

# All European countries are not the same!

## THE DUBLIN REGULATION AND ONWARD MIGRATION IN EUROPE

Marianne Takle & Marie Louise Seeberg



NOVA

Velferdsforskningsinstituttet

HØGSKOLEN I OSLO  
OG AKERSHUS

**“All European countries are not the same!”**

The Dublin Regulation  
and onward migration in Europe

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Norwegian Social Research  
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# Preface

The project "Secondary Movements in Europe" was commissioned by the Norwegian Directorate of Immigration and conducted by NOVA between December 2014 and October 2015. We thank the Directorate for this opportunity to examine European and national asylum systems and the effects and workings of the Dublin Regulation in particular. We are also very grateful to the many people who have generously shared with us their experiences, time, knowledge and reflections on this vast, complicated and rapidly changing field of study, including public servants in Norway, Sweden and Germany, representatives of NGOs in all three countries, and men and women who came to Europe seeking international protection. Thanks also to all the interpreters who helped us understand each other. A special thank you goes to our colleagues at HAW Hamburg for helping us recruit and interview migrants. Without the help and contributions of all these people, we would not have been able to complete this project.

Marianne Takle was the project manager, while Marie Louise Seeberg was responsible for the qualitative part of the project. This report is the product of our joint efforts. Takle has written chapters 3, 4 and 5 and Seeberg has written chapters 6 and 7 as well as most of chapter 2, while we have co-written chapters 1 and 8. Central parts of the research underlying our analysis in chapter 4 were conducted by Takle at Europa-Kolleg Hamburg with funding from the German Academic Exchange Service (DAAD).

A Project Reference Group was established by the commissioning body at the beginning of the project period and has met with the researchers twice. This group had the following members, all working in Norway:

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Oslo, november 2015

Marianne Takle

Marie Louise Seeberg

# Terminology and abbreviations

Asylum seeker – a person who has left his or her country of origin and formally applied for asylum in another country, and whose application has not yet been concluded.

BAMF – Bundesamt für Migration und Flüchtlinge

CEAS – Common European Asylum System

EASO – European Asylum Support Office

EU – European Union

EU-LISA – European Union Agency for Large Scale IT Systems in the Area of Home Affairs

Eurodac – European fingerprint database

Eurostat – European Commission Directorate-General in charge of providing statistical information

Eurosur – The European Border Surveillance System

Frontex – European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

Incoming requests – Requests one EU/Schengen member state receive from another Member State to take back or take charge of a person.

MS – Member State(s). In this report, the term Member State(s) refers to the 32 countries taking part in the Dublin Regulation.

Migrant – a person who has left his or her country of origin and for whatever reason seeks to establish her- or himself elsewhere. This broad social definition includes asylum seekers and recognised refugees as well as many other specific, legal categories. In this report, we use migrant in this wide sense, when specific status is not discussed.

NOAS – The Norwegian Organisation for Asylum Seekers

NPIS – National Police Immigration Service (PU, Politiets Utlendingsenhet, Norway)

Outgoing requests – Requests one EU/Schengen Member State send to another Member State to take back or take charge of a person.

Refoulement/non-refoulement – non-refoulement is a core principle of international refugee law that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened (definition taken from the European Database of Asylum Law).

SIS – Schengen Information System

Take back request – concerns cases where a Member State requests another Member State to take responsibility for an applicant because the person has already lodged an asylum application in that Member State.

Take charge request – concerns cases where a Member State requests another Member State to take responsibility for an asylum application, although the applicant has not previously submitted an application in the other Member State.

VIS – Visa Information System

## Government institutions referred to in this report

Ausländerbehörde - Immigration Office (Germany)

Bundesamt für Migration und Flüchtlinge (BAMF) - Federal Office for Migration and Refugees (Germany)

Dublinenheten - Dublin unit (Norway, Utlendingsdirektoratet)

Dublinenheten – Dublin unit (Sweden, Migrationsverket)

Landinfo – The Norwegian Country of Origin Information Centre, an independent body within the Norwegian Immigration Authorities

Migrationsdomstolen - Migration Court (Sweden)

Migrationsverket - Swedish Migration Agency (Sweden)

Mottagningsenheten (Migrationsverket) - Reception Unit (Sweden)

Operativa stödenheten (Migrationsverket) - Operative Supportive Unit (Sweden, Migrationsverket)

Politiets Utlendingsenhet (PU) - National Police Immigration Service (NPIS) (Norway)

Utlendingsdirektoratet (UDI) - Directorate of Immigration (Norway)

Utlendingsnemnda (UNE) - Immigration Appeals Board (Norway)

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## Executive summary

In this project, we have examined the significance of the Dublin Regulation for the onward migration of asylum seekers from their first country of arrival in Europe to other countries in the EU/Schengen area. The project was commissioned by the Norwegian Directorate of Immigration, initiated in December 2014 and conducted in 2015. We collected our data in Norway, Sweden, and Germany during the period from February to April 2015. Because of the ongoing, rapid changes and dramatic events in this field, this limited period of data collection has important implications for our findings. Our analyses and recommendations are based on the data collected in this period. We describe a system on the brink of a major crisis – a crisis that has unfolded as we were writing our report, and a crisis that our material clearly anticipates. Our ambition is that our detailed study of the system may form part of the necessary knowledge base for the revision of the Dublin Regulation, which the EU Commission has announced will come in March 2016.

The purpose of the Dublin Regulation is to determine the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. The practical work in applying the Dublin Regulation has decisive consequences for where migrants will live in the future. This is because refugee status granted by one Member State does not give the right to live or work in any other Member State as a refugee, while individual Member States' rejections of asylum claims are valid in all Member States.

*The Dublin Regulation* is an integrated part of the *Common European Asylum System* (CEAS). The aim of the CEAS is to harmonise the internal legislation on common standards for asylum seekers among the EU Member States. The CEAS consists of three directives; the Qualification Directive (on who qualifies for asylum and the content of protection granted), the Reception Conditions Directive and the Asylum Procedures Directive; and of two regulations, namely the Dublin Regulation and the *Eurodac Regulation* on the use of fingerprints of persons over 14 years who are not European citizens. The

Dublin Regulation and the Eurodac Regulation together form the *Dublin System*.

States have different forms of membership in the EU/Schengen policies on asylum and migration. The CEAS includes all EU Member States. Norway, Iceland, Switzerland and Liechtenstein are not included in the CEAS as a whole, but do take part in the Dublin System. These countries are also part of the *Schengen cooperation*, which also includes EU Member States, except the UK, Ireland, Romania, Bulgaria, Cyprus and Croatia. In this report, we use 'Member States' when we refer to the 32 countries taking part in the Dublin System: the 28 EU member states, and Norway, Iceland, Switzerland and Liechtenstein.

This research project aims to identify the most important consequences of the Dublin Regulation from the points of view of Member States as well as from migrants' perspectives. We address the following three research questions:

1. What characterises the people who migrate onward within Europe, in terms of migration patterns, citizenship, gender and age?
2. How does the Dublin Regulation work in practice, as seen from the points of view of immigration bureaucracies?
3. How does the Dublin Regulation work in practice, as seen from the points of view of migrants, and what are the implications of the Dublin Regulation for their decisions to travel onward within Europe?

1. WHAT CHARACTERISES THE PEOPLE WHO MIGRATE ONWARD AFTER ARRIVAL IN EUROPE, IN TERMS OF MIGRATION PATTERNS, CITIZENSHIP, GENDER, AND AGE?

European migration statistics constitute a relatively new field, and only to a limited extent show the migration patterns and key characteristics of people who are migrating onward within Europe. We have examined existing Dublin related statistics, which are only partly updated up to the end of 2014. The border control agencies Frontex and EASO have recently started collecting statistics on persons travelling onward within Europe, but these numbers are not yet published.

There are two main sources of Dublin statistics on the European level: Eurodac statistics and Eurostat statistics. As the two sets of statistics are based

on diverging categories, Eurodac statistics cannot be linked to Eurostat statistics on *requests* to transfer individual asylum seekers and *completed* transfers between Member States.

There are several weaknesses in the Eurostat Dublin statistics especially as some data are not included in the statistics. These statistics do not include the categories citizenship, sex and gender. There is also a time lag between the registrations of the stages in the Dublin procedure, which means that it is not possible to follow the movements of individuals, as requests registered one year will often lead to transfers registered the following year.

### *European statistics*

The majority of those who entered irregularly in one Member State and later lodged an application for asylum in another Member State went to Germany and Sweden.

Moreover, Germany, Switzerland and Norway were the Member States where most persons were found irregularly present after they had applied for asylum in another Member State (Eurodac 2015). Eurostat Dublin statistics from 2008 to 2014 show EU-border countries have the most incoming requests from other Member States. In 2014, Germany, Switzerland, and Sweden sent the most outgoing requests to other Member States. There was also a circulation of requests among countries in North-West Europe.

### *National statistics*

Norwegian, Swedish, and German national statistics from 2014 show that the ratio of effectuated Dublin transfers are generally low in all three countries. The three countries send requests to each other. They also mutually transfer, and therefore in effect exchange, asylum seekers with similar nationalities – mostly people originating in Eritrea and Syria. The patterns are similar between Norway and Sweden, while Germany in addition sends more requests to neighbouring countries on the continent. Most incoming and outgoing requests and transfers concern asylum seekers from Syria, Eritrea, Afghanistan, Somalia and Sudan.

While neither Eurostat nor German Dublin statistics include information on age and gender, Norwegian and Swedish statistics do provide data on these characteristics. In 2014, men between the ages of 20 and 40 formed

the largest category of persons registered as Dublin cases who travelled onward to Norway or Sweden. There was also a significant number of women and of persons below the age of 18, but few above the age of 60.

Reports from the European Parliament (Guild et al. 2014) and EASO (2014a) operate with a distinction between three categories of percentages referring to: 1) outgoing Dublin requests of total asylum applicants; 2) accepted Dublin requests of total asylum applicants; 3) effectuated Dublin transfers of total asylum applicants. When we apply the same distinction to Norway, Sweden and Germany in 2014, we find the following:

1) In Norway, the proportion of outgoing requests out of the total number of first asylum applications was 30 per cent, while the corresponding number for Sweden was 14 per cent and for Germany 20 per cent. 2) While the proportion of accepted outgoing requests of all first asylum applications to Norway was 15 per cent, the corresponding number for Sweden was 11 per cent and for Germany 16 per cent. 3) The proportion of effectuated Dublin transfers out of the total number of first asylum applications to Norway in 2014 was 13 per cent, while the corresponding number for Sweden was 5 per cent and for Germany 3 per cent.

When it comes to the percentages of effectuated Dublin transfers measured in relation to outgoing requests accepted by other Member States, there are also significant differences between the three countries in 2014. In Norway, the proportion of effectuated Dublin transfers of all accepted outgoing requests was 85 per cent. The corresponding number for Sweden was 49 per cent and for Germany 39 per cent.

These numbers can only be interpreted as indicators to see the proportion of Dublin transfers. The number of asylum applications registered one year will for various reasons not necessarily reflect the number of applications processed by the government in the same year. However, as this holds true for all three countries, the significant differences between their Dublin transfer ratios reflect a clear pattern: The likelihood for asylum seekers to have their applications processed in countries of onward migration is higher in Germany and Sweden than in Norway. The differences may indicate a Norwegian priority to use the Dublin Regulation as a means to transfer asylum seekers to other Member States.

## 2. HOW DOES THE DUBLIN REGULATION WORK IN PRACTICE, AS SEEN FROM THE POINTS OF VIEW OF IMMIGRATION BUREAUCRACIES?

### *Studies of the Dublin Regulation*

Our review of reports and statistical material exposes a broad consensus among scholars and policy makers about weaknesses in the Common European Asylum System (CEAS) and in the Dublin Regulation. As an effect of the shortcomings of the CEAS, the Dublin Regulation has been attributed with several implicit aims in addition to its explicit aim of identifying the Member State responsible for processing specific claims for asylum. While the Dublin Regulation is the only current framework for *allocating* responsibility for individual asylum claims among the European countries, it is not designed to be an instrument for the general *sharing* of responsibility between Member States. The main weaknesses of the Dublin System itself lie in Member States' diverging application of the Dublin Regulation, the low effective transfer rates, and no measurable decrease in onward migration after nearly two decades since the Dublin Convention first came into force.

### *Public institutions' experiences*

Regarding the administrative cooperation between the Member States at the operative level, we found that all the public servants we spoke to in the three countries had positive experiences. This well-established cooperation was the strongest positive effect we found of the Dublin Regulation in the three countries.

When it comes to persons not registered in the first Member State of arrival, the Dublin system is only able to handle these cases to the extent that other Member States have the capacity to check asylum seekers' travel documents. While Norwegian authorities reported that they have this capacity, Swedish and German authorities almost exclusively use the Eurodac fingerprint database and VISA data files to identify Dublin cases.

As the aim is not to start the asylum process before the responsible Member State is identified, immigration bureaucracies in all three countries focused on technical questions related to the persons' itineraries within Europe. In contrast to Norway and Sweden, however, German authorities gave persons in a Dublin process an extended possibility to express any special



reasons for not being transferred to another Member State, through two separate Dublin interviews in addition to the initial registration interview.

All our public servant interviewees emphasised they applied the criteria in the hierarchical order prescribed in the Regulation in order to determine the Member State responsible for an application. In spite of public servants' own understanding of their application of criteria in the prescribed hierarchical order, a low-ranking criterion (application examined in the first Member State in which they arrived when entering the EU/Schengen territory) was the most frequently applied. Most likely, this is due to the relative ease of access to information that makes this criterion applicable, through the Eurodac fingerprint database. The information required to apply the higher ranked criteria has not been made similarly accessible through established instruments of cooperation.

While Norway has a separate tribunal for immigration cases, Dublin decisions in Sweden and Germany are treated within the general court system. Norway gives persons with a Dublin decision access to appeal procedures and provides two hours of lawyer assistance free of charge, by lawyers appointed by the immigration authorities. This is not the case in Sweden or Germany, where asylum seekers must find and pay for any legal assistance themselves. In all three countries, bureaucratic decisions in Dublin cases were very rarely amended by subsequent court decisions, in spite of these significant legal differences.

An obstacle to the functioning of the Dublin Regulation is the absconding of persons with a Dublin decision before the transfer can take place. When deemed necessary, Norwegian, Swedish and German authorities make use of detention before Dublin transfers. Such detention forms part of an internal border control.

We found diverging views between the three countries of whether, and how, differences in the Member States' asylum procedures and reception conditions should influence the application of the Dublin Regulation. Such considerations are not part of the Dublin Regulation, but of the three Directives that form the CEAS together with the Dublin System. This indicates that the cart has been set before the horse in the Dublin System: rather than setting the Dublin System in motion after its preconditions as

outlined in the Directives were in place, one has begun by implementing the Dublin System, with the preconditions as future goals.

Diverging national jurisprudence within the three countries thus leads to different practices. While neither of the three countries transferred persons to Greece, and they had changed their practice in relation to transferring families to Italy following the Tarakhel decision, Norway and Sweden transferred persons to Hungary with no reservations, while Germany (Berlin) had reservations in doing this due to an administrative court decision in Berlin.

The Dublin System is not equally important to the immigration bureaucracies in the three countries. Norwegian government institutions give the criterion concerning first country of entry in the Dublin Regulation high priority in relation to both the use of resources and the transfer of asylum seekers to other Member States. Swedish government institutions had a more ambiguous practice. They used fewer resources and transferred fewer asylum seekers than Norway, measured in relation to the number of asylum seekers. German government institutions transferred very few asylum seekers under the Dublin Regulation. Public institutions in Berlin emphasised to us that the Dublin Regulation was not a priority in their daily work, as the onward migration of other groups than asylum seekers was more important.

In summary, public institutions in the three countries prioritise differently in their application of the Dublin Regulation.

### 3. HOW DOES THE DUBLIN REGULATION WORK IN PRACTICE AS SEEN FROM THE POINTS OF VIEW OF MIGRANTS, AND WHAT ARE THE IMPLICATIONS OF THE DUBLIN REGULATION FOR THEIR DECISIONS TO TRAVEL ONWARD WITHIN EUROPE?

#### *Decisions on onward migration*

The literature review indicates that decisions to migrate onward within Europe are formed in a complex interplay between many agents and factors. Decisions do not just depend on asylum procedures, outcomes and standards of reception and waiting conditions but even more on future possibilities. For the individual migrant, it makes sense to ask: “If I gain protection in this country – will I have the means to survive here? If not, where might I be better able to build myself a new life?” Such questions are answered not only on the individual, economic-rational level, but also in terms of wider social realities such as the possibility of

reciprocal relationships with other people. Which country offers the best future opportunities will depend on individual, transnational and national factors such as the location of existing social networks, knowledge of and familiarity with different European languages and cultures, and which European country is likely to recognise their competencies and to need their labour.

### *Migrants' experiences with the Dublin system*

Through the interviews, we found the Dublin Regulation is only a small part of migrants' own experiences. Its significance lies in the ways in which it interacts with other elements and factors. 'Dublin' works as a largely unforeseen barrier to their plans and aspirations. Being defined as a Dublin case adds to the many difficulties they have to overcome and takes its additional tolls on their health and well-being.

Although policies and practices are built on the principle of *mutual trust* among Member States, this trust, as extended to the countries of first entry in Europe, was clearly not shared by the migrants. Our interviewees were less concerned with comparing the material conditions for asylum seekers in different countries, and more concerned with their own access to basic necessities such as housing, health services, food and work, as well as with human rights violations directed at asylum seekers and migrants in some countries of first entry. Over half of the people interviewed stated they feared desolation, homelessness and/or violence in the first country of entry. None of the migrants interviewed in Norway stated they had had any opportunity to explain these fears fully to case workers, while migrants interviewed in Germany reported that they had this opportunity. While residency may be granted, means of subsistence do not always follow. This is especially a problem for people with refugee status in the Mediterranean countries, where refugees to a limited extent have access to welfare services and labour and housing markets.

When it comes to Dublin procedures, including Member States' obligation to inform migrants of the Dublin Regulation, the general picture gained from the migrants was that of Dublin outcomes as predominantly random.

Most of our interviewees named the immigration authorities (in Norway, NOAS provides information on commission from the Directorate of Immigration) as their main sources of information about the Dublin Regulation. Although most of the interviewees had received general information, it was

difficult for them to apply the information to their own cases. Access to information relevant to a specific case largely depends on agents of law who are specialised in asylum procedures. Understanding the criteria and procedures of the Dublin Regulation as a system was less relevant to the migrants than identifying the specific possibilities and obstacles that this system posed to them.

None of our informants had heard of Eurodac before we spoke to them, but all had an idea about the central role of fingerprints in the European asylum system. The specific role of fingerprints in their own cases was resented. Several migrants described having been forced to give their fingerprints, or having been wrongly informed that the fingerprints would not have any impact on their asylum procedures.

More than half of the migrants we interviewed had made a decision about their final country of destination before leaving their country of origin. These decisions had been based on a combination of reasons. The likelihood of reaching a country offering democracy and human rights, safety, peace, education and work was the top priority. The presence in other countries of family, friends or an ethnic network, and familiarity with the language and culture of the destination country had also been important factors. Changes of plans en route had been caused by unexpectedly closed borders and the perception of persecution or push back (*refoulement*) of migrants and refugees in the first country of entry

Our material shows that it does make a difference for asylum seekers where they file their claim, in terms of criteria, status and conditions – the content of the three Directives of the CEAS. While the main thing is to be safe, even this most basic need is not equally met in all Member States. Other basic needs, such as the need for subsistence, are also met differently across Europe, as are more long-term but important concerns about access to housing, education, employment, acceptance, and social networks.

As a consequence of the Dublin Regulation and the wider CEAS, many migrants – asylum seekers, recognised refugees and others with related residence permits – are confined to countries where they have little or no access to such essentials.

Our interviews show that the Dublin System appears fundamentally unjust to migrants. While most asylum seekers in Norway, Sweden and

Germany must have passed through one or more European countries on their way, very few of these are categorised as Dublin cases, and even fewer are returned to their first country of entry. The added uncertainty and time involved in a Dublin process exacerbates levels of emotional distress. Being identified as a Dublin case and having to wait passively for a response from another country reinforced the migrants' sense of being denied human agency and dignity, of being harassed, rendered suspect, and pushed about.

In summary, the interviews show the migrants did not feel the Dublin Regulation works as a solution to their problems, nor indeed as the answer to any conceivable logical question.

## Recommendations

As shown in our report and as widely reflected in other studies and in current EU activities, the Dublin Regulation is in dire need of revision. Such revision must be part of a larger revision of the Common European Asylum System. Our recommendations are especially directed towards the Norwegian authorities. Norway is a signatory to the Schengen agreement and the Dublin Regulation, and the country adapts to the directives in the CEAS. The Norwegian Directorate of Immigration has specifically requested our recommendations on the following:

1. How should Norwegian authorities handle the fact that many third-country nationals are not registered in their first country of arrival in Europe?
2. Is it possible to reduce the ratio of persons who claim asylum in more than one European country? If so, how?

### 1. HOW SHOULD NORWEGIAN AUTHORITIES HANDLE THE FACT THAT MANY THIRD-COUNTRY NATIONALS ARE NOT REGISTERED IN THEIR FIRST COUNTRY OF ARRIVAL IN EUROPE?

Our recommendations here necessarily depend on how the authorities' aim is defined.

*If the aim is to transfer asylum seekers to the first country of entry in Europe,* Norwegian authorities could make an even stronger effort to check travel documents and other sources of information in addition to Eurodac hits and report of Visa data file, and use these as evidence to prove the person has been

in another Member State. However, this would demand even more resources than are currently spent on Dublin processing in Norway. It would also entail considerable human costs, and most likely be inefficient in economic terms. We would therefore not recommend this.

*If the aim is to increase the number of registrations*, Norwegian authorities could provide more support to EU agencies' establishment of so-called Hotspots for the European border countries' registration of asylum seekers. The establishment of such Hotspots and the implied (if necessary, forced) registration of all third-country nationals who cross the borders into Europe in irregular ways involves yet new logistical challenges for the border countries, as well as complex human rights challenges. We would therefore only recommend this on condition the human rights challenges are adequately met before the establishment of such Hotspots. This would demand thorough and time-consuming preparations.

*If the aim is to give persons in need of protection the possibility to lodge their applications*, Norway could refrain from requesting Dublin transfers and instead examine all applications lodged in Norway. This complies with the Dublin Regulation as it is. This would also make available for the direct assessments of asylum applications the considerable human and economic resources now spent on Dublin cases and on the transfer of asylum seekers between countries. We recommend this as an immediate action.

## 2. IS IT POSSIBLE TO REDUCE THE RATIO OF PERSONS WHO CLAIM ASYLUM IN MORE THAN ONE EUROPEAN COUNTRY? IF SO, HOW?

The exact ratio or number of persons seeking asylum in more than one European country is not known; however, the low ratios of Dublin requests indicate that such multiple applications are less common than is often assumed.

Effectively reducing the ratio of persons who claim asylum in more than one European country is only possible under certain circumstances. These circumstances are, in order of importance: equal asylum procedures resulting in equal recognition rates, equal future possibilities, and equal reception conditions for asylum seekers. The first and last of these are already defined as CEAS Directives and as such form a foundation for the Regulation. However, at present, they function as goals rather than as preconditions. As we have shown, this logical fallacy does not lead to the desired results, such as the legal

protection of asylum seekers and the reduction of onward migration. The second circumstance, equal future possibilities, goes far beyond the CEAS, as it depends on the economies of Member States and on the characteristics of individual asylum seekers. The Norwegian Directorate of Immigration can do very little to influence any of these circumstances.

#### OTHER RECOMMENDATIONS – RELATED TO NORWEGIAN IMMIGRATION BUREAUCRACY

With regard to the organisation and distribution of tasks and responsibilities within Norway, on the basis of our study we recommend.

*The role of the police in Dublin cases should be reconsidered.* This should be considered together with a reconsidering of the efficiency of the present system of legal support. If an asylum seeker is identified as a Dublin case in connection with the initial registration conducted by the police, his or her opportunity to communicate with the Directorate of Immigration is rigorously limited. In Sweden and Germany, our research shows this line of communication is more available to all asylum seekers, thus potentially providing an opportunity to defend the case for claiming asylum in these countries. Although the police today are required to ask for such information, this is done upon arrival in Norway, in a stressful initial situation where large amounts of information are to be exchanged and the asylum seekers have little understanding of the procedures in Norway. Having been identified as Dublin cases, asylum seekers should therefore be provided the opportunity to present their reasons to the Directorate of Immigration in at least one later, separate interview, as in Germany. This would facilitate case workers' access to information necessary to applying the higher ranked criteria in the Dublin Regulation.

*Independent and systematic information about conditions and developments in Member States as relevant to Dublin decisions should be available to the Directorate of Immigration and the Immigration Appeals Board.* Such information should be included in Landinfo's mandate. In order to ensure the transparency and independence of the decisions of these two institutions, the Immigration Appeals Board's sources of information should, however, not be limited to Landinfo but include reports from a wider range of national and international sources.

In order to ensure immigration appeals including Dublin appeals the same degree of objectivity and transparency as other court appeals, Norway should consider following Sweden's example and *replace the Immigration Appeals Board with a Migration Court placed within the general tribunal system*. Norwegian authorities should examine Sweden's experiences with this change.

#### OTHER RECOMMENDATIONS TO NORWEGIAN AUTHORITIES

Based on our analyses of how the Dublin Regulation worked in the months immediately preceding the summer of 2015 when the number of asylum seekers coming to Europe rose dramatically, and in light of the current critical situation, we would like to extend the following additional recommendations to Norwegian authorities.

*Immediately suspend the Dublin procedure* for asylum seekers from Syria, and thus take over the responsibility for processing their claims, also considering this measure for other nationality groups. The current challenges have been created on the European level, and separate national solutions are therefore not likely to succeed. Like Germany, Norway should therefore seek solutions on the European level.

In the longer term, commit to a revision of the Dublin Regulation in which the Regulation is based on *mutual recognition of refugee status and related residence and work permits*, so that recognition, and not just rejection, is valid on a European level.

Any revision of the Dublin Regulation should also include a mutually binding definition of *vulnerability*.

The announced revision should build on the main achievement of the Dublin system to date, which consists of *well-established and functioning networks and instruments of cooperation among the immigration administrations of Member States*.

*Continuous research is needed* on the consequences of the immediate and long-term developments in EU's common asylum policy. The Dublin Regulation should not be seen in isolation but rather as an integrated part of a system in crisis. Special attention should be paid to what will happen to the future asylum system and to persons seeking international protection in this



system, depending on the degree and nature of an agreement among all Member States on the distribution of asylum seekers in Europe.

We view the following research topics as especially urgent:

- The consequences of any European level agreement on the distribution of asylum seekers, or on the lack thereof.
- The consequences of a revised Dublin Regulation for Member States
- The consequences of a revised Dublin Regulation for migrants, with special attention to children and vulnerable groups
- Changes in border control policies and practices at the inner and outer Schengen borders
- How civil society and governments act, legitimate their actions, and adapt to one another, especially considering the identification of possible synergy effects and areas of tension.
- Research should also focus on refugee related changes internally in the Member States' educational systems, labour and housing markets and other important societal fields, and examine the possibilities for a harmonisation of integration instruments on a European level.

# 1 Introduction

## Brief background to the study

On 21 August 2015, the German Federal Office for Migration and Refugees (BAMF) issued an instruction to suspend the Dublin procedure for asylum seekers from Syria, taking over the responsibility for processing their claims (AIDA 2015; BAMF 2015a). With this instruction, Germany cancelled the application of the Dublin Regulation to what is currently by far the largest national group of asylum seekers in Germany and in Europe. This action, which was quickly followed by a series of meetings and actions reflecting a sense of crisis at national and EU levels, illustrates how fast this field is changing and that the Dublin Regulation, as part of the Common European Asylum System, is under considerable pressure.

This partial suspension of the Dublin Regulation is made by the country in Europe which receives far more asylum seekers than any other European country. The number of asylum seekers in Europe has been increasing over the last two years and has contributed to the so-called Mediterranean crisis. During the first six months of 2015 alone, around 414,580 persons applied for asylum in the EU/Schengen Member States. In 2014, the total number of asylum seekers in these Member States was 663,060, and compared with 2013 there were 44 per cent more asylum applicants in 2014 (Eurostat 2015a). Due to visa restrictions and other border control measures, most people seeking international protection in Europe arrive in EU-border countries such as Greece, Italy and Hungary, while some aim to travel onward to countries further north and west in Europe, such as Germany, the UK, and Sweden.

According to the Schengen Borders Code, any person, irrespective of his/her nationality may cross the internal borders between the Schengen Member States at any point without checks being carried out (Regulation (EC) No 562/2006). However, this does not preclude the possibility for national police authorities to exercise their powers if this exercise does not have an effect equivalent to border checks. The lack of border checks between Schengen Member States implies that asylum seekers, as well as persons without the legal right to stay on EU/Schengen territory, may move freely between the EU/Schengen Member States.

This kind of migration within the EU/Schengen area is often called 'secondary movements' (Frontex 2014; EASO 2015). Since many people not only move from one country to another, but between several European countries, we prefer to call these movements 'onward migration'. Persons who are not citizens of the 28 EU Member States nor of the closely associated states Norway, Switzerland, Liechtenstein and Iceland are often called 'third-country nationals'. We can identify at least four groups of third-country nationals involved in onward migration: persons who have entered irregularly and have not applied for international protection; persons who have entered legally but who are no longer entitled to stay in the EU/Schengen area legally (over-stayers); persons who have a residence permit in one Member State and, finally, persons who have applied for international protection. This last group includes both asylum seekers and previous asylum seekers, whose need for international protection has already been recognised or rejected by a Member State.

In this report, we examine the onward migration of asylum seekers within the EU/Schengen area, drawing on our own, as well as existing, data from Norway, Sweden, and Germany. These three countries are all typical receiving countries for onward migration of asylum seekers from the border countries of Europe. However, they are significantly different in terms of the absolute and relative numbers of asylum seekers. We elaborate on migrants' reasons to travel and the governments' responses to the movements. We concentrate on the Dublin Regulation, as this is the only current framework for allocating responsibility for asylum claims among the European countries (Guild et al. 2014). Importantly, the Dublin Regulation only regulates the onward migration of asylum seekers, while the EU/Schengen Member States must find other political tools to handle other types of onward migration.

The main purpose of the Dublin Regulation is to determine the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Regulation (EU) No 604/2013).

The practical work in applying the Dublin Regulation has decisive consequences for where migrants will live because refugee status granted by one Member State does not grant the right to live or work in any other

Member State. There is a hierarchy of criteria for determining the responsibility, ranking from family unity as the most important down to the first Member State in which the applicant filed a claim of asylum. Firstly, then, asylum seekers who have family members with recognised refugee status or who are in the process of applying for asylum will have their claims determined in the Member State where their nuclear family members (legal spouse, children under the age of 18, or parents if the asylum seekers are under the age of 18) reside or dwell. Secondly, if no such nuclear family is present, asylum seekers with a valid (or recently expired) residence document or visa will have their application examined in the Member State that issued this documentation. Thirdly, if neither of these two criteria applies, the asylum seekers will have their application examined in the first Member State in which they arrived when entering the EU/Schengen territory. Finally, if none of the above criteria applies, the responsibility lies with the first Member State in which the applicant filed a claim of asylum.

The Dublin Regulation is an integrated part of the Common European Asylum System (CEAS). The aim of CEAS is to harmonise the internal legislation on common standards for asylum seekers among the EU Member States. CEAS consists of three directives, on qualification, reception conditions and asylum procedures respectively, and two regulations, namely the Dublin Regulation and the Eurodac Regulation.

The Eurodac regulation is a supplement to the Dublin regulation. It asserts that all Member States are obliged to take the fingerprints of every applicant for asylum of at least 14 years of age, and send these fingerprints to the central unit database. The Eurodac fingerprint database determines whether an asylum seeker has previously applied for asylum in another Member State. It also checks for individuals apprehended by a Member State in connection with the irregular crossing of an external border or found illegally present in a Member State.

There are different forms of membership of the EU/Schengen policies on asylum and migration. CEAS covers all EU Member States. Norway, Iceland, Switzerland and Liechtenstein are not included in CEAS as a whole, but do take part in the Dublin Regulation and the Eurodac Regulation. These countries are also part of the Schengen cooperation, which also includes EU

Member States, except the UK, Ireland, Romania, Bulgaria, Cyprus and Croatia. In this report, we use ‘Member States’ when we refer to the 32 countries taking part in the Dublin regulation.

## Aims, research questions, and analytical framework

This research project aims to identify the consequences of the Dublin Regulation from the points of view of Member States as well as from migrants' perspectives. We have therefore formulated and addressed the following three main research questions as the methodological point of departure for our empirical research:

1. What characterises the people who migrate onward within Europe, in terms of countries of origin and citizenship, itineraries, gender and age?
2. How does the Dublin Regulation work in practice, as seen from the points of view of immigration bureaucracies?
3. How does the Dublin Regulation work in practice as seen from the points of view of migrants, and what are the implications of the Dublin Regulation for their decisions to travel onward within Europe?

In order to address these research questions, we have conducted research consisting of three distinct, but interrelated parts: a review and juxtaposition of available statistics, a literature review, and a qualitative part comprising interviews with migrants, NGO representatives and public servants. We have analysed our material according to an analytical framework consisting of three separate, but interrelated issues:

- Uniform Dublin criteria and procedures: how the Dublin Regulation functions in practice in relation to its intention.
- Uniform asylum procedures and reception conditions: how the contemporary CEAS practices lay the foundations for how the Dublin Regulation functions today in relation to its intention.
- Onward migration: what kind of role the Dublin Regulation plays in relation to onward migration.

We develop this framework throughout chapter 3 and present it in detail towards the end of chapter 3 on the background to the Dublin Regulation.

## About this report

This report is based on a research project initiated in December 2014 and conducted in 2015. Most of the data was collected in the three-month period from February to April 2015. This has important implications for our findings because of the ongoing, rapid changes and dramatic events in this policy field. Our analyses and recommendations are based on our data and do not extend beyond this limited period, although we are describing a system on the brink of a major crisis – a crisis that is unfolding as we write, and a crisis that our material clearly anticipates.

The report itself comprises eight chapters. Following this introduction, the second chapter explains how we carried out our research and analyses. The third chapter presents and discusses the Dublin Regulation as an integrated part of the European border control and Common European Asylum System, and here we also present our analytical framework. The fourth chapter examines the production of Dublin statistics at the European level by Eurostat, Frontex and EASO, and at the national level in Norway, Sweden and Germany. A main aim in this chapter is to highlight and discuss the many challenges of comparative analysis based on these statistics. In the fifth chapter, we present our qualitative study of how the Dublin system works as seen from the points of view of Norwegian, Swedish and German public servants responsible for implementing different parts of the Dublin process. The sixth chapter is a review of selected qualitative studies of asylum seekers' motivation and reasons for undertaking onward migration within Europe. This forms a background to the seventh chapter, which presents how the Dublin Regulation works as seen from migrants' own perspectives. Chapter 8 is the conclusion, which also includes our policy recommendations.



## 2 Methods and approaches

In this chapter, we present our choices of methods and approaches to our main research questions, as outlined in the first chapter. An important aspect of this study is the comparison of Norway with Germany and Sweden, and we begin our presentation of what we did in the study by describing our comparative methodology.

### A three-country comparison

Data from all three countries form the empirical basis of this report. However, the main emphasis was on Norway, and we have more data from Norway than from Germany and Sweden. This is because the study was commissioned by Norwegian authorities, who naturally wanted as much information as possible about the Norwegian case. Comparing with the two other countries has been useful for two reasons. Firstly, because systematic comparison generally makes it easier to see what is otherwise taken for granted in settings of familiarity, and to see which aspects and elements are especially important in describing and analysing the familiar. Secondly, in 2014, Sweden and Germany were the two European countries with the highest ratios and numbers of asylum seekers, in contrast to Norway, which received, and still receives, very few. This juxtaposition not only puts the Norwegian case into perspective, but it also adds valuable information based on much larger numbers of asylum seekers than the Norwegian case can provide. This facilitates a systematic comparative analysis of how the Dublin Regulation works in three countries with different histories and practices in relation to asylum seekers. In contrast to Norway and Sweden, Germany is a federal republic with considerable differences between its *Bundesländer* or federal states. However, the authority to implement the Dublin Regulations is placed at the federal level. There are differences between the *Bundesländer* in their interpretations, practices and policies. Our interview data on the practices are taken from Berlin, and thus reflect Berlin's interpretations, practices and policies related to the Dublin Regulation as one of sixteen federal states, and as the capital of the federal republic. In chapter 5, we describe some of the implications of this for our analysis.



## Review of background material and literature

In order to build on existing knowledge, we have conducted extensive searches for relevant literature as part of this study. As our project comprises a quantitative or 'macro' policy part and a qualitative, 'micro' implementation and experiences part, our selected literature falls into these two main categories. Our study builds on the argument asserted by several scholars that the changed relations between borders and control have challenged the classical concept of border control in which border control was a central characteristic of state sovereignty. In chapter three, we build on this research when we distinguish between internal and external border control. Our discussion on statistics in chapter four builds on existing reports and policy documents. Several scholars, public administrations and non-governmental organisations have evaluated the Dublin Regulation. We present a review of three reports published in 2013, 2014 and 2015 as a background to our analysis. We have chosen these reports because they present extensive evaluations of the Dublin Regulation, they are published by central institutions in the field of migration in Europe, and they are the most recently available reports on the topic. The reports refer to the functioning of Dublin II, and to the transitional period between Dublin II and III.

Rather than providing a broader, updated state of the art description of onward migration, our review is designed to provide our particular study with the most relevant, existing background knowledge. We searched for literature using the main scientific bases and search strings such as “Dublin II eurodac consequences”, “Dublin III eurodac consequences”, “Asylum seekers ‘secondary movements’”, “Asylum seekers ‘secondary movements’ Dublin”, “‘Onward migration’ Europe ‘asylum seekers’” and variations of these. We also searched for literature by specific authors who we knew had made important contributions that were relevant to our topic. From an initial pool of around 200 hits, we narrowed it down by going through the abstracts and ended up with approximately 20 publications that we deemed particularly relevant in providing background knowledge for our study, based on the questions asked in this part of our project. Our review of these, focusing on our particular research questions and especially on the implications of the Dublin Regulation for migrants’ decisions and experiences, are included in chapter 6 below.

## Compiling Dublin Statistics

With the aim of analysing how European Dublin statistics can provide a comprehensive overview of onward migration in Europe, we review and juxtapose available statistics. At the European level, we examine the extent to which the production of statistics by Eurostat, Frontex, EASO and Eurodac can show fundamental characteristics of those who are travelling regarding; numbers, the countries they travel to and from, family relations, asylum status, citizenship, age and gender.

We met some challenges in our work with these statistics. Eurostat 2014 Dublin statistics are not complete, as many Member States have not submitted their data. We therefore compared available data with patterns from previous years. Frontex and EASO only started collecting Dublin statistics in 2014/2015. We contacted public servants and asked if they could supply these statistics, but without any great success. In our review and juxtaposition of available statistics, we also discuss what type of data the individual statistics are based on, what kind of weaknesses they have and the challenges of comparing statistics developed in various contexts and with diverse aims.

We received Dublin statistics from the Norwegian Immigration Directorate, the Swedish Migration Agency and the German Federal Office for Migration and Refugees. With the aim of analysing the key characteristics of those asylum seekers who travel, we asked these three public institutions whether they could provide us with Dublin statistics on numbers of incoming/outgoing requests and transfers, the countries asylum seekers travel to and from, the asylum seekers' family relations, asylum status, citizenship, age and gender. As the three countries diverge in relation to what kind of statistics they have available, this makes it complicated to compare, and we expand on the implications of this in chapter 4. The statistics we received constituted the basis for our analyses of the number and types of Dublin cases in Norway, Sweden and Germany, and the transfer of asylum seekers between these countries.

## Interviews

We met and spoke with many people as part of this project: representatives of Norwegian German and Swedish government authorities and NGOs as well as migrants. We conducted individual and group interviews. Unlike many

studies where interviews are conducted by research assistants, we chose to conduct all interviews ourselves and both of us took part in all interviews. This gave us a valuable closeness to our material and to all the different perspectives represented in our material that would otherwise have been impossible. We conducted the following numbers of interviews:

#### Public servants:

Norway – four interviews, eight people in total

Germany – two interviews, six people in total

Sweden – four interviews, five people in total

#### NGOs:

Norway: one interview, three people in total

Germany: three interviews, three people from three different NGOs in total

Sweden: one interview, one person

#### Migrants:

Norway: sixteen interviews, sixteen people in total

Germany: three interviews, four people in total

Sweden: no interviews

Overall, we conducted and transcribed notes from 34 interviews, totalling 46 individuals in three countries. Our interview languages were Norwegian, English and German and we used interpreters to help us conduct interviews in a further five languages.

#### INTERVIEWS WITH PUBLIC SERVANTS

Some of our interviews with public servants had only one interviewee, but most included two or three representatives together during one interview – in one case, as many as four. We conducted four interviews with in total eight public servants working at the national level in Norway, representing the Directorate of Immigration, the National Police Immigration Service and the National Appeals Board. In Berlin, Germany, we conducted two interviews where we had the opportunity to meet in total six public servants, two of them representing the city-state of Berlin's Immigration Office (*Ausländerbehörde*)

and four from the Federal Office for Migration and Refugees, at the national level. The Swedish Migration Agency generously allowed us to interview three of its staff in three separate interviews, one of which was a telephone interview. In Sweden, we also met and interviewed two representatives of the Migration Court (*Migrationsdomstolen*).

In Norway, the recruitment of public servants for interviews was a straightforward process, as expected, given that the Norwegian government authorities had commissioned the study. Representatives not just from the Directorate of Immigration, but also from the National Police Immigration Service and the Immigration Appeals Board willingly found time for us in their schedules in order to participate in the research interviews. These interviews were all conducted in Norwegian.

German and Swedish public servants were not in the same position of obligation to take part in the study, and we found it considerably more time consuming to find and recruit the people we needed to interview. However, having been recruited, the public servants in these two countries also generously shared their time, knowledge, and points of view with us. As described in chapter 5, the German public servants are only representing the implementation and practice in Berlin. In Germany, the interviews were partly conducted in English, partly in German, and in one case with a German-English interpreter. In Sweden, we interviewed public servants in Norwegian and Swedish.

#### INTERVIEWS WITH NGO REPRESENTATIVES

In the Norwegian case, the most central non-governmental organisation (NGO), NOAS, in this field was also involved in various forms of cooperation with the Directorate of Immigration. NOAS also accepted our invitation to participate in the project. When we contacted them, they readily invited us to a meeting that quickly turned into an interview.

The organisational landscape in Sweden and Germany is different from the Norwegian one, where there is one main organisation with the main mandate of helping asylum seekers. We contacted several organisations in these two countries and were able to interview representatives of one organisation in Sweden and three in Germany. All these interviews were conducted with just one representative, in each case the organisation's main representative

in issues concerning asylum seekers. These interviews with were conducted in English and German.

Our study focuses on the perspectives of public servants and migrants, which are presented extensively in separate chapters. In this report, we do not extensively cite information gathered from interviews with NGOs. However, the interviews with the NGOs provided an invaluable source of information, especially in terms of discussing and interpreting the often widely divergent viewpoints of migrants and public servants on the same realities.

#### INTERVIEWS WITH MIGRANTS

We interviewed migrants in Norway and Germany. The majority of our migrant interviewees had ongoing or previous Dublin cases, and this was indeed our main criterion for recruitment. However, sometimes without our prior knowledge, we also inadvertently interviewed a few people who told us that they had valid residence permits in other European countries. Formally, these were not Dublin cases but, as one of the public servants explained to us, searches in Eurodac do not provide information about possible residence permits, so these migrants had probably been provisionally classified as Dublin cases based on fingerprints.

In any research project, recruiting participants can be a challenge. A combination of expertise and persistence may be essential to succeed in meeting the targeted number of participants. In this project, we successfully recruited twenty migrants, thus falling short of the original target number of 30 interviews. One may question the importance of such numbers. Ostensibly, the data might appear more representative with a larger number of interviewees. Using quantitative methods, this would have been a real issue. However, in clear contrast to quantitative research, in a qualitative study such as this the issue of representation is less at stake than the exploration of links between structural circumstances and individual experiences. The structural circumstances in question are formed by the Dublin Regulation and the Common European Asylum System, as well as by various national legal frameworks. In this light, each individual we interviewed constitutes a case study aimed at identifying specifically how the Dublin Regulation influences the lives and decisions – the experiences – of migrants.

In Norway, we interviewed 16 persons who were asylum seekers or in other ways had experience with the Dublin Regulation (since our main focus was on Norway we had aimed at 20). In Germany, we interviewed four (the aim was five), while in Sweden, we did not succeed in recruiting any migrants to the project (here, too, our aim was five interviews). Asylum seekers and other migrants were under no obligation to take part in the research, and may have had many reasons not to do so. Recruiting migrants to share their experiences with us was therefore predictably more challenging than recruiting the other two main categories of interviewees. Time was one decisive factor. In Norway, it was more time-consuming and ethically challenging than difficult to achieve. Here, asylum seekers and migrants with 'Dublin' statuses are almost invariably to be found in reception centres for asylum seekers. These centres, although run on commission by private entrepreneurs or by NGOs, are the responsibility of the Directorate of Migration, which has detailed information about the whereabouts of each individual. We were therefore issued with lists of centres where we were likely to find onward migrants, and provided full access by the Directorate. We then contacted staff at the centres and explained our undertaking, whereupon they contacted persons who corresponded to our criteria and asked them if they would like to take part. It was difficult for us to know exactly how they had been recruited by the staff, and we took great care to inform the migrants we met that we were researchers, and had no access to or way of influencing their individual cases. We were reassured by the fact that one man withdrew from the project just before the interview, when he understood that we could not help him. However, we cannot be certain that our information was always understood or accepted. This uncertainty is reinforced by the fact that our research was funded by the Directorate of Immigration, the very authority that processes asylum applications. We also tried to recruit migrants through NGOs, who were able to provide us with contact information, but we received no responses to our repeated communication attempts.

In Sweden and Germany, migrants had little reason to believe that we had anything to do with their asylum applications; like them, we were foreigners. However, we quickly discovered that recruiting people for our interviews still might not be any easier. In Sweden, asylum seekers and people

with pending Dublin cases alike are encouraged to find their own dwellings. In the local communities where they live, a migrant's status is not known by public servants or others unless the migrants themselves make it known, which is rarely the case (DeBono, Ronnqvist, & Magnusson, 2015b). Only the Swedish Migration Agency knows their status, and as Agency staff told us, their rules of confidentiality did not allow them to help us in the recruitment process. We tried to ask representatives of municipal authorities for help but they did not have the capacity and also did not know the status of individual people. Finally, asking NGOs for help also turned out to be unsuccessful. As described by DeBono and colleagues, the highly politicised nature of the field has created front lines that pervade the relations and modes of communication between Swedish government institutions and NGOs:

The highly politicized nature of the field, broadly understood as the various institutions, service/providers and NGOs, meant that we were questioned and subject to scrutiny ourselves (...) Differences in ideology, morality and political tendencies were evidenced in the use of different terminology. As researchers one of our first hurdles was to learn how to navigate these different language/terminology-groups in an attempt to avoid being labelled. (DeBono, Ronnqvist, & Magnusson, 2015a).

Learning the languages and related concerns of each position takes time; the time-frame of our project meant that we did not have the opportunity to immerse ourselves in the different parts of the Swedish asylum system. With more time, we might have been able to acquaint ourselves with people at meeting points and arenas and build confidence so that we could have recruited people, but this was well beyond the scope of this project. As we did not interview any migrants in Sweden, our knowledge of the Dublin system there is chiefly derived from the NGO and government perspectives, which we have been able to supplement to some extent with citations from DeBono and colleagues' recent book based on their – finally achieved – interviews (DeBono, Ronnqvist, & Magnusson, 2015b). In Germany, we were able to engage with our existing contacts among researchers themselves working among refugees. They provided us with extremely valuable help and managed to recruit the four people we interviewed there.

Our criteria for recruiting migrants were that they had experiences related to the Dublin Regulation, and that they otherwise represent a wide scope of experiences and backgrounds. We interviewed five women and fifteen men, who had their origins in five different African countries, four countries in Asia (of which most, but not all, from Syria) and one country in the former Soviet Union. Ten of the migrants we interviewed were in their twenties or thirties but there was a wide age span, with the youngest 19 and the oldest 50. Most had at least finished 7 years of school, with about half having completed 12 years of education or more.

We prepared concise, written information in Norwegian and English for each of the three categories of interviewees, explaining what we were doing and how the information would be used. With a few exceptions, all participants were either given this material in advance or just before the interview started (see appendices). We also gave all participants the same information more informally in spoken form before the interviews started.

All interviews – in all three countries and with all three categories of interviewees – were conducted by both researchers. One of us led the interview, while the other made written notes as accurately as possible. Only in a few cases where language posed a problem to the speed with which we could take notes, did we also record the interviews, with the explicit permission of the interviewees. In this way, both researchers had first-hand knowledge of all the interviews and the settings in which they took place.

The use of interview guides ensured we covered all relevant topics in all interviews, while keeping the flexibility of an unstructured interview where the concerns and associations of the interviewees were allowed to come to the fore. As we did not have exact recordings of most of the interviews, our analyses of the interviews focus mainly on the content rather than on how it was expressed. A systematic review of all the interviews provided an overview of the key concerns and viewpoints of our interviewees, through which some main topics emerged.

#### ANONYMITY AND THE PROTECTION OF PRIVACY

We met and interviewed many public servants. They were all informed of the study and of how we would use the interview data. As representatives of the



authorities in three different countries, they mainly spoke on behalf of their organisations, as part of their service and obligations of transparency and freedom of access to information. We have chosen to protect their privacy while at the same time protecting the general public's right to access to information by citing and rephrasing statements made by our interviewees in the public sector without connecting any statements to specific persons, e.g. "Public Servant Swedish Migration Agency".

When it comes to the migrants we met, we do not have their real names and have given them pseudonyms in the text. These are names that belong to their own languages. The intention is to make the texts come alive to the reader while still protecting the interviewees' anonymity. We have also chosen to omit or change information that might have made it possible to identify individual migrants, without changing the basis for our analyses.

### 3 Background: The Dublin Regulation and European Border Control

#### Borders and Control

The EU/Schengen Member States have established several institutions and agencies with the aim of handling the challenges posed by migration of third-country nationals to the Member States' territory. Some of these institutions and agencies are crucial for the Common European Asylum System (CEAS), which has the aim of establishing common standards for asylum seekers among EU Member States. CEAS consists of three directives; the Qualification Directive, the Reception Conditions Directive and the Asylum Procedures Directive, and two regulations; the Dublin Regulation and the Eurodac Regulation. To understand the establishment of the CEAS we must look at two major changes that have taken place since 1995.

*(1) The abolition of border controls between most EU Member States, and the change of the division of authority between Member States and EU institutions*

This relates to the establishment of an internal market and, gradually, one without internal border control between five of its Member States with the implementation of the Schengen Agreement. By facilitating internal mobility, the countries made it possible for asylum seekers to move between these countries, and it became unclear which country was responsible for asylum applications. The *Dublin Convention* was established in 1990 to prevent asylum seekers from applying in several countries (often called asylum shopping with reference to migrants travelling from one Member State to another to apply for asylum) with no country accepting responsibility for applications (asylum seekers in orbit). The Dublin regulation (*Dublin II*) replaced the convention in 2003. It maintained and clarified the criteria for determining responsibility and was brought under EU governance procedures. It was also supplemented by Eurodac, which records fingerprint data. The Dublin regulation was replaced by *Dublin III* in 2014. We discuss Dublin III extensively below.

*(2) The enlargement of the EU led to substantial change in the size and shape of the EU*

The enlargements of the EU in 2004 and 2007 incorporated 12 new states with 130 million inhabitants, as well as an eastward and southward shifting of EU and Schengen external borders. The EU's increased activities in the field of asylum and migration at the turn of the millennium can be understood as a growing wish for control of the new and more complex external borders to the South and East after the enlargements were implemented (Angenendt 2008). A decisive factor in this process is that many of these states had little or no experience of migration.

The abolition of the internal borders among Schengen Members and the new definition of the Members' common external borders are reflected in the Schengen Borders Code (Regulation (EC) No 562/2006; Regulation (EU) No 610/2013). There is a huge contrast in the Borders Code's definition of border control related to the internal and external borders. The Borders Code states *internal borders* may be crossed at any point without a border check on persons, irrespective of their nationality, being carried out (Article 20). The abolition of border control at internal borders shall not affect the exercise of police powers under national law as long as this does not have an effect equivalent to border checks. Member States that are part of the Schengen area must remove all obstacles to traffic flow at road crossing points at internal borders, in particular any speed limits not exclusively based on road-safety considerations (Regulation (EC) No 562/2006; Regulation (EU) No 610/2013). These open internal borders make it problematic to have an overview of the onward migration of third-country nationals within the EU/Schengen area.

In 2013, the Member States amended the Borders Code in order to provide for common rules on the temporary reintroduction of borders control at internal borders in exceptional circumstances (Regulation (EU) No 1051/2013). Where there is a serious threat to public policy or internal security, Member States may exceptionally reintroduce borders control at their internal borders for a period of no more than 30 days or for the foreseeable duration of a serious threat. The Commission may also issue recommendations if there are

serious deficiencies in the Schengen framework (Regulation (EU) No 1051/2013).

By contrast, the crossing of Schengen *external borders* into Europe is criminalised if it is done at places other than border crossing points or at times other than the fixed opening hours (Bigo, Bendotti & Olson 2010: 60). When crossing an external border, EU-citizens undergo a minimum check, while third-country nationals are subject to thorough checks. For stays not exceeding three months per six-month period, a third-country national must: possess a valid travel document and a valid visa if required; justify the purpose of his/her intended stay; not have an alert issued for him/her in the Schengen Information System (SIS); and not be considered a threat to public policy, internal security, public health or the international relations of EU countries. Moreover, the travel documents of TCNs are systematically stamped upon entry and exit (Regulation (EC) No 562/2006; Regulation (EU) No 610/2013).

These changed relations between borders and control has led to scholars such as Bigo, Guild and Walker (2010), Guild (2009) Lyon (2009), Huysmans (2006), Bigo and Guild (2005) and Salter (2007) challenging the classical concept of border control in which border control was a central characteristic of state sovereignty. According to this principle, a state's sovereignty depends on a harmonious relationship between territory (geography), bureaucracy (state) and people (national identity). A physical border encircles the territory, and a necessary condition of statehood is that the state has a monopoly over both the legitimate use of violence within the territory as well as the legitimate means of movement into and out of its territory.

In contrast, the EU's approach to borders permits a rethink of the meaning of exclusion and inclusion as embedded in state border practices. When the state's capacity to control the entry and exit of an individual is moved away from the border of the territory, Bigo, Guild and Walker (2010: 19) argue that if it is to be exercised at all, it must find other venues. The changed relationships between borders and control among EU/Schengen Member States imply the control of entry and exit of an individual is separate from any obvious relationship with borders.

## Internal and External Border Control

The phenomenon of onward migration must be understood in relation to how the EU/Schengen Member States have established institutions and agencies with the aim of controlling the migration of third-country nationals. The Member States exercise migration control both inside and outside the EU/Schengen territory.

### INSIDE THE EU/SCHENGEN MEMBER STATES' TERRITORIES

Inside each Member State, we can observe an increasing linking of immigration and criminal law. While these two political fields were previously separated in different administrative units, they are increasingly combined in a way that also combines criminal acts and daily administrative activities. This combination of immigration laws and penalty laws is called *crimmigration* (Johansen, Ugelvik and Aas 2013). The trends to combine different aspects of security and various levels of authority require a coordination of policies with substantially different goals, and goes beyond traditional control at the physical border. This type of combined control is crucial to find third-country nationals involved in onward migration, especially those who are not entitled to stay legally in the EU/Schengen area (Takle 2012).

At the European level, and inside the EU/Schengen territory, control is related to how the EU Internal Security Strategy combines border management with various forms of threats such as international criminal networks, terrorism, security in cyberspace and the increasing of Europe's resilience to crises and disasters (COM (2014) 365). While the strategy also lays the foundations for further integration of the internal and external aspects of EU security (Monar 2010: 159), this is a process that has been evolving since the 1970s (Geddes 2005; Chou 2009). To ensure that operational cooperation on internal security is promoted and strengthened within the EU, the EU has established a Standing Committee on Internal Security (COSI). It facilitates coordination of the action of Member States' competent authorities.

### OUTSIDE THE EU/SCHENGEN TERRITORY

Control can be found at work within the territory of other states outside the EU/Schengen territory. In parallel with the work being done by the Member States on establishing a common, supranational refugee and migration policy

within the EU, attempts are also being made to coordinate political agreements with third-party states (Chou 2006). The external dimension of the EU's asylum and migration policy can be found in the European Neighbourhood Policy (ENP) and the Global Approach to Migration and Mobility (GAMM). They cover cooperation agreements, return agreements, visa facilitation, financial support and establishment of bilateral and multilateral forums for discussing migration. The control takes different forms of remote control where the Schengen countries check the identity of people who want to enter or transit through their territory before they travel (Bigo, Guild and Walker 2010: 27). With this policy the EU establishes extraterritorial border control.

*Frontex* was established as an external border agency in 2004, and one of its main tasks is to coordinate operational cooperation between Member States in the field of management of external borders (EU Regulation (EC) No 2007/2004). *Frontex* combines tasks and activities in one agency that the traditional nation state has kept separate. *Frontex* is responsible for conducting joint operations on EU/Schengen external borders (sea, land and air), training of border guards and senior officers, conducting risk analysis on external borders, research, providing rapid response capability, and assisting Member States in joint return operations. *Frontex* also develops and operates information on emerging risks and the current state of affairs at the external borders. *Frontex* coordinates border control both at the common European borders and outside the borders.

The *European Border Surveillance System* (Eurosur) is another instrument within the European border control regime, which is based on a gradual upgrading of national border surveillance systems (EU Regulation (EU) No 1052/2013). The main purpose is to prevent unauthorised border crossings, counter cross-border criminality and support measures against persons who have crossed a border illegally. The aim is to create a shared and information sharing environment among relevant national authorities.

A third form of extraterritorial check is visa policy. The *Visa Code* contains rules for the processing of applications and requirements for obtaining a visa (Regulation (EC) No 810/2009). The *Visa Code* covers visas issued for stays not exceeding 90 days in any 180 days period. Legislation on the issuance of visas for stays beyond 90 days remains national. The *Visa*

application process takes place at the embassies of the Member States. The decision is taken when the individual is potentially far from their common or individual borders (Guild 2009). The Visa application process is based on the Visa Information System (VIS) (Regulation (EC) No 767/2008). VIS is a system for the exchange of visa data among Schengen Member States. VIS connects consulates in non-EU countries and all external border-crossing points of Schengen States. The purpose of the VIS is to facilitate the visa application procedure, checks at the external border crossing points and in the national territories, and the application of the Dublin Regulation for determining the EU country responsible for the examination of an asylum application.

The *Schengen Information System* (SIS) became operational in 1995, and was replaced by SIS II in 2013. SIS II allows information exchanges between national border control, customs and police authorities. It contains alerts on missing persons, in particular children, as well as information on certain property, such as banknotes, cars, vans, firearms and identity documents that may have been stolen, misappropriated or lost. This information can be used to refuse entry to recorded people at the borders or it can lead to the refusal of their visa applications at embassies. SIS II contains biometric data such as photographs and fingerprints.

At the operational level, the *European Asylum Support Office* (EASO) was formally established in May 2010 (Regulation (EC) No 439/2010). EASO is designed to facilitate, coordinate and strengthen practical cooperation among Member States on aspects of asylum, and to help to improve the implementation of the external dimension of the CEAS. EASO's activities include assistance to Member States in enhancing the quality of asylum procedures with a special focus on access to protection, personal interview, evidence assessment and family tracing (European Commission 2014a).

These EU/Schengen institutions and agencies have been established with the aim of controlling third-country nationals crossing internal and external borders. Although the Schengen Borders Code states that any person, irrespective of his/her nationality, may cross the internal borders at any point without checks being carried out, Member States exercise migration control both inside and outside the EU/Schengen territory.

## The Common European Asylum System (CEAS)

In 1999, the European Council meeting held in Tampere agreed on the creation of CEAS. The CEAS should have:

a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and context of the refugee status (European Council Conclusions, Tampere 1999).

The aim of CEAS is to harmonise internal legislation on common standards for asylum seekers among EU Member States. Implementation of CEAS was planned in two phases:

The first phase aimed at harmonising the Member States' internal legislation on *minimum* common standards, regulated by the adoption of five instruments between 2002 and 2005. The Member States adopted the directives on Qualification, Reception Conditions and Asylum Procedures, and the regulations on Dublin procedures and Eurodac. The main conclusions after the first phase were that the harmonisation did not lead to a uniformity of procedures and practice, and the legislative framework contained shortcomings concerning human rights (Toscano 2013).

The second phase had, thus, the aim of achieving both a higher *unified* common standard of protection and greater equality in protection across the EU and of ensuring a higher degree of solidarity among Member States. According to the Lisbon Treaty (TFEU Art. 78) the European Union aim of adopting measures for a common European asylum system including e.g. a uniform status of asylum for nationals of third-countries, valid throughout the EU and standards concerning the conditions for the reception of applicants for asylum or subsidiary protection should be achieved by recasting the instruments. The recast directives required transposition into the national frameworks before 20 July 2015, although some provisions have a later deadline. The qualification directive was adopted in 2011.

The recast *Qualification Directive* (Directive (EU) No 95/2011) sets rules on qualification as “refugees” and “persons in need of international protection”, as well as the content of the protection granted. This directive defines the



category of “persons eligible for subsidiary protection”, who are at risk of suffering serious harm in their country of origin, and the minimum set of rights to be granted to them. The recast *Asylum Procedures Directive* (Directive (EU) No 32/2013) addressed procedures for dealing with application for asylum. The directive defines the beginning and end of asylum seeker status and the minimum procedural standards to be respected by Member States pending the examination of the application, regarding interviews, legal assistance, detention and appeals. The recast *Reception Conditions Directive* (Directive (EU) No 33/2013) lays down the minimum standards for various aspects of the protection of asylum seekers, such as information, residence, freedom of movement, employment and education. It emphasises it is crucial that individuals, regardless of the Member State in which their application for international protection is made, are offered an equivalent level of treatment regarding reception conditions (Directive (EU) No 33/2013). The recast of this Directive introduces common rules to ensure asylum applicants can only be detained in specific cases according to a detailed list of grounds. It clarifies the obligation to conduct an individual assessment to identify the particular reception needs for vulnerable persons. It sets forth rules concerning qualifications required of the representatives of unaccompanied minors.

According to the European Commission DGs Migration and Home Affairs, CEAS has gone from a first phase with legislative measures harmonising common *minimum standard* to a second phase with *common high standards* to ensure that asylum seekers are treated equally in an open and fair system, wherever they apply. As we can read on its website:

Asylum must not be a lottery. EU Member States have a shared responsibility to welcome asylum seekers in a dignified manner, ensuring they are treated fairly and that their case is examined to uniform standards so that, no matter where an applicant applies, the outcome will be similar (European Commission 2015a).

This is based on what several authors call *the principles of mutual trust and cooperation* that theoretically bind the Member States (Mitsilegas, V. 2012; Langford, L. M. 2013; Mouzourakis, M. 2014). The aim to establish a unified common standard of protection and greater equality in protection across the EU is important for the functioning of the Dublin system. However, there is

a tension between how the term unified standard is used on the Commissions homepage and how legally binding documents refer to e.g. minimum standard or equivalent level of treatment regarding reception conditions (Directive (EU) 33/2013). The various Member States seem to relate to this in different ways, and European jurisprudence might play a crucial role here (Vevstad 2013).

## The motivation of Member States

Under the Dublin Regulation, Member States with the external borders most frequently crossed by asylum seekers receive the highest number of incoming requests from other EU states, while the wealthier core states issue the most requests. We return to this in chapter four. The question addressed in an article by E. Thielemann and Armstrong (2013: 149) is “why states enter into agreements that appear to have highly inequitable distributional implications”. In other words, what is in the Dublin Regulation for countries such as Italy, Greece, and Poland? The authors point out that states may be motivated by norms and reputations and thus gain normative benefits in the form of external prestige as a humanitarian country, or internal support in the form of votes. In addition, the concept of multiple contribution dimensions makes it possible to ask how states may implicitly trade “across the different dimensions of the Dublin system” (ibid: 158) and the larger system consisting of Schengen and Dublin, for example by a higher degree of citizen mobility within the EU of the border states’ populations. According to this argument, the border states accept a higher share of the costs, because they in return benefit from their own populations’ access to the core countries.

## The main purpose of the Dublin Regulation – Dublin III

The Dublin Regulation is based on the core assumption that asylum seekers receive equivalent consideration and treatment wherever they submit their applications. As we have seen, the Dublin Convention was established in 1990 to prevent asylum seekers from applying in multiple countries. The Convention was replaced by the Dublin Regulation (*Dublin II*) in 2003, and simultaneously supplemented by Eurodac for recording fingerprint data. The Dublin Regulation was revised as a part of the second phase of the CEAS. The recast Dublin

Regulation (Regulation (EU) NO 604/2013) (Dublin III) came into force on 1 January 2014. In the following, we refer to some parts of the Dublin Regulation crucial for our analysis. We also mention the revisions of Dublin III that we find relevant to examine onward migration.

The *main purpose* of the Dublin Regulation is defined in Article 1:

This Regulation lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ('the Member State responsible') (Regulation (EU) No 604/2013, Article 1).

Chapter III of the Regulation specifies the *criteria to determine the Member State responsible*. The criteria are defined in a hierarchical order, which Member States are obliged to follow.

The first three criteria, which are the first the Member State must evaluate, for determining responsibility are related to *family unity and the welfare of unaccompanied minors* (Articles 8 to 11). Asylum seekers who have family members with recognised refugee status or who are in the process of applying for asylum will have their claims determined in the Member State where their nuclear family members are located. Where an unaccompanied minor has family present in another Member State, that Member State will be responsible for examining his or her claim – if this is in the best interest of the minor.

The next criteria for determining responsibility are related to cases where asylum seekers have a valid or recently expired *residence document or visa*, and the responsibility is defined in relation to the Member State that issued this documentation (Article 12).

In the case of applicants without family present or residence documents, and who have *irregularly crossed the border* into a Member State when entering the territory of the EU, the first Member State they enter is responsible for examining the application for international protection. That responsibility shall cease 12 months after the date on which the irregular border crossing took place (Article 13(1)). If an applicant has been living in a Member State for at least five months before lodging an application, that Member State is responsible. If an applicant has been *living for more than five months* in several

Member States, the Member State where he or she has been living most recently is responsible (Articles 13 (1) and 13(2)).

While the hierarchically defined criteria are decisive for determining responsibility and all Member States are obliged to follow them, the Dublin Regulation also says each Member State may decide to examine an application even if such examination is not its responsibility under the criteria in the Dublin regulation (Article 17 (1)). The Regulation has clauses for *dependent persons* and *discretionary decisions*. If a person is dependent on the assistance of his or her child, sibling or parent in one of the other Member States, the Member States may normally bring those persons together (Article 16). The discretionary clause says that a Member State may also request another Member State to take charge of an applicant, for example in order to bring together a family or on humanitarian grounds (Article 17(2)). This is discretionary, and the requested Member State is not obliged to accept. As these clauses are open for discretion there might be diverging evaluations among the Member States.

Moreover, the Regulation gives each Member State the responsibility of evaluating the asylum procedure and the reception conditions for applicants in the other Member State before transferring a person:

Where it is impossible to transfer an applicant to a Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible (Regulation (EU) No 604/2013, Article 3(2)).

If no other Member State is responsible according to the criteria, the determining Member State must take responsibility (see also Article 17(1)). The way the Dublin Regulation opens the way for discretionary decisions implies every Member State is responsible for evaluating asylum procedures and reception conditions in another Member State before transferring any persons.

Chapter II provides *additional guarantees to persons in a Dublin procedure*, which are new in Dublin III. Article 4 of Dublin III introduces, for example, new requirements for how Member States are obliged to inform persons who are in a Dublin process about the consequences this might have for them. This information must be provided in writing in a language the applicant understands, and a common leaflet should be used. Accordingly, the European Commission (2014b) has recently produced leaflets to inform asylum seekers about the Dublin Regulation in several different languages. The title is “I’m in the Dublin procedure – what does this mean?” The leaflet goes through the Dublin procedures and explains:

The Dublin procedure establishes which single country is responsible for examining your application for asylum. This means you may be transferred from this country to a different country that is responsible for examining your application. The Dublin procedure has two purposes:

1. to guarantee that your application for asylum will reach the authority of the country responsible for examining it;
2. to ensure that you do not make multiple applications for asylum in several countries with the aim of extending your stay in the Dublin countries.

Until it has been decided which country is responsible for deciding on your application, the authorities here will not consider the detail of your application (European Commission 2014b).

The 16-page, A5 format leaflet poses and answers questions about the Dublin procedure, is printed in full colour with three pictures and a map of Europe. The aim is for all Member States to distribute similar leaflets to inform persons in a Dublin process. The first page refers to article 4 in the Dublin Regulation. However, while the leaflet describes other rights and obligations it does not explain how this article states that the asylum seeker has rights to information.

Article 5 in Dublin III says the determining Member State must conduct a personal interview with the applicant, and this must be conducted in a timely manner and in a language the applicant understands. This article is also new in Dublin III, and the interview must also allow the proper understanding of the information supplied to the applicant.

Member States' *obligations and procedures for taking charge and taking back* are defined in Chapter V and VI. Dublin III introduces more precise deadlines for procedures between Member States regarding maximum limits for sending outgoing requests to take back/take charge, to answer incoming requests and to transfer persons.

*Take back* requests concern cases where a Member State requests another Member State to take responsibility for an applicant because the person has already lodged an asylum application in that Member State. This may be the case if a person applies for asylum in two Member States or if the person has not submitted an application in the country he/she is present. The application lodged in the Member State responsible might be under examination, withdrawn or rejected.

*Take charge* requests concern cases where a Member State requests another Member State to take responsibility for an asylum application, although the applicant has not submitted an application in the other Member State previously. The Dublin criteria such as family unity reasons, documentation or entry reasons and humanitarian reasons indicate the requested Member State would be the best place to deal with the case. In such cases, an asylum application in the responsible Member State will only be registered after the acceptance of the request/transfer of the person.

A request to take back/take charge has to be submitted within:

- 3 months standard limit – runs from the date the application was lodged
- 2 months if based on a Eurodac hit – runs from the date the Eurodac hit was received
- 1 month if the asylum seeker is in detention because of the risk of absconding.

The requested Member State must answer within:

- 2 months to a take charge request
- 1 month to a take back request
- 2 weeks to a take back request based on a Eurodac hit or the applicant is detained because of the risk of absconding
- When the requesting Member State has pleaded urgency, (Article 21 (2)), the requested Member State shall make every effort to comply with the time limit requested (minimum one week). If the examination is complex, the time limit can be extended to a maximum of one month

After acceptance of the request, transfer from one member state to another must be carried out within:

- 6 months for a standard procedure
- 6 weeks if the asylum seeker is in detention because of the risk of absconding (if not carried out within 6 weeks, the applicant should be released from detention and the standard time limit applies)
- 12 months if the transfer could not be carried out due to imprisonment of the person concerned
- 18 months if the transfer could not be carried out due to absconding of the person concerned.

Chapter VI also defines *procedural safeguards*. We refer to some articles relevant for our analysis.

The *notification of a transfer decision* implies that the Member State must notify the person concerned of the decision to transfer him or her to the Member State responsible. This could either be done to the applicant or to a legal advisor or other counsellor representing the person, but the notification must always include the main elements of the decision, information on the legal remedies available, and the time limits applicable for seeking such remedies. It must also be in a language that the person concerned understands or is reasonably supposed to understand (Article 26(3)).

Applicants have the right to an effective *remedy*, in the form of an appeal or a review against a transfer decision before a court or a tribunal. The Member State must provide a reasonable period of time within which the person can

exercise this right, and the transfer must be suspended as long as the application is under scrutiny. The Member State must also ensure the person has access to legal assistance and when necessary linguistic assistance (Article 27).

If there is a significant risk of absconding, the Member State may *detain* a person in order to secure transfer procedures in accordance with the Regulation. If a person is detained, the transfer must take place within six weeks of acceptance of the request by the other Member State (Article 28). The risk of absconding is defined as the existence of reasons in an individual case, which are based on objective criteria defined by law, to believe that an applicant or a third-country national or a stateless person who is subject to transfer procedure may abscond (Article 2 (n)).

The Member State carrying out the transfer must also *communicate relevant information and health data* to the Member State responsible before a transfer is carried out. Personal data concerning the person to be transferred must also be transferred. The aim is to ensure the responsible Member State is in a position to provide the person with adequate assistance, including the provision of any immediate health care required (Articles 31 and 32).

Dublin III confirms and strengthens a mechanism for early warning, preparedness and crisis management. On the basis of EASO's analysis, the Commission may establish that the application of the Regulation may be jeopardised:

...due to either to a substantiated risk of particular pressure being placed on a Member State's asylum system and/or to problems in the functioning of the asylum system of a Member State, it shall, in cooperation with EASO, make recommendations to that Member State, inviting it to draw up a preventive action plan (Article 33).

The Member State concerned may also draw up a preventive action plan, and call for assistance from the Commission, other Member States and EASO. According to article 22 in the Dublin Regulation, EASO is responsible for ensuring the European Union is alerted if there is a concern that the smooth functioning of the Regulation is being jeopardised as a result of particular pressure on, and /or deficiencies in, the asylum systems of one or more Member States. This gives EASO a role regarding the functioning of the



Dublin system, both regarding the collection of information and by collaborating with the Member State concerned.

The Dublin Regulation has hierarchically defined criteria and procedures to determine the Member State responsible for persons in need of international protection. It also allows discretion, which implies every Member State is responsible for checking the conditions in other Member States. Dublin III provides additional guarantees to information and interviews for persons in a Dublin procedure, it introduces more precise deadlines for procedures between Member States and strengthens a mechanism for early warning and crisis management.

## Eurodac

The Dublin System consists of the Dublin Regulation and the Eurodac Regulation. The Eurodac Regulation was established in 2003, and revised as part of the second phase of the CEAS. The recast Eurodac Regulation (Regulation (EU) NO 603/2013) came into force on 20 July 2015. In the following, we refer to some parts of the Eurodac Regulation crucial for our analysis.

The Eurodac Regulation is a supplement to the Dublin Regulation. It says all Member States are obliged to take the fingerprints of every applicant for asylum of at least 14 years of age, and transmit them to the central unit database. The Eurodac fingerprint database is used to determine whether an asylum seeker has previously applied for asylum in another Member State. It is also used to check individuals apprehended by a Member State in connection with the irregular crossing of an external border or found illegally present in a Member State. Since the creation of Eurodac in 2003, the data recorded, stored and compared are the fingerprints of:

- Persons who have applied for international protection (category 1)
- Persons apprehended in connection with the irregular crossing of an external border (category 2)
- Persons found illegally staying in a Member State (category 3)

Data in category 1 are stored for 10 years, and they are compared with existing entries in category 1 and category 2. Data in category 2 are stored for 18 months. Data in category 3 are not stored, but used to compare with entries

in category 1. It is not mandatory for Member States to use category 3, and not all Member States use it.

The recast of the Eurodac Regulation improves data protection standards and sets new time limits for transmitting fingerprint data to the central unit of Eurodac. A major change is the possibility that national police services and Europol can access Eurodac data for the purposes of comparing Eurodac data with fingerprints linked to criminal investigations.

In theory, the Dublin Regulation and the Eurodac Regulation make up a complete and well-functioning system to determine the Member State responsible for persons in need of international protection. There are, however, several weaknesses in how the Dublin system functions in practice, and this is documented in several reports on the theme.

## Recent reports evaluating the purpose of the Dublin Regulation

Several scholars, public administrations and non-governmental organisations have evaluated the Dublin Regulation (e.g. ECRE 2008b; 2015; Pro Asyl 2013a; Ngalikpima and Hennessy 2013; Guild et al. 2014; 2015; Fratzke 2015). We present below a review of three reports published in 2013, 2014 (including a follow up in 2015) and 2015 as a background to our analysis. We have chosen these reports because they present extensive evaluations of the Dublin Regulation, they are written by key institutions in the migration field in Europe and they are the most recently available reports on the theme. The reports refer to the functioning of Dublin II, and the transitional period between Dublin II and III.

In 2013, the *Dublin II Regulation – Lives on hold – European Comparative Report* was published by The Dublin transnational network partners. Forum Réfugiés – Cosi, the Hungarian Helsinki Committee and the European Council on Refugees and Exiles (ECRE), coordinated the network. Matiada Ngalikpima and Maria Hennessy wrote the synthesis report we refer to below (hereafter referred to as Ngalikpima and Hennessy 2013), while members of voluntary organisations in the participating countries wrote the national reports that form the basis for the findings.

The report provides a comparative analysis of Member States' practice in applying Dublin II in Austria, Bulgaria, France, Germany, Greece, Hungary, Italy, Slovakia, Spain, Switzerland and the Netherlands. The national reports concentrate on Member States' administrative practice relating to how the Member State applies the criteria and procedures in Dublin II. The analyses are also based on relevant legislation and the context in which Dublin II applies.

The report describes the aims of the Dublin Regulation as multifold:

- a) ensure that one Member State is responsible for the examination of an asylum claim and therefore avoid "asylum seekers in orbit" scenarios;
- b) prevent abuse of asylum procedures in the form of multiple asylum applications;
- c) to determine as quickly as possible the responsible Member State and to guarantee effective access to an asylum procedure in the responsible Member State (Ngalikpima and Hennessy 2013: 14).

The authors also assert the Dublin Regulation is sometimes seen as a mechanism for sharing responsibility, and argue that it was not intended to have this function.

*The main findings are:*

There are *vast divergences in the way the Member States apply the Dublin Regulation*. Asylum seekers are often left in a prolonged state of anxiety and uncertainty with their lives effectively 'on hold'. The *efficacy* of the Dublin Regulation is questionable, and only a limited number of outgoing requests result in implemented transfers. There is a paucity of information about the financial costs of the system.

There are *vast disparities in the ways Member States interpret and apply the Dublin criteria*. For example, in several countries the presence of family members in one Member State is not taken into account. Irregular entry, recognised on the basis of Eurodac data, is the most utilised criterion for assigning Member States responsibility for the examination of an asylum claim despite its low position in the hierarchy of criteria. The sovereignty clause and humanitarian clause are applied differently, and rarely applied by any Member

State. The authors of this report also point out Member States generally have no definition of, nor identification process for, vulnerable persons. This means “vulnerability *per se* will commonly not lead to a transfer decision being cancelled but may result in the transfer being postponed to a later stage [and] that continuity of care within the Dublin procedure is not always guaranteed due to the failure of some Member States to effectively inform the receiving State of any medical conditions or illnesses the person may have in advance of transfer” (Ngalikpima and Hennessy 2013: 7).

*Procedural safeguards* are inadequately in place to guarantee asylum seekers’ rights across the Member States. Examples include information provided to asylum seekers varies extensively and not all persons subject to transfer are correctly informed of the decision. While all Member States provide some form of appeal to a transfer decision, there is diverging practice regarding the use of detention, restricted access to legal aid and to a lawyer and in some Member States a transfer decision is only delivered shortly before removal. Detention is almost systematically used immediately prior to transfer in most Member States. The approach to transfers, circumstantial evidence and adherence to time limits is extremely varied in Member States. However, communication and administrative cooperation between Member States in applying the Dublin Regulation is generally good.

The operation of the Dublin system shows that Member States have varying standards of *reception conditions* and asylum seekers in the Dublin procedure frequently have fewer entitlements. Member State implementation of key European jurisprudence is inconsistent and varied. As reflected in the title, a main conclusion is that the Dublin system leads to further delays in already long waits for asylum seekers and thus puts lives on hold.

Finally, the report concludes that the then forthcoming Dublin III could be expected to introduce significant humanitarian reforms in the operation of the Dublin system. Nevertheless, the report presented deficiencies in Member State practice that Dublin III would not address (Ngalikpima and Hennessy 2013).

In 2014, *New approaches, alternative avenues and means of access to asylum procedures for persons seeking for international protection* was published by the European Parliament Directorate-General for Internal Policies. Upon request

by the Committee on Civil Liberties, Justice and Home Affairs, the report was written by Elspeth Guild et al. (hereafter referred to as Guild et al. 2014).

The report examines the CEAS in order to assess the relevance and utility of joint processing and distribution of asylum applicants, often perceived as burden sharing mechanisms. It argues the perception of ‘burden’ is dependent on the policies and practice of Member States. The report shows there are diverging reception conditions and processing of asylum claims across Europe, and that the recognition rates reveal differences among Member States. Moreover, it argues that before identifying ways to share the burden, it is necessary to reduce the use of coercion and the complexity of the existing CEAS.

According to the report, the Dublin I, II and III systems are based on three simple principles that are *antagonistic to responsible sharing* in the sense of distributing equal numbers of asylum seekers across Europe. The three principles are:

first, the Member States are responsible for determining where an asylum application must be examined. The most frequently used criterion, which is usually decisive (though hierarchical subordinate to other criteria), is the Member State through which first entry into the EU occurred. Secondly, any negative decision on asylum by the responsible Member State is automatically recognised as final for all Member States; and thirdly a positive decision has only limited territorial application in the Member State where the decision was made (Guild et al. 2014: 36).

The Dublin Regulation is rather described by Guild et al. (2014) as a *disciplining measure* as Member States that allow people to cross their borders irregularly will be responsible for determining their asylum claims.

Nevertheless, the report emphasises the Dublin system is *the only current framework for allocating responsibility* for asylum claims under the CEAS. The report argues there are serious problems with its implementation in practice. The system does not produce outcomes which are fair and sustainable for Member States and asylum applicants.

The Dublin system is built on an implicit presumption that asylum seekers will be able to enjoy access to similar standards of treatment and rights in all participating states, but this goal, which is also the objective of the CEAS as a whole, is yet to be achieved in practice. The lack of trust that asylum seekers have for the system – and for the likelihood

that it will ensure them of access to similar standard of treatment and rights in all participating states – means that secondary movements persist, contrary to Dublin’s implicit aim of preventing what is characterised negatively and simplistically as ‘asylum shopping’. In many cases, Member States are unwilling or unable to comply with its provisions (Guild et al. 2014: 85).

The report refers to how *Dublin III sought to address* some of the problematic aspects of implementation such as strengthening the procedural safeguards. Thus, the authors argue that to ensure a sustainable allocation of responsibility and respect for rights in practice, there is a need to remove, or at least reduce, its coercive and punitive elements (Guild et al. 2014).

Guild and her colleagues followed up with a new report in 2015 (Guild et al. 2015). Based on what they found in the previous report and new findings, the authors presented three types of recommendations. Firstly, they recommended various ways of ensuring safe and lawful access to EU territory. Secondly, the authors recommended changes to achieve mutual recognition of positive asylum applications in the near future. They emphasised that mutual recognition is a key principle of EU law, but in the field of asylum, only negative asylum decisions are subject to mutual recognition. Guild et al (2015: 10) argued ‘mutual recognition of positive asylum decisions within CEAS flows directly from the Treaties’. Thirdly, the authors recommended alternatives to the Dublin system and systems of financial imbalance. Also here, as in the report from 2014, the authors emphasised that as long as the Dublin system is based on coercion against asylum seekers, it cannot ensure a sustainable allocation of responsibility and respect for rights in practice (Guild et al. 2015).

In 2015, *Not Adding Up – The Fading Promise of Europe’s Dublin System* was published by Migration Policy Institute Europe (MPI). The report was a part of the ‘European Asylum Beyond 2014’ initiative organised by MPI and International Migration Institute (IMI), and was written by Susan Fratzke (hereafter referred to as Fratzke 2015).

The report examines the key criticism of Dublin II, with special attention to the efficiency of CEAS and the ability of applicants to quickly access asylum procedures and protection. It evaluates the recently adopted Dublin III, and concludes by making recommendations.

The report asserts the Dublin system has two main purposes, which are also reaffirmed in Dublin III:

- to ensure quick access to protection for those in need, and
- to improve the efficiency of asylum procedures and reduce costs to Member States by deterring asylum seekers from submitting multiple applications (Fratzke 2015: 4).

The hierarchy of criteria in the Dublin Regulation was developed to achieve this. However, *the findings from the report* are that there are still low effective transfer rates and a persistently high incidence of secondary movements among asylum seekers, both before and after filing an application. This has undermined the efficiency of the Dublin system. The report also refers to several unnecessary transfers, especially when cases could have been dealt with quickly. Another criticism the report refers to is the delays that the Dublin procedures cause in the evaluation of protection claims as such delays, disrupt family unity and put vulnerable persons at risk (Fratzke 2015).

*Dublin III seeks* according to the report to address some of these concerns by clarifying how Dublin assigns responsibility for asylum claims, by tightening deadlines, by providing asylum seekers with better access to information on Dublin procedures and by creating an early warning and preparedness mechanism. The report emphasises how Dublin III recognises the responsibility of the transferring Member State to ensure applicants' rights are respected at destination.

The report concludes that while the practical effects of the amendments in Dublin III remain to be seen, it remains obvious there are critical gaps in the system.

Crucially, the regulation does not recognise or address the main factor underlying the Dublin system's problems: despite the harmonisation efforts of the CEAS essential differences remain in the asylum procedures, reception conditions, and integration capacity of EU Member States. Such differences invalidate Dublin's core assumption that asylum applicants will receive equal consideration and treatment wherever they submit their claims. Addressing this key issue, however, may lie beyond the scope of the Dublin Regulation as it now stands (Fratzke 2015: 4).

The report concludes the ‘heart of the problem’ in the Dublin system can be found outside the Dublin Regulation. Moreover, the report argues the Dublin Regulation does not take into consideration the reasons why asylum seekers may choose one country over another. Such reasons can for example be personal networks, language skills and employment opportunities. These are reasons that will continue to drive secondary movements (Fratzke 2015: 24).

*In summary*, these three reports show a broad consensus concerning weaknesses both in the fundamental principle of the Dublin system and in the Dublin Regulation:

- There are multiple understandings of the purpose of the Dublin Regulation.
- The main purpose, as defined in the Dublin Regulation, is determining the Member State responsible for examining an application for international protection.
- Other implicit purposes referred to are that the Dublin Regulation should avoid “asylum seekers in orbit” scenarios; prevent asylum seekers from submitting multiple applications often referred to as asylum shopping or secondary movements; and function as a responsible sharing mechanism.
- The Dublin Regulation was not intended to have the function of a responsible sharing mechanism, but it is currently the only mechanism available in the EU to determine the Member State responsible for an asylum application.
- There are several weaknesses in how the Dublin Regulation works. There are for example vast differences in how Member States apply the Regulation, low effective transfer rates and high secondary movements.
- One of the main problems of the Dublin system lies outside the Dublin Regulation, in the variation in Member States’ asylum procedures, reception conditions and capacity to integrate asylum seekers.
- While Dublin III introduced several reforms which might improve the implementation of the Dublin system, further improvements are necessary – also beyond the Dublin Regulation and in the whole CEAS.



The definitions, findings and conclusions from these three reports are crucial for how we develop the analytical framework we use to evaluate how the Dublin Regulation works in relation to its main purpose and how it influences asylum seekers' choices. Such evaluation cannot only be based on the main purpose of the Dublin Regulation as it is defined in the Regulation but also in the whole CEAS.

## The EU Commission's view of the functioning of the Dublin Regulation

The EU Commission's proposals on EU migration policy Spring 2015 includes an evaluation of how the Dublin Regulation works, which is highly pertinent to our analysis.

On 13 May 2015 the European Commission (2015b) presented a European Agenda on Migration. As a response to the thousands of migrants who have risked their lives, and many lost their lives, in the Mediterranean, the Agenda starts with a ten-point plan for immediate action. The Commission's argument was:

Emergency measures have been necessary because the collective European policy on the matter has fallen short (European Commission 2015b: 2).

The Commission's proposals for immediate action included how the EU should introduce new measures with the aim of saving lives at sea, targeting criminal smuggling etc. Relevant for our analysis is the Commission's proposal:

The EU needs a permanent system for sharing the responsibility for large numbers of refugees and asylum seekers among Member States (European Commission 2015b: 4).

On 27 May 2015, the Commission proposed a temporary distribution scheme for persons in clear need of protection within the EU (European Commission 2015c). The scheme was intended to help Italy and Greece by redistributing 40,000 asylum seekers registered in these countries, as they have been confronted with exceptional migratory inflows. In 2014, Italy had 277% more irregular border crossings than in 2013, and the comparable number for Greece was 153%. Italy had 60% of the total number of irregular border crossings in the EU in 2014, while Greece had 19% (European Commission 2015c). The

Commission's declared aim was to ensure a fair and balanced participation of all Member States in this common effort. The criteria the Commission proposed to calculate the distribution are the size of the population (40%); the total GDP (40%); the number of asylum applications received in the past 5 years (10%); and the unemployment rate (10%). The Commission emphasised the redistribution will be made in line with the existing rights in the Dublin Regulation to live with family members and to give primary consideration to the best interests of the child. Moreover, the Commission stated:

For the relocated persons, the proposed decision entails a limited and temporary derogation from certain provisions of the Dublin Regulation, in particular as regards the criterion for determining the Member State responsible for examining an asylum application (European Commission 2015d: 3).

In addition to this temporary redistribution scheme, the Commission proposed a system for resettlement of 20,000 asylum seekers per year for the EU in 2 years, in line with UNHCR (European Commission 2015c). As the Commission suggested using the same criteria for relocation as for the emergency redistribution scheme, the provisions of the Dublin Regulation will apply. Moreover, the Commission argued it would draw experience from these relocation and redistribution mechanisms in its evaluation of the Dublin system in 2016, as there is a need to achieve a fairer distribution of asylum seekers in Europe (European Commission 2015b).

The Commission proposal on relocation also discussed secondary migration of those persons who are relocated (European Commission 2015c). The Commission argued it would avoid secondary migration by informing applicants of the consequences of such action, namely they would be returned to the Member State of relocation under the Dublin system. The Dublin Regulation cannot prevent onward migration, but it is an instrument the Member States can use to transfer asylum seekers to another Member State in line with defined criteria.

On 25 June 2015 the European Council agreed to the rapid adoption of such temporary relocation and resettle mechanisms. It also concluded Member States should agree by consensus on the distribution of such persons, but Member States did not come to an agreement about distribution. On 20 July

2015 the Council agreed on the relocation of 32,256 persons from Italy and Greece, while they aim to agree on the relocation of the remaining 7,744 person by the end of 2015. The Council also adopted a conclusion to resettle 22,504 persons from outside the EU who are in need of international protection (Council of the European Union 20 July 2015).

The second part of the Commission's European Agenda on Migration starts by stating:

The migration crisis in the Mediterranean has put the spotlight on immediate needs. But it has also revealed much about the structural limitations of EU migration policy and the tools at its disposal (European Commission 2015b: 6).

Moreover, the Commission sees this as an opportunity for the EU to face up to the challenges and send a clear message to the citizens that migration can be better managed collectively by all EU actors. While the Commission suggests several actions for an EU migration policy, the most relevant for our analysis is how it defines *Europe's duty to protect: a strong common asylum policy*. Here the Commission argues that the EU needs a clear system for reception of asylum-seekers inside the EU:

One of the weaknesses exposed in the current policy has been the lack of mutual trust between the Member States, notably as a result of the continued fragmentation of the asylum system. This has a direct impact on asylum seekers who seek to 'asylum shop', but also on EU public opinion: it encourages a sense that current system is fundamentally unfair (European Commission 2015b: 12).

The Commission gives priority to ensuring a full and *coherent implementation of the CEAS*. This implies among other things that it will examine the implementation and application of the asylum rules and foster mutual trust. In cooperation with EASO, the Commission will give further guidance to improve standards on reception conditions and asylum procedures in the Member States.

With this argument the Commission states the core premises for the functioning of the Dublin Regulation do not work. As long as the reception conditions and asylum procedures are not applied equally in Member States, it is crucial for asylum seekers in which country he or she lodges an application.

Regarding the *Dublin Regulation* the Commission argues:

Though the recent legal improvements date only from 2014, the mechanism for allocating responsibilities to examine asylum applications (the ‘Dublin system’) is not working as it should. In 2014, five Member States dealt with 72% of all asylum applications EU-wide (European Commission 2015b: 13).

Here the Commission goes directly from the argument about how the Dublin Regulation allocates responsibilities to the sharing of responsibility between the Member States. This closeness in arguments might indicate the Commission evaluates the functioning of the Dublin Regulation not only in relation to how it works as an instrument for ‘allocation of responsibility’ but also a ‘sharing of responsibility’ between Member States. As discussed above, this is not an aim of the Dublin Regulation, but it is the only available instrument to the EU to determine the responsible Member State.

The Commission emphasises Member States are responsible for applying the Dublin system. It underlines how Member States must follow the procedures defined in the Regulation, and gives special priority to the implementation of the rules on taking migrants’ *fingerprints* according to the Eurodac Regulation. According to the Commission, this work will be supported by new initiatives at the EU level. The Commission has suggested establishing a *Hotspot system*, where EASO, Frontex and Europol will work on the ground with frontline Member States to swiftly identify, register and fingerprint incoming migrants. Moreover, the Commission will put forward a *guidance to facilitate systematic fingerprinting* with the aim of putting forward a common approach for the process of fingerprinting (European Commission 2015b: 13). This is how the Commission describes the current situation:

Currently, Member States apply the existing legislation under varying conditions, using either detention, coercion or neither to ensure fingerprinting (European Commission 2015b: 6).

This shows the Commission sees that crucial mechanisms in the Dublin system are not working as they should, and it therefore proposes new measures at the EU level. It emphasises simultaneously that it is up to Member States to follow up by implementing procedures.

*In summary*, the Commission:

- Emphasised a need for a permanent system for sharing the responsibility for asylum seekers among Member States.
- Proposed a temporary distribution scheme for persons in need of protection within the EU, which would imply a limited and temporary derogation from certain provisions of the Dublin Regulation.
- Argued that it would draw experiences from these relocation and redistribution mechanisms in its evaluation of the Dublin system in 2016.
- Observed a continued fragmentation of the CEAS and argued that has a direct impact on asylum seekers who seek to “asylum shop”, and thereby implicitly argued core premises for the functioning of the Dublin Regulation do not work.
- Argued it would give further guidance to improve standards on reception conditions and asylum procedures in Member States.
- Stated the mechanism for allocating responsibilities to examine asylum applications (the “Dublin system”) is not working as it should, and emphasised only a few Member States deal with the majority of applications.
- Underlined how Member States must follow the procedures defined in the Dublin Regulation, and gave special priority to improving the implementation of the rules on taking migrants’ fingerprints.

These statements and proposals show how the Commission perceives the functioning of the Dublin Regulation, and how it proposes to improve this instrument to meet the challenges imposed by migration. It also shows that one main problem of the Dublin Regulation lies in some of the premises the Dublin Regulation builds on, as was also emphasised in the three reports reviewed above. Together with the three reports, the Commission’s proposals are crucial for how we develop our analytical framework.

## Analytical framework: Three issues examined on how the Dublin Regulation works

While the main purpose of the Dublin Regulation is to determine the Member State responsible for examining an application for international protection, we have seen that there are additional implicit purposes of the Regulation. If the Dublin Regulation does not work as it should, the reasons might not necessarily be found in the Regulation, but rather in the premises it builds on. These implicit purposes and premises are therefore included in the analytical framework we use to evaluate how the Dublin Regulation works in relation to its main purpose and how it influences asylum seekers' choices. We concentrate on how the Dublin Regulation works in Norway, Sweden and Germany, both in relation to how it is practised by public administrations and for persons who are in a Dublin process.

**The analytical framework consists of three main issues, which we specify in concrete questions:**

### **(1) Uniform Dublin criteria and procedures**

The Dublin Regulation lays down the criteria and mechanisms for determining the Member States responsible for examining an application for international protection lodged in one of the Member States. The intention is that only one Member State examines an application. In theory, the Dublin Regulation builds a coherent system together with the Eurodac Regulation. A precondition for the Dublin system to work in practice is that all Member States follow the criteria and procedures to determine the Member State responsible.

*One central issue in our analysis is how the Dublin Regulation functions in practice today in relation to its intention.*

We analyse how the Dublin Regulation functions today for Norway, Sweden and Germany in relation to its intention to determine the Member State responsible for examining an application for international protection lodged in one of the Member States. We examine what kinds of experiences government institutions administering the Dublin Regulation in Norway, Sweden and Germany have in relation to the following questions:

- How does administrative cooperation function at the operative level in relation to procedures to take charge/take back, exchange of information and transfers?
- To what extent does the Member State fingerprint asylum seekers, and how is the Dublin system able to handle persons who are not registered in the first Member State of arrival?
- How are Member States applying criteria to determine the Member State responsible for an application?
- To what extent and how do Member States apply the procedures in the Dublin Regulation, such as providing information to asylum seekers, giving access to appeal procedures and the use of detention before transfers?

Moreover, we examine how the Member States' following of procedures has consequences for asylum seekers, and raise the following questions:

- What kind of information do asylum seekers receive from the public administration in these countries?
- To what extent do they have knowledge of the consequences of being in a Dublin process?
- What kinds of consequences can there be for asylum seekers if Member States do not apply the criteria and procedures in the same way?

## **(2) Uniform asylum procedures and reception conditions**

The CEAS lays central premises for how the Dublin Regulation works, as the Regulation is based on the assumption that no matter where an applicant applies, the outcome will be similar.

*Another central issue in our analysis is how the contemporary practice of the CEAS lays premises for how the Dublin Regulation functions today in relation to the intention.*

We analyse how the contemporary practice of the CEAS lays premises for Norwegian, Swedish and German experiences with how the Dublin Regulation functions in relation to the intention. What kinds of experiences have

government institutions administering the Dublin Regulation in Norway, Sweden and Germany in relation to the questions:

- What are the reception conditions in Norway, Sweden and Germany?
- How does the practice of the CEAS in various Member States influence how the Dublin Regulation is administered in Norway, Sweden and Germany?
- How do the three countries adapt to court cases where there are diverging asylum procedures and reception conditions in the various Member States?

We also examine how asylum seekers perceive the diverging asylum procedures and reception conditions among Member States, and ask:

- What does it mean for the asylum seekers choice of country?
- What kind of knowledge do they have about the CEAS?

### **(3) Onward migration**

Some asylum seekers, and persons without the legal right to stay in the EU/Schengen area, move between Member States. Such *onward migration* is done not only by persons who have not given their fingerprints in any Member States, but also by persons who are already registered and have given their fingerprints in one Member State. Third-country nationals also travel, even though they have lodged an asylum application in one Member State, and so do persons who have residence permission in one Member State.

*The third central issue in our analysis is what kind of role the Dublin Regulation plays in relation to onward migration.*

We examine how government institutions in Norway, Sweden and Germany perceive the role of the Dublin Regulation regarding the challenge posed by onward migration, and raise the questions:

- To what extent and how is the Dublin Regulation perceived as an important political instrument to handle onward migration?
- What alternatives are there to the Dublin Regulation?



We also examine the reasons that encourage asylum seekers to undertake onward migration, and raise the following questions:

- Why are they travelling?
- Why are those who have given their fingerprints in one Member State travelling to another Member State?
- Do they know the consequences of giving fingerprints in a Member State?
- Why are those with an asylum application lodged in one Member State, or even residence permission, travelling to another Member State?
- What kind of knowledge do they have about the Member States?
- What other reasons, such as networks and smugglers, do asylum seekers have for undertaking onward migration?

We examine these three main analytical issues in chapters 5 and 7, based on the background material presented in chapter 3, the statistical data in chapter 4, and the literature review in chapter 6.

## 4 Statistics on onward migration in Europe

In this chapter, we analyse how European statistics on Dublin procedures can provide an overview of onward migration of asylum seekers in Europe, specified in three questions:

- How can European statistics on Dublin procedures show fundamental characteristics of those who are travelling regarding; numbers, the countries they travel to and from, family relations, asylum status, citizenship, age and gender?
- What characterises onward migration of asylum seekers to Norway, Sweden and Germany?
- What type of data are the individual statistics based on, and what kind of weaknesses do they have?

Our analysis starts with a discussion of the legal basis for EU statistics on migration. Subsequently we examine the production of statistics at the European level by Eurostat, Frontex and EASO, and at the national level in Norway, Sweden and Germany. Finally, we analyse the challenges by comparing migration statistics in the EU.

### The Legal Basis

On 20 August 2007, the European Union's Regulation on Community statistics on migration and international protection came into force (Regulation (EC) No 862/2007). EU Member States had reached an agreement on how to define the categories required to measure migration. The Migration Statistics Regulation establishes common rules for statistics on international migration flows, citizenship, asylum, enforcement of immigration legislation, and the granting of permission to reside. It represents the first comprehensive legal basis underpinning the processing of EU statistics on migration, and it is directly applicable in all Member States.

Before the Regulation came into force, the exchange of statistical information on migration and international protection was based on a series of 'gentlemen's agreements'. European migration statistics were characterised by a low

degree of harmonisation. Some data were either not available from the Member States or based on different statistical categories, and many EU level aggregates were meaningless to produce. In 2001, the Justice and Home Affairs Council took the first initiative for this Regulation, and since then the Commission, the European Economic and Social Committee, the European Council and Parliament have called for common statistics on migration. The essence of their main argument is that the development of Community policies and legislation has highlighted the need for comprehensive and comparable European statistics on a range of migration-related issues (European Commission 2012).

The EU institutions' argument builds on a perception of a close relationship between politics and statistics. This is in line with how several studies describe how the emergence of statistics was closely related to the establishment of the nation state in the eighteenth and nineteenth century (Foucault 2004; Cole 2000; Desrosières 1998). To administer the population the state needed to have a record of who was living on the territory. The creation of national political entities required the development of statistical knowledge about the society as a basis for political decisions. The statistics each country produced were adapted to the country's historical tradition and type of migration (Poulain et al. 2005). The diverging national traditions illustrate the way statistics do not reflect reality, but are ways of representing the world in categories and figures attached to these categories (Fassmann et al. 2009).

Several research projects have been conducted with the aim of overcoming the lack of comparative data on migration within the EU/Schengen area. Some, such as the Compstat, the Emin and the Thesim project (2005), were financed by the EU. While Compstat aimed at providing useful instruments for a comparative monitoring of integration of immigrants in Europe, Emin produced a database with information on various aspects of migration in Europe. The Thesim project (2005) is the most crucial one as it aimed to support the implementation of the EU regulation on migration statistics. The research team provided an up-to-date and comprehensive picture of the whole system of statistical data sources on international migration and asylum in the EU (Poulain et al. 2005). Thesim explored the current state of EU 25 international migration statistics in 2005, and analysed the prospects for greater coordination in line with UN recommendations. The authors concluded that

the availability of statistics on migration in the EU countries is relatively high, but the countries use diverging sources (Thesim 2005).

There have been several unsuccessful attempts to establish internationally standardised definitions on international migration. By the end of the nineteenth Century, the International Statistical Institute (ISI) drafted the first uniform definition of an international migrant. The International Labour Organisation (ILO), and the United Nations (UN) have also presented recommendations on definitions and measurement of international migration. Other institutions such as OECD, the International Organisation on Migration (IOM) and Eurostat work to harmonise existing data collected by the nation states. Eurostat coordinates the collection of community statistics, which covers both general statistics and statistics on specific fields such as health, employment and migration.

The nation states have been reluctant to implement these international definitions on migration. One reason seems to be that the definitions can only partly address each country's special needs for statistics, as the concepts are developed to cover general tendencies and wide ranging processes (Fassmann et al. 2009). The national differences involve two problems for the development of comparable migration systems, and these correspond with how Desrosières (1998) defines two processes: (1) an agreement on the categories of who is a migrant and (2) the measurement of how the counting of migration should be technically achieved.

#### CATEGORIES OF MIGRANTS

The main objective of the EU's migration statistics regulation is the collection and compilation of European statistics on immigration to and emigration from Member States' territory (Regulation (EC) No 862/2007). It includes flows both between Member States and between a Member State and a third-country, and thereby, both internal and external Schengen border crossings. Through the standardisation of statistics in the field of migration the Regulation provides statistical knowledge, which is crucial for facilitating common policies. As the first comprehensive legal basis in the field, the EU migration statistics Regulation gives diverging solutions to the process of creating conceptual categories of who is a migrant.

The Regulation provides knowledge on four main areas of statistics in which Member States must submit data to Eurostat. Firstly, the Regulation governs international migration flows, population stock and the countries' acquisition of citizenship in Article 3. Secondly, the Regulation governs asylum applications in Article 4. This includes decisions at first instance, appeal granting, and the withdrawal of different forms of international protection status. The Regulation also governs asylum applications by unaccompanied minors. All asylum applications are disaggregated by age, sex and citizenship. This Article governs statistics on the operation of the Dublin arrangements for the transfer of asylum applicants between Member States, and we analyse this more extensively below. Thirdly, the Regulation governs the enforcement of immigration legislation in relation to third-country nationals in Article 5 and 7. This relates to third-country nationals who are refused entry at the external borders, found illegally present in the country, subject to an order to leave the territory and departing after the issue of such order. Fourthly, it governs residence permits issued to third-country nationals in Article 6. These are disaggregated by citizenship, length of permit validity and by the reason for the permit being issued.

One common characteristic of these four areas of statistics is that they are mainly defined in relation to the administrative status of the individual, such as whether an individual is legally staying and on which type of permit. This kind of statistical data is based on public registers. For such registration the encoding procedures are crucial for how each individual case is defined as belonging to a category, and this is performed at the administrative level within each nation state (Desrosières 1998). The administration within each country thus plays a crucial role in the production of statistics.

#### HOW TO MEASURE MIGRATION?

The Regulation leaves it to each Member State to decide how to collect and measure the required data. The Regulation allows Member States to base the statistical data supplied on any appropriate data source according to national availability and practice (European Commission 2005). The data sources might be a population register, register/database of foreigners, residence permit register/database, work permit register/database, border sample survey, census, household sample survey and estimation methods. The various choices

of data sources determine how the data are collected, encoded and measured. This means Eurostat aggregates nationally collected statistics based on diverging statistical procedures among the Member States.

As Fassmann et al. (2009: 31; 43) argues, as long as the nation states' various ways of collecting data constitute the basis of comparability the aggregation of national statistics will remain incomplete. Furthermore, the Commission concludes in an evaluation of the Regulation that the comparability between countries is hampered because *the countries vary in terms of data sources used to produce the statistics* (European Commission 2012). The evaluation shows cases of both missing and incomplete data. There is variation among the main areas of statistics governed by the Regulation. Of the 31 countries covered by the Regulation, between 22 and 26 countries have submitted the requested data. Most cases of incomplete data are in the field of asylum, as is the case for six countries.

To compensate for this lack of data, the Regulation requires Member States to deliver *metadata* to Eurostat. They must explain the data sources and procedures and any estimation and modelling process applied to the data. Statistical estimations have been used by several countries in relation to the production of statistics on migration, especially where survey data sources are used. By allowing estimation methods, the Regulation aims to make the procedures used for estimations clearly documented (European Commission 2012). The availability of metadata for these statistics allows the Commission to evaluate the statistics.

The question of achieving comprehensive European statistics on onward migration is not only challenged by diverging national statistics, but also by a lack of registration of intra-Schengen migration. There is an increasing quest for statistics on how third-country nationals, without long-term permits to stay in a European country travel between Member States.

## The Production of Statistics at the European Level

With the aim of mapping how European Dublin statistics show fundamental characteristics of those who travel we examine the main producers of common European Dublin statistics on migration: Eurostat, Frontex and EASO. Our analysis is based on the most recently published statistics as of August 2015.

## Eurostat Dublin statistics

Eurostat Dublin statistics are based on how Member States report in statistical terms to Eurostat.

Article 4.4 of the migration statistics regulation says Member States must supply to Eurostat the following statistics on the application of the Dublin regulation:

- (a) the number of requests for taking back or taking charge of an asylum seeker;
- (b) the provisions on which the requests referred to in point (a) are based;
- (c) the decisions taken in response to the requests referred to in point (a);
- (d) the numbers of transfers to which the decisions referred to in point (c) lead;
- (e) the number of requests for information.

These statistics must relate to reference periods of one calendar year and be sent to Eurostat within three months of the end of the reference year. The first reference year was 2008. The Eurostat datasets are disaggregated by incoming/ outgoing request, Eurodac hits, legal base of the request, type of decision and by Member States. Incoming requests are requests a Member State receives from another Member State to take back or take charge of a person. Outgoing requests are the requests a Member State sends to another Member State. The latest Eurostat Dublin statistics were published in July 2015, and these show the collected data until 2014 (Eurostat 2015b). The latest Eurostat analysis of Dublin statistics was published in March 2014, and shows collected data until 2012 (Eurostat 2014). The following analysis is based on data and analysis from Eurostat. It is, however, crucial to note that Eurostat's numbers on each Member State are in some cases different from the numbers we have received from Norwegian, Swedish and German authorities. According to statistical experts at the Norwegian Directorate of Immigration the reason might be that the authorities in the respective countries have adjusted the numbers after sending them to Eurostat. We comment on cases where there are huge differences.

### EUROSTAT DUBLIN STATISTICS – NUMBERS

Eurostat statistics show around 50,000 Dublin requests to take back/take charge reported from 2009 to 2013. As the first year of data collection, the

data for 2008 are incomplete. The numbers of incoming and outgoing requests for 2014 are also incomplete. While 8 out of 32 countries have not submitted their data for incoming requests, 10 out of 32 have not submitted data for outgoing requests. This means the following analysis of Dublin statistics is based on incomplete data for 2014. We, therefore, include data from 2013, and compare them with statistical trends for the period from 2008 to 2012. Based on the data for the period from 2008 to 2014, we find it meaningful to distinguish between *EU-border countries* such as Italy, Poland, Hungary, Bulgaria, Spain and Greece and attractive destination countries, *core countries*, for asylum seekers such as Germany, France, Switzerland, Belgium, Austria, Sweden, and Norway. The Member States within these two categories have, to a large extent, similar challenges.

#### EUROSTAT DUBLIN STATISTICS – MOVEMENTS

There are large disparities in *incoming requests* among Member States.

Those Member States traditionally receiving most incoming requests are EU-border countries such as Italy, Poland, Hungary, Bulgaria, Spain and Greece. As we can see from the table below, three of these Member States have not delivered data for 2014. We might, however, assume Italy and Poland also received incoming requests in 2014.

Incoming requests MS/year	2013	2014
Hungary	7,756	7,930
Bulgaria	1,164	6,884
Italy	15,532	---
Poland	10,599	---
Spain	2,744	---
Greece	61	58

**Table 4.1 Based on Eurostat (2015b): Incoming Dublin requests by submitting country, type of request and legal provision, border countries.**

Only a few countries send requests to Greece due to the situation in the country and recommendations from the European Court of Human Rights in 2011 in the Case of M.M.S. v. Belgium and Greece. Until 2011, Greece was among those Member States receiving most incoming requests.



Attractive destination countries, core countries, for asylum seekers receive a high number of incoming requests such as Germany, France, Switzerland Belgium, Austria, Sweden, and Norway. The numbers for 2013 and 2014 are similar, and these similarities can also be found in the previous period from 2008 to 2012.

Incoming requests MS/year	2013	2014
France	3,426	5,619
Germany	4,552	5,535
Switzerland	3,672	4,041
Belgium	5,441	3,940
Austria	3,181	2,398
Sweden	3,468	2,369
Norway	1,860	2,180

**Table 4.2 Based on Eurostat (2015b): Incoming Dublin requests by submitting country, type of request and legal provision, core countries.**

A high number of incoming requests means migrants leave this country with the aim of applying for asylum in another country. One reason might be that this is the first country of arrival, and asylum seekers only want to travel through the respective country. This also seems to be the case for attractive destination countries for asylum seekers in the north of Europe. One reason might be that the asylum seekers are not registered on arrival in an EU border country.

We have not included the United Kingdom in this overview. The UK has had low numbers of incoming requests throughout the whole period since 2008. In 2014, the number was 514. This means few asylum seekers leave the UK. One reason for this low number might be that the UK is very attractive for asylum seekers and/or only few migrants have arrived in the UK without being registered in another Member State. Other Member States with a low number of incoming requests are Liechtenstein (6) and Estonia (117). In contrast, Hungary, Bulgaria and Germany received the highest numbers of incoming requests in 2014.

There are also huge differences in Member States' *outgoing requests*.

The *EU-border countries* submitted very few outgoing requests in 2013, and only Hungary, Greece and Bulgaria submitted data for 2014. This low number indicates that few asylum seekers travel from another Member State to these Member States. One reason might be that these Member States are not attractive destination countries for asylum seekers. Another reason might be that most asylum seekers arrive first in these Member States. If they travel to other Member States, these EU border countries receive incoming requests.

Outgoing requests MS/year	2013	2014
Hungary	314	1,815
Greece	1,279	1,293
Bulgaria	144	11
Italy	2,575	---
Poland	132	---
Spain	79	---

**Table 4.3 Based on Eurostat (2015b): Outgoing Dublin requests by submitting country, type of request and legal provision, border countries.**

In contrast, the attractive destination countries for asylum seekers have high numbers of outgoing requests, and those Member States with the highest numbers are Germany, Switzerland and Sweden. These numbers have been relatively stable, although there was a huge increase in Germany from 2012 to 2013. Germany has a much higher number of outgoing requests than any other Member State.

Outgoing requests MS/year	2013	2014
Germany	32,796	35,058
Switzerland	9,679	14,900
Sweden	10,162	8,272
Austria	5,104	6,066
France	5,903	4,948
Norway	3,343	3,311
Belgium	2,813	3,160

**Table 4.4 Based on Eurostat (2015b): Outgoing Dublin requests by submitting country, type of request and legal provision, core countries.**

The high numbers of outgoing requests indicate these Member States are attractive for asylum seekers' onward migration after arrival in another

Member State. In contrast, Member States with a low number of outgoing requests in 2014, such as Latvia (8), Malta (16), Ireland (17) and Estonia (19) are either not attractive or just small countries the asylum seekers never reach.

We can also observe that the number of reported outgoing requests is higher than incoming request. This discrepancy might reflect incomplete datasets, as one should assume that an outgoing request also would lead to an incoming request. Two additional factors might explain the discrepancy. Firstly, there is a time delay between one country sending a request and another country registering an incoming request. Secondly, the outgoing/ incoming requests are counted differently. An outgoing request from more than one country on the same person is only counted as one incoming request.

The statistics on *transfers* refer to actually carried out transfers from one Member State to another.

The EU-border countries had diverging numbers of *incoming transfers* in 2013, and only Hungary, Bulgaria and Greece have submitted data for 2014. The number for Greece was low as few Member States transfer persons to Greece. Italy and Poland had a high number of incoming transfers in 2013. These numbers relate to the high numbers of incoming requests, and the fact that these countries are often the first countries of arrival.

Incoming transfers MS/year	2013	2014
Hungary	850	827
Bulgaria	100	174
Greece	7	2
Poland	2,442	---
Spain	734	---
Italy	3,460	---

**Table 4.5 Based on Eurostat (2015b): Incoming Dublin transfers by submitting country, legal provision and duration of transfer, border countries**

The *attractive destination countries* for asylum seekers also have diverging numbers of incoming transfers, and those Member States with the highest numbers in 2014 are Germany, France and Belgium. Sweden and Norway have not submitted numbers for 2013 and 2014, and Austria not for 2014.

Incoming transfers MS/year	2013	2014
Germany	1,702	1,768
France	834	1,725
Belgium	1,779	1,673
Switzerland	751	933
Austria	765	---
Sweden	---	---
Norway	---	---

**Table 4.6 Based on Eurostat (2015b): Incoming Dublin transfers by submitting country, legal provision and duration of transfer, core countries.**

However, the numbers of transfers are low compared to the numbers of incoming requests, and few incoming requests seem to lead to transfers.

Regarding the numbers of *outgoing transfers*, we can observe that the *EU-border countries* have low numbers. Only Greece and Hungary have delivered data for 2014, but we can see that these Member States did not transfer many asylum seekers to other Member States in 2013. This must be seen in relation to the numbers of outgoing requests, but also here the numbers of requests lead to only a few transfers.

Outgoing transfers MS/year	2013	2014
Greece	675	713
Hungary	32	89
Italy	5	---
Poland	61	---
Spain	12	---
Bulgaria	29	---

**Table 4.7 Based on Eurostat (2015b): Outgoing Dublin transfers by submitting country, legal provision and duration of transfer, border countries.**

The number of outgoing transfers was higher for the *attractive destination countries* for asylum seekers, with Germany, Switzerland and Sweden as those Member States with the highest numbers. These low numbers of transfers imply asylum seekers have a crucial reason to believe their asylum application will be examined in the Member State they travel to with the aim of applying for asylum.

Outgoing transfers MS/year	2013	2014
Germany	4,316	2,887
Switzerland	4,165	2,638
Sweden	2,869	2,059
Norway	945	1,401
Austria	1,145	1,076
Denmark	---	748
Belgium	738	741
France	645	470

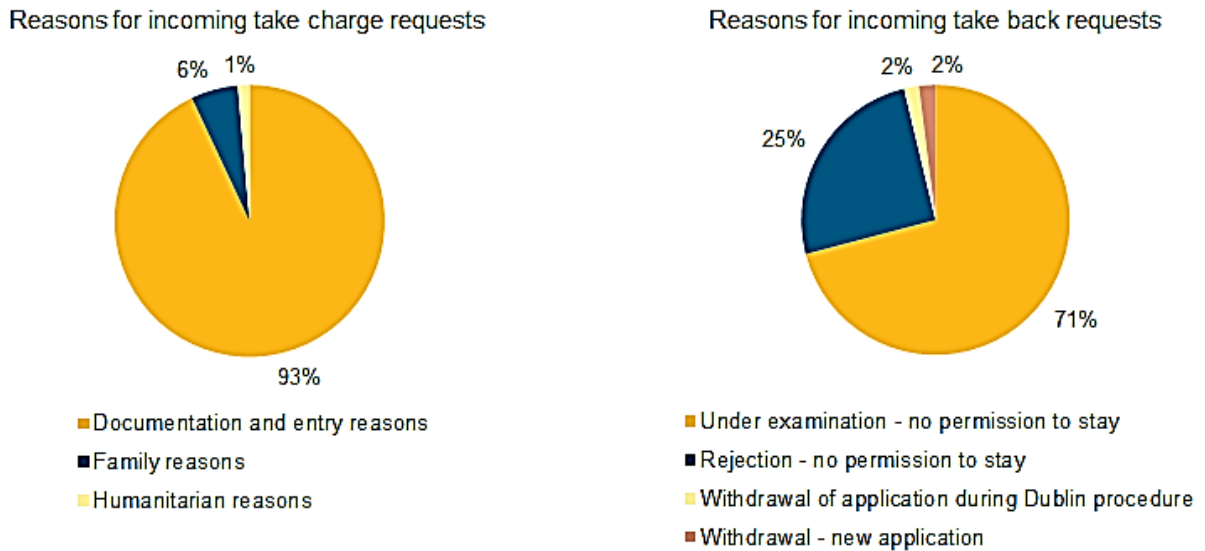
**Table 4.8 Based on Eurostat (2015b): Outgoing Dublin transfers by submitting country, legal provision and duration of transfer, core countries.**

This number is relatively stable compared to the years from 2009 to 2012. Transfers resulting from outgoing requests did not exceed 30% in the period from 2008 to 2014. Some reasons might be that some people might abscond during the Dublin process, the Member States might not be able to transfer the persons within the time limits and/or the persons are transferred on the basis of other rules such as returns or re-admission agreements (see chapter 5). Moreover, the numbers might not be accurate. According to Eurostat the numbers of outgoing transfers from Germany in 2014 was 2,887. The German Federal Office for Migration and Refugees refers to 4,772 outgoing transfers the same year. The number of outgoing transfers from Sweden were also higher according to the numbers we received from the Swedish Migration Agency, and for 2014 the number was 3,973. Nevertheless, we can observe that Norway has a high number of outgoing transfers seen in relation to the country's relatively low numbers of asylum seekers and persons in a Dublin process. This confirms the high priority on the implementation of the Dublin Regulation in Norway and its emphasis on transferring persons.

#### EUROSTAT DUBLIN STATISTICS – FAMILY RELATIONS

The reasons for incoming take charge/take back requests are diverse. Most incoming take charge requests were related to documentation and entry reasons (93%), while family reasons and humanitarian reasons were low (7%). The majority of incoming take back requests were related to the lack of permission for the asylum seeker to stay (under examination 71% and rejection 25%). Withdrawal of application was the reason for 4% of the incoming take back

request. The patterns are quite similar for the reasons for outgoing take charge and take back requests.



**Figure 4.1: Reasons for incoming take charge / take back requests, 2008-2012. Source: Eurostat (2014)**

We have not updated these numbers for 2014. As around 20 Member States have not submitted data on the various categories of reasons, it will not help to analyse these low numbers.

#### EUROSTAT DUBLIN STATISTICS - EURODAC

Eurostat Dublin statistics include the number of requests based on the Eurodac system. Eurostat statistics show a difference in how Member States cross check the requests against the fingerprint database. The table below shows incoming requests based on Eurodac hits, and the figures in brackets refer to the total number of incoming requests. Among the countries that received the most *incoming requests* in 2014, Bulgaria reported the highest use of Eurodac followed by Hungary, Belgium and Switzerland, while 8 Member States have not submitted data. Italy reported the highest use of Eurodac in 2013. The numbers in brackets show the numbers of incoming requests. We can see that most of the incoming requests were based on fingerprint hits in the Eurodac database.

Incoming requests based on Eurodac MS/year	2013	2014
Bulgaria	1,069	6,731 (6,884)
Hungary	6,239	5,813 (7939)
Greece	27	36
Italy	11,954	---
Poland	---	---
Spain	1,384	---

**Table 4.9 Based on Eurostat (2015b): Incoming Dublin requests based on EURODAC by submitting country, type of request and legal provision, border countries.**

We have included Denmark in the table below, as it is among those Member States reporting a high use of Eurodac. Although Sweden probably receives incoming requests based on Eurodac by the sending country, the country has not reported such use to Eurostat.

Incoming requests based on Eurodac MS/year	2013	2014
Belgium	5,114	3,634 (5,441)
Switzerland	3,373	3,463 (3,672)
France	1,879	3,080 (3,426)
Germany	2,568	2,947 (4,532)
Norway	1,697	1,947 (1,860)
Austria	2,601	1,724 (3,181)
Denmark	---	1,118 ---
Sweden	---	---

**Table 4.10 Based on Eurostat (2015b): Incoming Dublin requests based on EURODAC by submitting country, type of request and legal provision, core countries.**

Among the countries that sent the most *outgoing requests* in 2014, Germany reported the highest use of Eurodac followed by Sweden and Switzerland, while 11 Member States have not submitted data. In the tables above and below, the figures in brackets refer to the total numbers of outgoing requests. Among the EU-border countries, the numbers are relatively low as they also have low numbers of outgoing requests.

Outgoing requests based on Eurodac MS/year	2013	2014
Hungary	225	1,465 (1,815)
Greece	158	238 (1,293)
Bulgaria	106	11 (11)
Italy	2,385	---
Poland	---	---
Spain	69	---

**Table 4.11 Based on Eurostat (2015b): Outgoing Dublin requests based on EURODAC by submitting country, type of request and legal provision, border countries.**

Germany has a much higher number of outgoing requests based on Eurodac, which reflects the country's high number of outgoing requests. There is a relatively high use of Eurodac among Member States, but other evidence is also used.

Outgoing requests based on Eurodac MS/year	2013	2014
Germany	22,102	24,885 (35,058)
Sweden	5,392	5,374 (8,272)
Switzerland	6,078	4,311 (14,900)
Austria	3,724	3,722 (6,066)
France	2,442	2,311 (4,984)
Belgium	1,976	1,935 (3,160)
Denmark	---	1,829 (1,831)
UK	1,533	1,463 (2,450)
Norway	2,316	1,263 (3,311)

**Table 4.12 Based on Eurostat (2015b): Outgoing Dublin requests based on EURODAC by submitting country, type of request and legal provision, core countries.**

Denmark and the UK are included in this table as they show a high use of Eurodac.

#### EUROSTAT DUBLIN STATISTICS - NATIONALITY, AGE AND GENDER

Eurostat's Dublin statistics are not disaggregated by citizenship, age and gender, and cannot therefore show these characteristics of those who travel.

#### EUROSTAT DUBLIN STATISTICS AND ASYLUM STATISTICS

Eurostat also collects asylum statistics under Article 4.1-3 of the migration statistics regulation (Regulation (EC) No 862/2007) covering various parts of the asylum process: asylum applications, pending asylum cases, withdrawn



asylum applications, outcome of first and final instance decisions on asylum applications, withdrawal of previously granted status and resettlement.

The asylum statistics from 2015 show an increasing number of asylum seekers in Europe. According to Eurostat (2015a) during the first six months, 399,165 first time asylum seekers applied for protection in the EU. In addition, 15,415 applied for asylum in Norway and Switzerland. The largest groups came from Syria and Afghanistan. In the second quarter of 2015 the highest numbers of first time applicants were registered in Germany (80,935), and this equated to 38% of total first time applicants in the EU. Hungary ranked second (32,675 or 15%), followed by Austria (17,935 or 8.2%), Italy (14,895, or 8%), France (14,685 or 7%), Sweden (14,295 or 6.7%) and the United Kingdom (7,470 or 3.5%).

Despite these dramatic changes in 2015, we use the statistics from 2014 to compare with Eurostat Dublin statistics. The latest Dublin statistics refer only to 2014.

Eurostat (2015d) asylum statistics show the number of asylum seekers rose to 431,000 in 2013 and 626,000 in 2014; this was the highest number of asylum applicants within the EU since the peak in 1992. In 2014, the highest number of asylum seekers was in Germany with 202,645 applicants, which was two and a half times as many as the number of applicants in second ranking Sweden, 81,180. Italy had 64,625 applicants and France 64,310. The remaining Member States had below 50,000 applicants each and Norway had 13,205 applicants. Although these numbers are different from the numbers Norwegian, Swedish and German authorities use in their statistics, we use the numbers from Eurostat in this section (Eurostat 2015d).

- In contrast to Dublin statistics, asylum statistics are disaggregated by citizenship, age and gender.

*Citizenship:* The largest number of applicants to the EU/Schengen Member States in 2014 came from Syria, Eritrea, Kosovo, Afghanistan and Ukraine. Asylum applicants from Syria amounted to 122,000 in the EU-28, which equated to 20% of the total number of asylum seekers from non-EU countries. Afghani citizens accounted for 7% of the total, while Kosovans and Eritrean citizens accounted for 6% and Serbians for 5%. Moreover, Syrians accounted

for the highest number of applicants in 11 of the 28 EU Member States, including 41,100 applicants in Germany and 30,750 applicants in Sweden. Syrians were the second largest group in Norway, and accounted for 2,085 applicants (Eurostat 2015b).

*Age:* Nearly four in every five (79 %) asylum seekers in the EU-28 in 2014 were aged less than 35 and those aged 18–34 accounted for 54% of the total number of applicants, while minors aged less than 18 accounted for one quarter (26 %). This age distribution for asylum applicants was common in the vast majority of EU Member States.

*Gender:* The distribution of asylum applicants by gender shows men were more likely than women to seek asylum. This is especially the case for asylum applicants aged 14–17 or 18–34, as around three quarters of applicants were male. Female applicants outnumbered male applicants for asylum seekers aged 65 and over, although this group accounted for just 0.8 % of the total number of applications in 2014.

- Eurostat’s statistics on Dublin and Asylum are not connected.

Eurostat’s statistics on asylum applicants are not categorised by Dublin procedures, and it is impossible to see how many asylum applicants have been subject to a Dublin procedure. Moreover, Eurostat’s Dublin statistics are not categorised by asylum applicants, and cannot be linked to asylum statistics (EASO 2014b). Dublin transfers are registered in Eurostat asylum statistics from 2014 (Guild et al. 2014: 39), and this might improve the connection between the statistics.

There is, however, a quest for better statistics on onward migration in Europe. Both Frontex and EASO have therefore started to collect more disaggregated data to map the intra-Schengen movements of third-country nationals.

## Frontex – Intra-EU/Schengen Movements

Frontex actively monitors and pools data about everything that happens at the external borders of the EU. This agency collects data from Member States, EU bodies as well as from public media and other sources within and beyond

Europe's borders. Frontex Risk Analysis Unit (RAU) provides a regular overview of illegal migration at the EU external borders based on illegal migration data provided by Member States border-control authorities in the context of the Frontex Risk Analysis Network (FRAN).

The FRAN reports (quarterly and annual) are based on statistical analysis of monthly data on the following indicators of illegal migration and on asylum: 1a Detection of illegal border crossing between BCPs; 1b Detection of illegal border crossing at BCPs; 2 Detection of suspected facilitators; 3 Detection of illegal stay; 4 Refusals of entry; 5 Asylum applications; 6 Detection of false documents; 7a Return decisions for illegally staying third-country nationals, 7b Returns of illegally staying third-country nationals.

The persistently large number of annual illegal border crossings along external borders, has led Frontex to sharpen its focus on the risk that onward migration is adding to the pull factors for illegal border crossings at the EU external borders (Frontex' Programme of Work 2014). In January 2014, Frontex started regular data collection on intra-EU/Schengen movements, which also includes Eurodac data. Frontex collects two datasets. One is on the number of re-admissions disaggregated by nationality and by Member States, while the other is on the number of Eurodac hits disaggregated by nationality (these are not recorded in the Eurodac database, but based on information from Member States) by Member States and by type of hit. Frontex produces *annual risk analysis*, and *quarterly FRAN reports*. Statistics on intra-EU/ Schengen movement have just started, and are not included in these reports. However, Frontex has produced a report on onward migration in Europe in 2014, but this is not publicly available and the statistics cannot be used in our report.

## **EASO – Monitoring Secondary Movements**

EASO has gained a more important role regarding the collection and compilation of statistics with the revision of the Dublin Regulation. As discussed in chapter three, the revised regulation introduces a mechanism for an early warning, preparedness and crisis management mechanism aimed at preventing crisis arising from particular pressures on, or internal shortcomings of, national asylum systems (Regulation (EU) 604/2013 Art. 33). EASO's Early warning and Preparedness System (EPS) covers a mapping of how

Member States' data on asylum is reported to Eurostat. During 2013 and 2014 EASO showed there are major disparities between data collection and reporting across Member States, and concluded that the development of an EPS will need to be incremental (EASO 2014b).

At each stage, EASO will propose a limited number of new indicators and disaggregation to be collected with a certain frequency and timeliness. The next step in EASO's statistical work is called EPS II, and builds on current data collection activities and EASO analytical products. Monthly data collection should have started in April 2014 (EASO 2014b), but was postponed until autumn 2015. While EASO uses the same data set currently collected by Eurostat, it has higher frequency and expands with two new categories: citizenship and "yes or no" for applied for asylum.

EASO produces *monthly overviews* of latest asylum trends and main countries of origin. These show the number of applicants for international protection in Member States, the main countries of origin of applicants, and the number and type of decisions issued in first instance in the Member States. It does not include Dublin statistics. EASO produces *quarterly asylum reports*. These reports provide an overview of key asylum trends in EU/Schengen Member States. They analyse data on application for international protection, pending cases and decisions made on applications by Member States. The reports are based on data submitted to Eurostat regarding Article 4 of the Migration Statistics Regulation. They do not include Dublin statistics. EASO produces *annual reports* on the situation of asylum in the EU. They provide an overview of requests for international protection made in Member States and how the Member States dealt with them. These reports include a chapter on Dublin statistics. This is based on statistics from Eurostat, and the latest report is from 2014 (EASO 2015). There are not yet any available Dublin statistics from EASO.

## **EU-LISA – Eurodac, VIS and SIS II**

EU-LISA is an agency for the management of large-scale IT systems, and has been operational since 2012 (Regulation (EU) No 1077/2011). It fulfils operational management tasks for Eurodac, VIS and SIS II. EU-LISA is responsible for ensuring data security and integrity as well as compliance with

data protection rules. EU-LISA produces statistics based on these databases. As some of the data are on Dublin related issues, we give a short overview of how they might be useful to map onward migration of asylum seekers.

#### EU-LISA – EURODAC

EU-LISA produces Eurodac statistics based on hits in the database. Category 1 data are fingerprints of persons who have applied for asylum, category 2 data are fingerprints on persons apprehended irregularly crossing the external borders and category 3 data fingerprints of persons who are found irregularly present in a Member State.

The Eurodac database can give an indication of the travel routes related to onward migration of asylum seekers. It can show the patterns of how one country receives a high number of asylum seekers who had previously lodged an application in other countries. This can be done by comparing hits in category 1 with data already stored in category 1. While most Eurodac data are produced monthly, quarterly and annually, only Eurodac's annual report is publicly available.

As of August 2015, the latest annual report is from 2014. It shows the system processed 756,368 transactions in 2014, representing an increase of 49 per cent compared to 2013. In relation to category 1 data there was an increase of 43 per cent compared to 2013. Germany was responsible for 28 per cent of the transactions, followed by Italy with 14 per cent and Sweden with 13 per cent. The report also shows an increase of 122 per cent in the category 2 data from 2013 to 2014. Italy was responsible for 42 per cent in 2014, followed by Greece with 32 per cent and Hungary with 24 per cent. In the same period, there was an increase in the category 3 data of 36 per cent. Germany was responsible for 43 per cent, followed by the UK with 7.4 per cent.

The Eurodac report shows the percentage of multiple asylum applications (hits from category 1 data against category 1 data) decreased from the previous year. In 2014, from a total of 505,221 asylum applications recorded in Eurodac, 24.02 per cent were recorded as multiple asylum applications. There has, however, been an increase over the last couple of years, and the annual report concludes:

Foreign hits give an indication of the secondary movements of asylum seekers in the EU, as it shows cases when a person who has applied for asylum in a Member State or an Associated Country makes a new application in another country. 41% of the total foreign hits generated in 2014 were received by Germany. Similar to previous years, on the basis of the information available in the Central System secondary movements observed do not necessarily follow the expected routes between neighbouring countries and do not represent a one-way street from the countries with an external land border or those bordering the Mediterranean to a country more in the North. Italy received a high number of asylum seekers who had previously lodged an application in Norway (1,172) and in Hungary (1,183). Germany received a high number of foreign hits from asylum seekers who previously lodged an application in Italy (8,824), in Hungary (6,328) and Sweden (6,316) (Eurodac 2015).

The report gives an indication of routes taken by persons who have irregularly entered a Member State and then apply for asylum (hits from category 1 data against category 2 data). The majority of foreign hits (application of asylum in a Member State category 1) after irregular entry (category 2) were recorded in Germany, Sweden and Austria. The majority of those who entered irregularly in Italy and travelled to another Member State went to Germany, Sweden or Switzerland. Those who arrived in Greece went onward to Germany, Sweden and Austria. Germany and Sweden are particularly attractive countries for asylum seekers.

Moreover, hits from category 3 data against category 1 data show where irregular migrants first applied for asylum before they moved to another Member State. Germany, Switzerland and Norway were the Member States where most persons were found illegally present (Eurodac 2015). The number of category 3 hits is also a question of what volume of resources a Member State uses to check if persons are irregularly present in a Member State – as a part of an internal border control (Johanson, Ugelvik and Aas 2013).

Guild et al. (2014) have examined Eurodac data from the annual reports of Eurodac dating from 2004 to 2013. They show a substantial increase in the use of the fingerprint database during this period. Nevertheless, the authors conclude that the picture which emerges from the operation of the Eurodac and the Dublin system is not particularly illuminating. The reasons they give

for this conclusion is that there is a low number of actual Dublin transfers and that the end result of the number of asylum seekers for which the states are responsible does not change very much (Guild et al. 2014: 38-39). There is also a circulation of transfers between the countries. This report concludes:

According to available statistics, only around 25% of outgoing requests have resulted in transfers during the period 2008-2012, meaning that Dublin transfers take place in only around 3% of asylum cases in the EU. Most applications are processed where asylum seekers actually apply for asylum, irrespective of the Dublin allocation criteria (Guild et al. 2014: 9).

Several analyses confirm this low number of Dublin transfers (Ngalikpima and Hennessy 2013; Fratzke 2015). According to EASO, an annual average from 2009 to 2013 shows the number of registered asylum applications in the Member States was around 350,000 yearly:

Outgoing Dublin requests corresponded to about 15% of the total asylum applicants and accepted requests to 11%, but the proportion of outgoing transfers was only about 4% of the numbers of applicants (EASO 2014a: 9).

As we may note, these reports operate with a distinction between three categories of percentages, a distinction we shall make use of in our analysis of the numbers for Norway, Sweden and Germany later in this chapter. The three categories of percentages refer to: 1) outgoing Dublin requests/total asylum applicants; 2) accepted Dublin requests/total asylum applicants; 3) effectuated Dublin transfers/total asylum applicants. This distinction is especially useful because it corresponds to and reveals any discrepancies between a) the identification of Dublin cases by requesting Member States, b) the acceptance of such identification and requests by other Member States and, not least, c) the proportion of actually effectuated transfers. The latter may be regarded as the end result of the Dublin procedure.

These low percentages of transfers among all Member States indicate the chance of applying for asylum in the second or third country of arrival is high. However, the numbers do have several weaknesses because they are based on statistics from several Member States. The number of hits from the Eurodac

database would not match the numbers of request/decisions/transfers based on Eurodac hits derived from the Eurostat database. The main reason is that only persons aged 14 years and older are recorded in Eurodac, whereas for Eurostat all persons covered by a request should be reported. If the request is based on a Eurodac hit, family members below 14 who are not fingerprinted should also be reported to Eurostat. The number of Eurodac hits are not equal to the number of Dublin requests to take back/charge because Member States are not obliged to send a request.

#### EU-LISA – VIS AND SIS

EU-LISA is also responsible for the Visa Information System (VIS). VIS is a system for the exchange of visa data among Schengen Member States. It processes data and decisions relating to applications for short-stay visas to visit, or to transit through, the Schengen Area. The system can perform biometric matching, primarily of fingerprints, for identification and verification purposes. While Member States use the VIS to check if an asylum seeker has a short-stay visa in another Member State, the data are not used to monitor onward migration of asylum seekers in Europe.

EU-LISA produces statistics based on the Schengen Information System (SIS). SIS II allows information exchanges between national border control, customs and police authorities. It contains alerts on missing persons, in particular children, as well as information on certain property, such as banknotes, cars, vans, firearms and identity documents that may have been stolen, misappropriated or lost. EU-LISA produces statistics showing the number of records per category of alert, the number of hits per category of alert and how many times SIS II was accessed, in total and for each Member State each year. In common with VIS data, SIS data are not used to monitor onward migration of asylum seekers in Europe.

### **Norway, Sweden, and Germany**

The following analysis is based on statistics we have received by request from the Norwegian Directorate of Immigration, the Swedish Migration Agency and the German Federal Office for Migration and Refugees. As mentioned above, some numbers diverge from Eurostat numbers. In addition, the numbers we



have received from the three countries diverge. The number of outgoing requests e.g. one country has sent to another might not correspond with the number this country has on incoming request.

With the aim of analysing the key characteristics of those who are travelling, we asked whether the three countries have Dublin statistics on the numbers of incoming/outgoing requests and transfers, the countries asylum seekers travel to and from, the persons' asylum status and their citizenship. We also asked about statistics on asylum seekers' age and gender.

#### NORWAY

As part of the Schengen Borders Code and the Dublin Regulation, Norway is also bound by the migration statistics Regulation. The Norwegian statistics on Dublin related issues are administered by the Directorate of Immigration. The following numbers are based on data the Directorate has sent us by request.

Asylum applications in Norway amounted to 11,480 in 2014. The number of first applications was 10,970 (96%), while repeated applications amounted to 510 (4%). The three largest country groups of asylum seekers lodging a first application in Norway in 2014 were Eritrea (2,805; 26%), Syria (1,980; 18%) and Sudan (790; 7%). However, the category of Sudan was only marginally larger than Stateless (785) and Somalia (760).

In 2014, around 75 per cent of all asylum seekers in Norway were men, and 81 per cent of all asylum seekers were below 35 years of age and 940 asylum seekers were considered to be unaccompanied minors.

The Norwegian Dublin statistics show an increase in numbers of *outgoing requests* from Norway to other Member States from 2013 (3,205) to 2014 (3,319). In 2014, outgoing requests were rejected in 1,441 cases and accepted in 1,645 cases, while the outcomes of 233 were not registered. Moreover, 1,401 persons were transferred to another Member State. In 2014, we find that the proportion of effectuated Dublin transfers of all outgoing requests was 42.21 per cent, while the proportion of Dublin transfers of all accepted outgoing requests was 85.17 per cent. When we apply the same three categories of percentages for Norway as Guild et al. (2014) and EASO (2014a) did for all Member States, as mentioned above, we find the following.

- In 2014, the proportion of outgoing requests out of the total number of first asylum applications to Norway the same year was 30.3 per cent, while the proportion of the accepted outgoing requests of first asylum applications to Norway was 15 per cent. Moreover, the proportion of effectuated Dublin transfers out of the total number of first asylum applications to Norway in 2014 was 12.8 per cent.

These numbers are deceptively accurate and should only be interpreted as indicators, as the real proportion of Dublin transfers must be measured at an individual level and over more than one year. Numbers showing such real proportions are not available. As we will also return to below, the existing numbers do not refer to the same individuals, as those applying for asylum one year are not necessarily transferred the same year.

The number of *incoming requests* to Norway from other Member States increased from 2013 (1,836) to 2014 (2,183). In 2014, Norway rejected 667 requests, accepted 1,443 requests and 63 were not registered.

- We cannot juxtapose the numbers of persons Norway transferred to other Member States (1,441) and the number of persons transferred to Norway from other Member States because Norwegian government institutions do not register persons transferred to Norway.

In Norway, the outgoing and incoming requests and transfers differ among Member States. The following numbers are from 2014. Norway sent the highest number of *outgoing requests* to Italy (1,862), Sweden (210) and Germany (209). If we break this down to the level of asylum seekers' with a Dublin status by citizenship, we find the largest groups covered by Norway's outgoing requests came from Eritrea (806), Syria (451) and Sudan (276).

The highest number of *incoming requests* to Norway were from Sweden (752), Germany (590) and France (170). If we break this down to the level of asylum seekers' citizenship, we find the largest groups covered by the incoming requests to Norway from all Member States came from Somalia (365), Afghanistan (330) and Eritrea (147).

- While Norway sent most outgoing requests to Italy and attractive asylum countries, Norway received most incoming requests from countries attractive for asylum seekers in the north. Asylum seekers mainly come from Eritrea, Syria, Afghanistan and Sudan.

Norway sent 210 outgoing requests to *Sweden*, and 177 were accepted. The largest groups of outgoing requests to Sweden were from Morocco (16), Stateless (16) and Somalia (15). Norway transferred 148 asylum seekers to Sweden. Norway received 752 incoming requests from Sweden, and 595 were accepted. The largest groups of asylum seekers came from Somalia (206), Eritrea (68) or were categorised as Stateless (38). Sweden transferred 483 asylum seekers to Norway and the largest numbers are from Serbia (76), Syria (65) and Kosovo (53).

- The difference between Norway's outgoing requests to Sweden (210) and incoming requests from Sweden (752) is 542 asylum seekers. Due to the lack of registration of incoming transfers, we cannot count how many persons with a Dublin status were actually transferred between these countries.

Norway sent 209 *outgoing* requests to *Germany*, and 184 were accepted. The largest groups of outgoing requests to Germany were from Afghanistan (20), Morocco (19), Syria (15) and stateless (15). Norway transferred 176 asylum seekers to Germany. Norway received 590 incoming requests from Germany. The largest groups of incoming requests came from Somalia (88), Afghanistan (108) and Iran (57).

- The difference between Norway's outgoing requests to Germany (209) and incoming requests from Germany (590) is 381 asylum seekers. The difference of Norway's transfer to Germany (176) and Germany's transfers to Norway cannot be counted on the basis of Norwegian data as Norway does not register persons arriving in Norway due to incoming Dublin transfers (see the difference based on German data below).

Norwegian statistics suggest there is a circulation of requests among the attractive asylum destinations in the North West of Europe.

## SWEDEN

In Sweden, the statistics on Dublin related issues are administered by the Migration Agency. The following numbers are based on data we received from the Agency on request. We also received some data on Sweden from the Norwegian Directorate on Migration.

Total asylum applications in Sweden amounted to 81,325 in 2014. The number of first applications was 75,090 (92%), while there were 6,235 (8%) repeated applications. The three largest country groups of asylum seekers lodging a first application in Sweden in 2014 were Syria (30,315; 40%), Eritrea (11,055; 15%) and Stateless (7,540; 10%). In 2014 7,050 asylum seekers were considered to be unaccompanied minors.

The Swedish Dublin statistics show a similarity in numbers of *outgoing requests* from Sweden to other Member States from 2013 (10,761) to 2014 (10,760). In 2014 outgoing requests were rejected in 2,689 cases and accepted in 8,071 cases. Moreover, 3,973 persons were transferred to another Member State. As in the Norwegian case, transfers often occur in the calendar year after a request submission and acceptance, and these data are not collected as cohorts. Nevertheless, it is useful to measure the numbers of transfers (3,973) in relation to the outgoing requests (10,760) and in relation to the accepted outgoing requests (8,071) in one year. It might also be useful to measure the numbers of transfers in relation to the numbers of first asylum applications (75,090) in one year. In 2014, we find that, in the case of Sweden, the proportion of Dublin transfers of all outgoing requests was 36.9 per cent, while the proportion of Dublin transfers of all accepted outgoing requests was 49.2 per cent. Again, for the Swedish case, we do the same exercise as Guild et al. (2014) and EASO (2014) did for all Member States and find

- In 2014, the proportion outgoing requests out of the total number of first asylum applications to Sweden the same year was 14.3 per cent, while the proportion of the accepted outgoing requests of first asylum applications to Sweden was 10.8 per cent. Moreover, the proportion of effectuated Dublin transfers out of the total number of first asylum applications to Sweden in 2014 was 5.3 per cent.

As in the Norwegian case, these numbers can only be interpreted as indicators to see the proportion of Dublin transfers, as the real proportion of Dublin transfers must be measured at an individual level and over more than one year.

The number of *incoming requests* to Sweden from other Member States decreased from 2013 (3,806) to 2014 (3,430). In 2014, Sweden rejected 1,386 requests.

- We cannot juxtapose the numbers of persons Sweden transferred to other Member States (3,973) and the number of persons transferred to Sweden from other Member States because Swedish government institutions do not register persons arriving in Sweden due to incoming transfers.

Also in Sweden, the outgoing and incoming requests differ among Member States. The following numbers are from 2014. Sweden sent the highest number of *outgoing requests* to Italy (3,444), Germany (1,094) and Norway (754). If we break this down to the level of asylum seekers' with a Dublin status by citizenship, we find the largest groups covered by Sweden's outgoing requests came from Syria (1,554), Somalia (1,474) and Eritrea (1,289).

The highest number of *incoming requests* to Sweden were from Germany (1,353), Denmark (313) and Norway (264). If we break this down to the level of asylum seekers' citizenship, we find the largest groups covered by the incoming requests to Sweden from all Member States came from Afghanistan (413), Syria (290) and Serbia (265).

- While Sweden sends most outgoing requests both to Italy and attractive asylum countries, Sweden receives most incoming requests from countries attractive for asylum seekers in the north. The asylum seekers mainly come from Eritrea, Syria, Afghanistan, Somalia and Sudan.

Sweden sent 754 outgoing requests to *Norway*, and transferred 370 persons. Sweden received 264 incoming requests from Norway.

- The difference between Sweden's outgoing requests to Norway (754) and incoming requests from Norway (264) is 490 asylum seekers. Due to the lack of data on persons arriving due to incoming transfers, we cannot count how many persons with a Dublin status were actually transferred between these countries.

Sweden sent 1,094 outgoing requests to *Germany*, and transferred 838 persons. Sweden received 1,353 incoming requests from Germany.

- The difference between Sweden's outgoing requests to Germany (1,094) and incoming requests from Germany (1,353) is 259 asylum seekers. The sum of Sweden's transfers to Germany (838) and Germany's transfers to Sweden cannot be counted on the basis of data from Sweden as Sweden does not have data on persons arriving in Sweden due to incoming Dublin transfers (see the difference based on German data below).

Swedish and Norwegian statistics show several similarities in the patterns of Dublin requests in Norway and Sweden. There is a circulation of requests among the countries, and most of the registered persons have the same nationalities. While neither Eurostat nor German statistics have Dublin statistics on age and gender, Norwegian and Swedish statistics do provide information on these characteristics. In 2014, most outgoing and incoming requests registered both in Norway and Sweden concerned males between 17 and 60 years old, with a wide peak around the age of 30. This means most of the registered Dublin cases of onward migration comprised men between the ages of 20-40. There was also a significant number of persons below the age of 18, but only a few above 60. A significant number of boys and girls under the age of 18 as well as women are also among these onward migrants. See figures 4.2 and 4.3 below.

### Dublin Requests by Type of Request and Sex (N = 37 997)

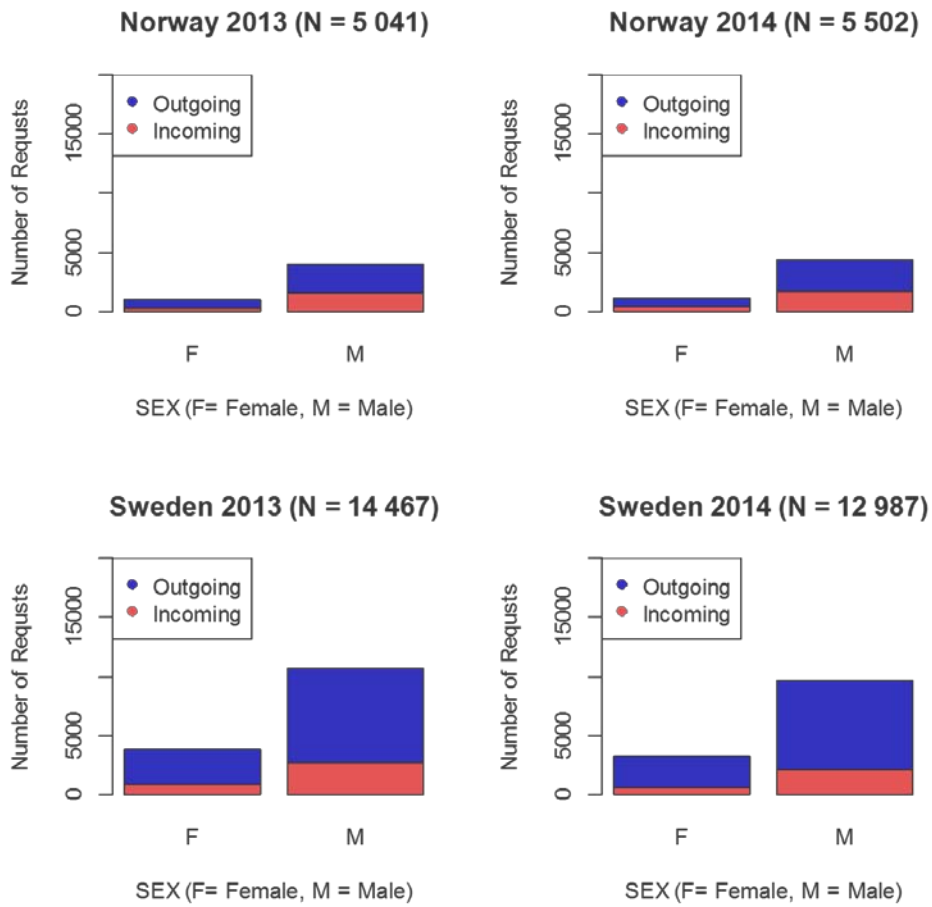


Figure 4.2 Dublin Requests by type of request and gender, Norway and Sweden.

### Dublin Outgoing Requests by Age

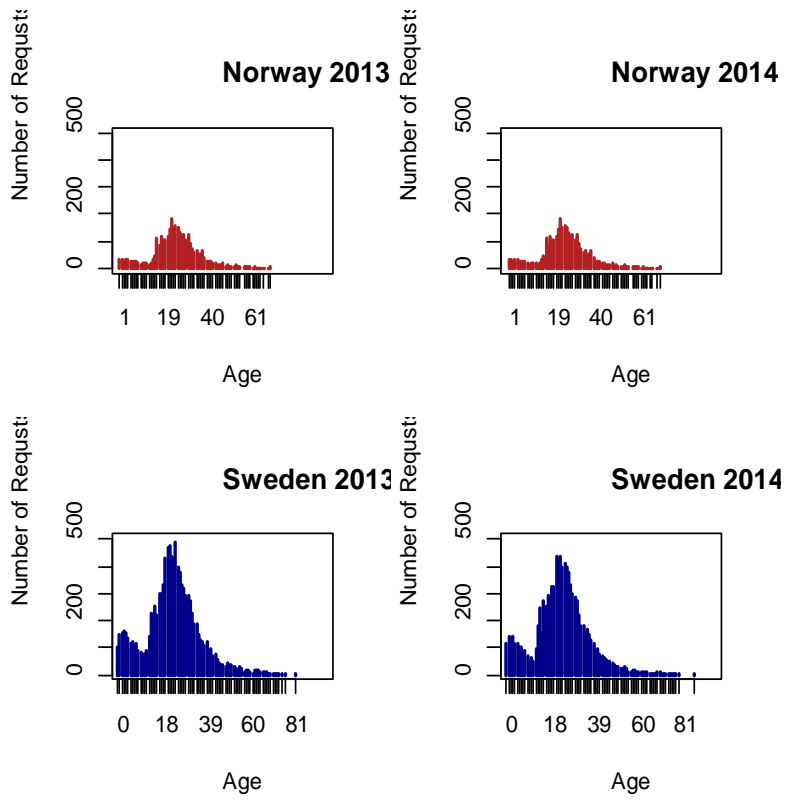


Figure 4.3 Dublin outgoing requests by age, Norway and Sweden



## GERMANY

German statistics on Dublin related issues are administered by BAMF. The following numbers are based on publicly available asylum and Dublin statistics (BAMF 2015), and statistics BAMF has sent us by request. From BAMF we received statistics on the numbers of incoming/outgoing requests and transfers, the countries asylum seekers travel to and from, the persons' asylum status and their citizenship. We did not receive statistics on the asylum seekers' age and gender. According to BAMF, German statistics have no breakdown by age and gender, and national statistics are not completely in line with Eurostat statistics due to some differences in definitions and concepts (BAMF Units of Statistics 2015).

German asylum statistics show the number of asylum seekers increased from 1953 to 2014. There was a peak in 1992 with 438,191 applications, and then the number decreased to 28,018 in 2008. Since then, the number has gradually increased to 202,834 in 2014.

In 2014, the number of first asylum application amounted to 173,072, while the number of second applications was 29,762. The three largest country groups of asylum seekers in 2014, measured in relation to first application, came from Syria (39,332), Serbia (17,172) and Eritrea (13,198). In 2014, around 66 per cent of all asylum seekers to Germany were men, and around 70 per cent of all asylum seekers were below 30 years old. In 2014 4,399 asylum seekers came as unaccompanied minors. Asylum seekers in Germany are distributed among the Federal States according to a system called EASY, Erstverteilung von Asylbegehrenden. The quotas for each Federal State are defined according to a key, Königsteiner Schlüssel, which is used to distribute different kinds of financial support and tasks among the Federal States. The key for distribution is based on each Federal State's income from taxes and population.

German Dublin statistics show an increase in numbers of *outgoing requests* from Germany to other Member States from 2005 (5,527) to 2014 (35,115). In 2014 year the outgoing requests were rejected in 10,728 cases and accepted in 27,157 cases, and 4,772 persons were transferred to another Member State. As in the Norwegian and Swedish case, the transfers often occur in the calendar year after a request submission and acceptance, and these data are not collected as cohorts. It might be useful to measure the numbers of

transfers (4,772) in relation to the outgoing requests (35,115) and in relation to the accepted outgoing requests (12,157) in one year. In 2014, we find that the proportion of Dublin transfers of all outgoing requests was 13.6 per cent, while the proportion of Dublin transfers of all accepted outgoing requests was 39.3 per cent.

Again, in the German case, we do the same exercise as Guild et al. (2014) and EASO (2014) did for all Member States.

- In 2014, the proportion of outgoing requests out of the total number of first asylum applications in Germany the same year was 20.3 per cent, while the proportion of the accepted outgoing requests of first asylum applications to Germany was 15.7 per cent. Moreover, the proportion of effectuated Dublin transfers out of the total number of first asylum applications to Germany in 2014 was 2.8 per cent.

As in the Norwegian and Swedish cases, these numbers can only be interpreted as indicators to see the proportion of Dublin transfers, as the real proportion of Dublin transfers must be measured at an individual level and over more than one year. Nevertheless, these numbers are significantly lower than what we have seen in the Norwegian case, while Sweden is somewhere in between.

The number of *incoming requests* to Germany from other Member States decreased from 2005 (6,255) to 2014 (5,091). In 2014, Germany rejected 912 requests, accepted 4,177 requests and received 2,275 asylum seekers with a Dublin status from other Member States.

- When we juxtapose the numbers of persons Germany transferred to other Member States 4,772 and the number of persons transferred to Germany from other Member States 2,275, we can see that the sum of the asylum seekers with a Dublin status in and out of Germany amounted to a net emigration of 2,497.

While the sum of the numbers of Dublin transfers is low, outgoing and incoming requests and transfers differ among the Member States. The following numbers are from 2014. Germany sent the highest number of *outgoing requests* to Italy (9,102), Bulgaria (4,405) and Hungary (3,913). Germany transferred most persons with a Dublin status to Poland (1,218), Belgium (844) and Italy (782). If we break this down to the level of asylum seekers' with a Dublin

status by citizenship, we find that the largest groups covered by Germany's outgoing requests came from Syria (5,307), Russia (3,083) and Afghanistan (2,997). The largest groups Germany transferred to other Member States were from Russia (1,435), Kosovo (267) and Somalia (251). The outgoing requests do not reflect the transferred persons, neither in relation to countries nor in relation to the asylum seekers' nationality.

The highest number of *incoming requests* to Germany was from Sweden (1,084), France (818) and the Netherlands (570). Germany received most persons with a Dublin status from Sweden (483), Greece (460) and Switzerland (241). If we break this down to the level of asylum seekers' citizenship, we find the largest groups covered by the incoming requests to Germany from all Member States came from Afghanistan (489), Georgia (459) and Serbia (430). The largest groups of asylum seekers transferred to Germany from other Member States were from Afghanistan (435), Syria (187) and Kosovo (141).

- While Germany sends most outgoing request to border states in the south and east, Germany receives most incoming requests from countries attractive for asylum seekers in the north. The asylum seekers mainly come from Syria, Afghanistan and Russia.

Germany sent 1,521 outgoing requests to *Sweden*. The largest groups of outgoing requests to Sweden were from Serbia (227), Afghanistan (175) and Syria (149). Germany transferred 215 asylum seekers to Sweden, and the largest groups were from Afghanistan (29), Serbia (26) and Albania (25). Germany received 1,084 incoming requests from Sweden. The largest groups of asylum seekers came from Serbia (186), Syria (187) and Kosovo (141). Sweden transferred 483 asylum seekers to Germany and the largest numbers are from Serbia (76), Syria (65) and Kosovo (53).

- The sum of Germany's transfer to Sweden 221 and from Sweden 483 is 262 asylum seekers to Germany with a Dublin status.

Germany sent 599 outgoing requests to *Norway*. The largest groups of outgoing requests to Norway were from Afghanistan (106), Somalia (90) and Iran (59). Germany transferred 93 asylum seekers to Norway, and the largest groups came from Afghanistan (18), Somalia (16) and Iran (19). Germany received 269 incoming requests from Norway. The largest groups of incoming requests came from Algeria (25), Morocco (25) and Afghanistan (22). Norway

transferred 205 asylum seekers to Germany, and the largest groups transferred are from Syria (19), Algeria (19) and Morocco (18). The outgoing requests and transfers cover the same groups of nationalities.

- The sum of Germany's transfer to Norway 93 and from Norway 205 is 112 asylum seekers to Germany with a Dublin status.

German statistics suggest that there is a low number of Dublin transfers, and that there is a circulation of requests among the most attractive and well-organised countries in the North West of Europe. The asylum seekers transferred between these countries come to a large extent from the same countries such as Eritrea, Syria and Afghanistan.

## Statistical Challenges – Comparing the Statistics

While there are several challenges to how the European Dublin statistics can provide an overview of the key characteristics of asylum seekers who travel between Member States, we discuss three limitations in the Dublin statistics.

- There are weaknesses in the quality of the collected data.

These weaknesses are primarily related to the fact that some Member States do not report on all requested data sets, and there are several cases of both missing and incomplete data. Member States also use diverging categories for registration. For example, when families travel, some Member States report the entire family as a single case, while others report individual persons. Another example is that an outgoing request from more than one country on the same person is only counted as one incoming request. Moreover, persons who are transferred are often not registered in the country they are transferred to, and this makes it impossible to know if they have actually arrived. Accordingly, the Commission concludes that comparability across countries is hampered by incomplete data and that countries vary in terms of data sources used to produce the statistics (European Commission 2012).

- There are weaknesses related to data not included in the statistics.

Eurostat's Dublin statistics are not disaggregated by citizenship, age and gender, and cannot therefore show central characteristics of those who are travelling. This information cannot be derived from the Eurodac database, nor from Eurostat asylum statistics as these statistics are not connected. This makes it

impossible to monitor the central characteristics of asylum seekers who travel in Europe. Frontex monthly data collection on intra-Schengen movements, which includes data from Eurodac disaggregated by citizenship, might compensate for this lack of information. However, it is too early to conclude whether it will fill this gap, as the data are not yet publicly available. EASO introduced indicators disaggregated by citizenship, but this data collection is scheduled to start in the autumn of 2015.

- There is a time interval between the registrations of the stages in the procedure.

Data on the stages in the Dublin procedure (the sending/receiving of requests to take back/take charge; the decisions on such requests and the transfers) are not collected in a cohort form. The time intervals between the registrations make it impossible to determine whether one concrete request or accepted request resulted in transfer. Each asylum seeker cannot be followed. One can only produce estimations based on long reference periods, and these are imprecise. Eurostat Dublin statistics has an annual periodicity to be submitted 3 months after the end of the reference period. While the statistics from Frontex and EASO have shorter periodicity, their statistics are not yet publicly available.

## Summary

European statistics on onward migration have crucial limitations in relation to showing central characteristics of those who travel. There are several reasons. The statistics on migration are new, and the first comprehensive legal basis underpinning the processing of EU statistics on migration was applied in 2008. Migration statistics are based on the countries' national traditions and historical experience with migration. There is an ongoing process to adapt the European countries various statistical categories and sources.

Moreover, the European Dublin statistics have several weaknesses. The statistics do not include the categories citizenship, sex and gender, and it is therefore not possible to say anything about this based on these statistics. There are weaknesses in the quality of the collected data, some data are not included in the statistics and there is a time interval between the registrations of the stages in the procedure.

However, there is an increasing request for statistics on how third-country nationals, without long-term permits to stay in a European country, travel between Member States. Frontex and EASO have started to collect statistics, but these statistics are not yet publicly available. Eurodac statistics do provide some patterns of onward migration and may give an indication of the travel routes related to onward migration of asylum seekers. Eurodac statistics also show the patterns of how one country receives a high number of asylum seekers who had previously lodged an application in other countries. In 2014, most asylum seekers travelled to Germany. The statistics also give an indication of the routes taken by persons who irregularly enter a Member State and then apply for asylum, and in 2014 most asylum seekers went to Germany, Sweden and Austria. Eurodac statistics can also show the Member States where most persons were found illegally present after they applied for asylum in another Member State, and in 2014 these were in Germany, Switzerland and Norway. However, Eurodac statistics cannot be linked to Eurostat statistics as they are based on diverging categories.

Despite these limitations, we find some interesting patterns in Eurostat Dublin statistics from 2008 to 2014. The statistics from 2014 are incomplete because between 8 and 11 Member States have not submitted data on different categories, and we therefore include statistics from 2013 and compare the trends from 2008 to 2012.

The main patterns we find in Eurostat Dublin statistics are that there is a difference between EU-border countries, and attractive countries for asylum seekers. The EU-border countries have most incoming requests, and are also the countries the asylum seekers travel from. The attractive countries for asylum seekers have most outgoing requests. There are, however, not only outgoing requests from the attractive countries in the north to EU-border countries in the south, but also a circulation of requests among countries in North-West Europe.

This circulation of requests among countries in the North of Europe is also confirmed by data we have received from Norway, Sweden and Germany. These three countries send requests to one another, and they transfer asylum seekers with similar nationalities. Most asylum seekers are from Eritrea and Syria. The patterns are quite similar between Norway and Sweden, while

Germany sends more requests to neighbouring countries on the mainland continent.

Reports from the European Parliament (Guild et al. 2014) and EASO (2014a) operate with a distinction between three categories of percentages. The three categories of percentages refer to: 1) outgoing Dublin requests of total asylum applicants; 2) accepted Dublin requests of total asylum applicants; 3) effectuated Dublin transfers of total asylum applicants. When we do a similar exercise for Norway, Sweden and Germany in 2014, we find the following:

In Norway, 1) the proportion of outgoing requests out of the total number of first asylum applications the same year was 30.3 per cent, while 2) the proportion of accepted outgoing requests out of first asylum applications was 15 per cent. Moreover, 3) the proportion of effectuated Dublin transfers out of the total number of first asylum applications to Norway in 2014 was 12.8 per cent.

In Sweden, 1) the proportion of outgoing requests out of the total number of first asylum applications was 14.3 per cent, while 2) the proportion of accepted outgoing requests of first asylum applications in Sweden was 10.8 per cent. Moreover, 3) the proportion of effectuated Dublin transfers out of the total number of first asylum applications to Sweden in 2014 was 5.3 per cent.

In Germany, 1) the proportion of outgoing requests out of the total number of first asylum applications the same year was 20.3 per cent, while 2) the proportion of the accepted outgoing requests of first asylum applications in Germany was 15.7 per cent. Moreover, 3) the proportion of effectuated Dublin transfers out of the total number of first asylum applications in Germany in 2014 was 2.8 per cent.

Furthermore, we find differences between the percentages of effectuated Dublin transfers measured in relation to outgoing requests accepted by other Member States. In Norway, the proportion of effectuated Dublin transfers of all accepted outgoing requests was 85.2 per cent. The corresponding number for Sweden was 49.2 per cent and for Germany 39.3 per cent.

These numbers are deceptively accurate and should only be interpreted as indicators, as the real proportion of Dublin transfers must be measured at

an individual level and over more than one year. Numbers showing such real proportions are not available. The number of asylum applications registered one year will for various reasons not necessarily reflect the number of applications processed by the government in the same year. Although the transfers often occur in the calendar year after a request submission and acceptance, the numbers of transfers are quite stable over several years.

Taking into account all the reservations regarding what the statistics show, as described in detail in this chapter, we conclude in line with EASO (2014) and Guild et al. (2014) that our findings indicate clear differences between the countries regarding how the Dublin Regulation is applied. Although the numbers of Dublin transfers measured in relation to the total numbers of asylum seekers are low in all three countries (as in Europe in general, cf. Guild et al. 2014), the number is higher in Norway. The ratio of effectuated transfers out of accepted requests is also higher for Norway. Regarding Norway, the relatively high ratios of Dublin transfers may indicate a priority to use the Dublin Regulation as a means to transfer asylum seekers to other Member States. We return to this issue in chapter five.





## 5 Government institutions' experiences with application of the Dublin Regulation

In chapter three, we developed an analytical framework consisting of three main issues. In this chapter, we analyse these three issues by examining how representatives of government institutions in Norway, Sweden and Germany describe their application of the Dublin Regulation. We also draw some conclusions about the general functioning of the Dublin system based on the analyses of interviews with public servants in these three countries.

The first issue is how the Dublin Regulation functions in practice at the time of interviewing in relation to its intention to determine the Member State responsible for examining an application for international protection lodged in one of the Member States. We examine what kinds of experiences government institutions in Norway, Sweden and Germany have by applying the criteria and procedures specified in the Dublin Regulation.

The second issue is to what extent the CEAS lays premises for how the Dublin Regulation works in practice. We analyse how contemporary implementation of the CEAS lays premises for Norwegian, Swedish and German experiences with how the Dublin Regulation functions in relation to the original intention.

The third issue is what kind of role the Dublin Regulation plays in relation to onward migration of asylum seekers, and persons without the legal right to stay in the EU/Schengen area. We examine how government institutions in Norway, Sweden and Germany perceive the role of the Dublin Regulation in the face of challenges posed by onward migration.

### Institutional approach

This chapter concentrates on public servants' descriptions of how government institutions apply the Dublin Regulation in Norway, Sweden and Germany. Within these countries, we examine national migration offices (also called migration agencies or directorates), border police and courts or tribunals working with migration issues. These immigration bureaucracies are formal

bureaucratic institutions with the task of applying not only EU regulations and directives, but also remaining in line with national laws and policy guidelines.

In addition to defining bureaucracy as an ideal-type and as a rational tool executing the commands of elected leaders (Weber 1978), we understand bureaucracy as civic and rule-bound institutions embedded in different historical administrative traditions (Olsen 2007: 139). Moreover, we understand bureaucratic institutions as organisational arrangements that link roles and identities, accounts of situations, resources and prescriptive rules and practices (March and Olsen 1995). This approach to institutions is built around ideas of identities and conceptions of appropriate behaviour, and stands in contrast to interpretations of institutions built on coalitions and exchange among self-interested actors.

We assume that bureaucratic institutions constitute and legitimise actors (in our study: public servants) and provide them with behavioural rules, conceptions of reality, standards of assessment, affective ties and thereby with capacity for purposeful action (March and Olsen 1995: 30). Public servants are driven by rules of appropriateness, which are organised into institutions and refer to a match of behaviour to a situation. Moreover, they follow rules because they seek to fulfil the obligations they perceive are expected of them in a role they have, according to their identity, as members of a group, and in line with the ethos, practice and expectations of the institution (March and Olsen 1995).

Our study of bureaucratic institutions applying the Dublin Regulation in Norway, Sweden and Germany examines not only formal rules, but also how they are implemented in practice. Public servants follow rules by a more or less strict application of policy guidelines. We understand discretionary decisions not only in relation to the more or less strict application of policy guidelines, laws and regulations, but also in relation to how decision makers interpret the normative context in which the decision is made (Grimen and Molander 2008: 183-188). In our study, this includes how the public servants understand the situation for asylum seekers in Europe, the role of the Dublin Regulation and the challenges of onward migration.

Moreover, based on the findings from these three cases we aim to draw some conclusions about how the Dublin system functions in general. As discussed in chapter two, our analyses of these institutions are based on public

documents, statistics and interviews. We did not have the opportunity to observe practices, but refer to *statements about practices* as given in interviews or in documents. References to statements made by public servants are seen as reflecting an institution's ethos, practice and expectations – according to a logic of appropriateness.

## Institutions involved

Three institutions apply the Dublin Regulation in Norway. The National Police Immigration Service (NPIS) *Politiets utlendingsenhet* registers asylum seekers who come to Norway, and has around 540 employees. NPIS establishes migrants' identity and travel routes. It also returns people without a lawful residence permit and runs Norway's immigration detention centre at Trandum. The Directorate of Immigration *Utlendingsdirektoratet* considers asylum applications and decides if Norway should take responsibility for these applications or if a Dublin procedure should be followed. In 2014, 11,480 persons applied for asylum in Norway. The Directorate of Immigration has more than 1,000 employees, and within the directorate there is a Dublin Unit with around 30 employees. The Immigration Appeals Board *Utlendingsnemnda* is responsible for dealing with appeal cases. This is a tribunal only for immigration cases, and has around 350 employees. Dublin cases were integrated as a part of a larger unit, but since September 2015 public servants working with Dublin cases do not have other tasks. The Dublin procedures are centralised in Oslo.

The Swedish Migration Agency *Migrationsverket* considers applications from people who apply for asylum in Sweden, and has around 5,000 employees. In 2014 they dealt with 81,325 asylum cases. Within the Migration Agency, various units are involved in the Dublin procedures. The Dublin Unit *Dublin-enheten* is responsible for the process from when the request is sent to another Member State until it is rejected or accepted. Around 80 employees, divided into seven teams, work with Dublin cases. The Operative Unit *Operativa Stödenheten* organises all transfers and returns from Sweden to other countries. The Migration Agency has several Reception Units *Mottagningsenheter* in the regions. They receive asylum seekers and examine applications from asylum seekers. While all decisions related to the Dublin procedure are centralised in Stockholm, decisions affecting daily operational activities are taken in the

regions. The Migration Agency's decisions can be appealed to the Migration Court *Migrationsdomstolen*, which is an integrated part of the Administrative Courts *Förvaltningsretten*. Until 2005, Sweden had an appeals system similar to the Norwegian one, with an Appeals Board separate from the general tribunal system. This model was, according to our interviewees at the Migration Court, discontinued in order to ensure the same objectivity and transparency in immigration cases as in the general tribunal system. There are four Migration Courts in Sweden (Stockholm, Gothenburg, Malmö and Lulea), but all Dublin cases are handled in Stockholm. Here, around 180 employees work with all types of cases related to migrants, including Dublin cases. The police are involved in the Dublin procedures only if a person absconds or does not cooperate, as the Migration Agency does not have the right to use force.

The German federal system makes it problematic to present a general review of how the Dublin Regulation functions in Germany. Our analysis of the German experience is based on how the Dublin process is applied in Berlin. There are, however, some common procedures. In all 16 Federal States, an Immigration Office *Ausländerbehörde* cooperates with the Federal Office for Migration and Refugees *Bundesamt für Migration und Flüchtlinge* (BAMF) and the Federal Border Police *Bundespolizei*. Within each Federal State, the tasks are divided differently among these institutions. The Immigration Office in Berlin is the largest in Germany with 380 employees. According to the German distribution key regarding, as discussed in chapter four, asylum seekers Berlin receives around 5 per cent of asylum seekers in Germany, equating to around 13,500 people out of the total number of 202,834 coming to Germany in 2014.

The Immigration Office in Berlin is involved in the Dublin procedures only by conducting the first registration interview, and by transferring persons to other Member States. The BAMF branch in Berlin is responsible for carrying out the Dublin procedure. While the Immigration Office only has one employee working with Dublin cases, the BAMF branch has two employees working with Dublin cases. These numbers are not directly comparable to the numbers of employees working with Dublin cases in Norway and Sweden because some tasks are carried out at the federal level in Germany.

There is a division of labour between the BAMF centrally, in Nuremberg and Dortmund, and the BAMF branches. There are 24 branches with at least one in each Federal State. Policy issues such as steering the Dublin procedure, cooperation at national and international levels, public relations, training and Eurodac representation are decided centrally in Nuremberg. The BAMF branches have a Dublin Unit responsible for handling regular Dublin cases such as opening the files, conducting personal interviews, drafting requests for take back/take charge, decision-making and delivery of the decision. The BAMF branch in Dortmund has the central responsibility of handling all Member States requests, and of coordinating transfers to the Member States and to Germany. The German administrative courts, *Verwaltungsgerichte*, in the Federal States are involved in the appeal of transfer decisions. In contrast to the Norwegian tribunal for immigrant cases, but similar to Sweden, migration decisions are integrated in the general court system.

### How do the Dublin criteria and procedures function?

With the aim of analysing how the Dublin Regulation functions today, in relation to its original intention, we examine what kinds of experiences government institutions applying the Regulation in Norway, Sweden and Germany have in relation to the following questions (as developed in the analytical framework in chapter three):

- How does administrative cooperation function at the operative level in relation to procedures to take charge/take back, exchange of information and transfer procedures?
- To what extent do Member States take fingerprints of asylum seekers, and how is the Dublin system able to handle persons who are not registered in the first Member State of arrival?
- How are Member States applying criteria to determine the Member State responsible for an application?
- To what extent and how do Member States apply the procedures in the Dublin Regulation, such as providing information to asylum seekers, granting access to appeal procedures and the use of detention before transfers?

## ADMINISTRATIVE COOPERATION

Administrative cooperation is regulated in Chapter VII of the Dublin Regulation (Regulation (EU) No 604/2013 Art. 34-36). This article specifies information sharing, the use of competent authorities and resources as well as administrative arrangements. A study of the implementation of the Dublin Regulation in 11 European countries concludes administrative cooperation functions well at the operative level (Ngalikpima and Hennessy 2013). Government institutions applying the Dublin Regulation in Norway, Sweden and Germany confirm this positive view. Institutions in the Member States communicate through DubliNet, which is a secure electronic network of transmission channels connecting national authorities dealing with asylum applications. It became operational in 2003 (Regulation (EC) No 1560/2003 Art. 18). All bureaucratic institutions make an effort to find practical solutions.

Public servants at the Dublin Unit in the Norwegian Directorate of Immigration emphasised the importance of this administrative cooperation for their handling of Dublin cases. They mentioned there could be some difficulties in getting answers from Italy, but they explained this as the result of the high number of asylum seekers there. They also suggested this problem had largely been solved as Norway has a liaison officer in Italy who helps with crucial communication. In addition, the Norwegian national police described the good cooperation with the transfer of people with a Dublin decision. NPIS contacts the country in question through DubliNet, and the two countries come to an agreement about a date and time for transfer. This can take the form of an automatic acceptance. Some countries require three days' notice before receipt, while others requires seven days.

The Migration Agency's Dublin Unit in Stockholm considers asylum applications, and decides whether Sweden is responsible for the application or if the Dublin procedures should be followed. A public servant told us:

The case officers at the Dublin Unit are handling Dublin cases and cooperate with the other countries through a common mail/database called DubliNet. We also have the phone numbers and fax numbers to all responsible units in all MS who are applying the Dublin Regulation, in case the DubliNet is out of order, which happens very seldom, and if there is a need to talk to a case officer. The Dublin Unit sends and receives correspondences daily, among the correspondence you will find

everything concerning the Dublin procedure, such as outgoing requests, incoming requests, answers to incoming requests, information about transfers and information about extended time limits. Sweden also has liaison officers in Germany and Italy. (Public Servant Swedish Migration Agency 27.04.2015)

In a similar way to their colleagues in Norway, the public servants described in detail how cooperation works well at the operative level. The judges at the Migration Court emphasised that the Dublin Regulation governs the relations between States, and not between States and individuals. The Operative Unit in the Swedish Migration Agency described the organising of all kinds of transfers and returns from Sweden to other countries. Historically, this unit has used the category “return” or *återvänding* for all kind of transfers and returns, but there is an increasing understanding that one needs to distinguish transfers to Dublin Member States from other types of returns. The unit did not provide us with numbers of all *återvänding* that were Dublin transfers, but public servants emphasised a decrease in the proportion of Dublin cases in relation to asylum cases. When a transfer decision is made, and there is an acceptance from another country, the Operative Unit contacts the countries in question about when and where the transfer can take place. This contact mainly goes through DubliNet. The public servants also mentioned problems connected to some Member States’ low capacity to take back migrants, and Italy was also mentioned here. This implied the transfer must be postponed, and they had administrative challenges. Moreover, they were concerned about the consequences of longer waiting times for migrants. We return to this in chapter seven.

In a similar way to their colleagues in Norway and Sweden, the public servants at the BAMF branch in Berlin mainly use DubliNet, and they described the cooperation between Member States as good. Some countries were portrayed as more problematic than others to cooperate with, but this was mainly understood to be a question of reception capacity. The public servants also emphasised the importance of contact with liaison officers when they make decisions in Dublin cases. BAMF has liaison officers in Poland, Sweden, the Netherlands, Greece, Hungary, Italy, the UK, and France.



*In summary*, we found all government institutions applying the Dublin Regulation in Norway, Sweden and Germany have positive experiences with how administrative cooperation works at the operative level. The institutions communicate through DubliNet and the public servants emphasised how useful it is to use liaison officers in other Member States. While administrative cooperation among Member States mainly functions well, there are some problems associated with the lack of capacity to respond to requests and to receive people in some countries.

#### EURODAC – FINGERPRINT REGISTRATION

The Eurodac fingerprint database (Regulation (EU) NO 603/2013) is, as discussed in chapter three, an important supplement to the Dublin Regulation. The database is used to determine whether an asylum seeker has previously applied for asylum in another Member State (category 1), or whether the asylum seeker has been apprehended by a Member State in connection with the irregular crossing of an external border (category 2). A search can also be made regarding a person found illegally present in a Member State to determine whether this third-country citizen has applied for asylum in another Member State (category 3).

The check for fingerprints, or Eurodac hit, is both external and internal border control. The control is external as far as the registration and check for a Eurodac hit is made before the person has crossed the EU/Schengen border, and internal when the control is made inside a Member State's territory (Bigo, Guild and Walker 2010). The increasing checks for Eurodac hits in EU/Schengen Member States is a new type of control of foreigners inside a Member State's territory as a daily administrative activity (Guild 2009; Lyon 2009). The linking of immigration and criminal law (Johansen, Ugelvik and Aas 2013) can also be observed in how the recast of the Eurodac Regulation makes it possible for national police services and Europol to compare Eurodac data with fingerprints linked to criminal investigations.

It is crucial for the Dublin Regulation to function that Member States use the fingerprint database. We have seen that Eurostat Dublin statistics show Member States often cross check requests against the fingerprint database. A Eurodac check is easy to perform and it is clear evidence to prove a person has

entered the EU/Schengen territory through another Member State, and might have lodged an application there.

In Norway, asylum seekers have their first registration interview with NPIS, and here the police take fingerprints (Norwegian Directorate of Immigration 2010). The aim is to establish the asylum seekers identity and travel route (NPIS 2015). If the police find a Eurodac hit and/or a visa not older than six months or a residence permission not older than two years in another Member State, the public servants give the asylum seeker a Dublin status. If there is no such evidence, but the public servants believe that an asylum seeker has connections to another Member State, he/she gives the asylum seeker a potential Dublin status. In addition to a Eurodac hit, visa and residence permission, NPIS check travel documents and family relations. If none of this evidence is found, the person is treated as an asylum seeker in Norway.

Asylum seekers in Sweden can either apply at the border or, if they have already entered Sweden, at one of the Migration Agency's application units in Gävle, Göteborg, Malmö, Märsta, Norrköping and Stockholm (Swedish Migration Agency 2015). In the first registration interview, public servants perform the checks for Eurodac hits or visa in other Member States. The public servants told us they do not have the capacity to check other documents to find out if the person has connections to another Member State. One public servant expressed it this way:

The Dublin Unit seldom investigates identity documents when the case is handled according to the Dublin Regulation. The common European database for fingerprints, Eurodac, is the main tool for receiving the information if an asylum seeker has come from a third country and entered illegally in a country applying the Dublin Regulation or/and applied for asylum. The fingerprints are taken upon a lodged asylum application or/and an illegal entry. Sometimes we send requests because there is a need of more information, but that happens not often (Public Servant Swedish Migration Agency 27.04.2015).

Persons seeking asylum in Germany can apply at any border, police station, Immigration Office or refugee centre. Here their cases are registered, their fingerprints are taken, and they have a short registration interview. This procedure is common for all Federal States. In Berlin, the Immigrant Office

often conducts the first registration interview before the cases are handed over to BAMF (Immigration Office Berlin 2015). The BAMF Berlin branch has the task of finding out whether a person should be given a Dublin status. The institution staff check fingerprints in Eurodac, and ask asylum seekers questions about the person's family relations, nationality and travel route. A public servant said:

We mainly use Eurodac hits and the report of Visa data file as evidence to decide if a person should be given a Dublin status.

The systematic use of the Eurodac database in all three countries combined with the lack of capacity to check other travel documents in Sweden and Germany implies that it is of huge importance that all Member States take fingerprints of migrants in the first Member State of arrival. The Dublin system is only able to handle persons who are not registered in the first Member State of arrival if a Member State has the capacity to check other travel documents.

In Norway, Sweden and Germany public servants brought to our attention the huge amount of asylum seekers arriving in Italy, and the challenges this poses for Italian reception capacity. Some public servants referred to rumours that Italian authorities do not take fingerprints of migrants on arrival, but nobody wanted to be quoted on this. However, the European Commission's initiative to establish 'hotspots', in which EASO, Frontex and Europol support Member States by taking fingerprints confirms a lack of capacity (European Commission 2015b). This initiative also shows the emphasis the European Commission and EU agencies put on a functioning fingerprint database.

*In summary*, Norwegian, Swedish and German authorities are taking fingerprints of asylum seekers arriving in their territories. When it comes to persons who were not registered in the first Member State of arrival, the Dublin system is only able to handle this as far as a Member State has the capacity to check other documents. While Norwegian authorities also check other documents, Swedish and German authorities almost exclusively use the Eurodac fingerprint database and Visa data file to decide if a person should be given a Dublin status.

## APPLICATION OF CRITERIA TO DETERMINE THE RESPONSIBLE MEMBER STATE

When asylum seekers are assigned a Dublin status, the process of defining the criteria to determine the responsible Member State starts. As discussed above, Chapter III of the Dublin Regulation (Regulation (EU) No 604/2013) defines the criteria to determine the responsible Member State in a hierarchical order, and Member States are obliged to follow the hierarchy. The hierarchy in criteria ranks from family unity (art 8,9,10,11) as the most important to asylum seekers with a valid (or recently expired) residence document or visa to the first Member State in which they arrived when entering the EU/Schengen territory (art 12, 14). Next in rank comes the irregular crossing of an external border (art. 13), and finally, if none of these criteria applies, the responsibility lies with the first Member State in which the applicant filed a claim of asylum.

The public servants handling the Dublin cases in Norwegian, Swedish and German government institutions emphasise that they follow the criteria in a hierarchical order. Public servants in all institutions emphasised that they have no opportunity for discretionary decisions in relation to these criteria because they have clear instructions (see e.g. Norwegian Directorate of Immigration 2014a; Immigration Office Berlin 2015). They all underlined that the guidelines are clear in the Dublin Regulation, and the hierarchy defines how they evaluate Dublin cases in practice. This means their understanding of discretion is based on the question of whether the guidelines are strictly defined or not.

In chapter four, we have also seen how Eurodac (2013) statistics show more than 90 per cent of incoming requests to take back or take charge were related to documentation and entry reasons, while family reasons and humanitarian reason were less than 10 per cent. Previous studies conclude the most utilised criterion is irregular entry based on Eurodac fingerprint data (Ngalikpima and Hennessy 2013; Guild et al. 2014). This means that public servants apply the criteria in the prescribed hierarchical order, while a low-ranking criterion (application examined in the first Member State in which they arrived when entering the EU/Schengen territory) is the most often used criterion.

However, the Dublin Regulation also says that each Member State may decide to examine an application even if such examination is not its responsibility under the criteria in the Dublin regulation. The discretionary clause says a Member State may also request another Member State to take charge of an applicant for example in order to bring together a family or on humanitarian grounds (Article 17). We return to the countries' application of the sovereignty clause below.

Norwegian public servants pointed to the possibility of Member States having diverging understandings of how to interpret the possibility of discretion in relation to families:

This can sometimes be problematic. Some countries are, for example, very focused on families. This is also a question about the welfare state. In Norway, we assume that the welfare state is ready to take care of those in need of support, while in some other countries they assume that the family should take this responsibility (Public servant Norwegian Directorate of Immigration 18.03.2015).

With reference to this statement from a Norwegian public servant, we asked public servants from the Swedish Migration Agency and the BAMF branch in Berlin how the Dublin Regulation may enable the use of discretion in relation to family unification. Neither in Sweden nor in Berlin could the public servants see this possibility.

In contrast to the practice in Norway and Sweden, where Dublin decisions are centralised and taken by people who do not meet the claimants, public servants who make decisions in Dublin cases at the BAMF Berlin branch meet persons who are in a Dublin process. This gives the decision makers in Berlin an opportunity to evaluate each individual case with reference to a much broader understanding of the individual applicant and a larger possibility for discretionary decision than their colleagues in Norway and Sweden. It might therefore be of great importance for persons who are in a Dublin process to communicate with the decision makers. We return to this in chapter seven.

*In summary*, public servants in government institutions in Norway, Sweden and Germany emphasise they apply the criteria in a hierarchical order to determine the Member State responsible for an application. In contrast to the practice in Norway and Sweden, public servants who make Dublin

decisions in Berlin meet the persons who are in a Dublin process and interview them twice. This potentially gives the public servant a broader understanding of the situation of an individual applicant.

#### APPLICATIONS OF DUBLIN PROCEDURES

Regarding how procedures in the Dublin Regulation are applied, we examine how the government institutions in Norway, Sweden and Germany (a) provide information to asylum seekers, (b) give access to appeal procedures and (c) make use of detention before transfers of persons with a Dublin decision.

##### *(a) Information*

Article 4 of Dublin III introduces new requirements for how Member States are obliged to inform persons who are in a Dublin process about the consequences this might have for them. As discussed above, this information must be provided in writing in a language the applicant understands, and a common leaflet from the European Commission should be used. We have also seen that article 5 in Dublin III says Member States must conduct a personal interview with the applicant, in which this information should be provided.

The authorities in Norway, Sweden and Germany conduct interviews with asylum seekers and inform them about the Dublin process. There are diverging procedures in Norway, Sweden and Germany for how the authorities conduct interviews with asylum seekers and inform them about the Dublin process. In line with an institutional approach we see this as different expectations within national traditions (March and Olsen 1995).

In the first interview with the Norwegian police, an asylum seeker receives information about the Dublin Regulation. As of April 2015, the Norwegian authorities had not yet handed out any leaflets produced by the European Commission to persons who are in a Dublin process. The leaflets had only just arrived from the Commission and they did not yet have enough copies to hand out.

A couple of days after the asylum seekers' arrival, the Norwegian Organisation for Asylum Seekers (NOAS) is responsible for informing them about the Dublin process. NOAS is an independent membership organisation that

works to protect the rights of asylum seekers in Norway, and it gives information and legal aid to asylum seekers (NOAS 2015). NOAS has had this responsibility since 2004. NOAS presents a film and a brochure, which show the asylum procedures in Norway. Both the film and the brochure are translated into around 20 different languages (NOAS 2015). By comparing this brochure with the brochure from the European Commission, we find this brochure less informative about the Dublin procedure, but it states more explicitly what kind of rights asylum seekers have. The employees at NOAS described how they have a personal conversation with each asylum seeker:

Receiving information and guidance from NOAS is voluntary; we do not force anyone to participate, and some may not be all that interested. Since the introduction of Dublin III, the police is supposed to give information on the regulation during registration, before meeting with NOAS. Many have not understood the consequences of being in a Dublin process, and perhaps they only come to realise this during the meeting with NOAS. We must explain the background, but many of them need more time to understand. Some are shocked. Providing information in Dublin cases may in fact be more complicated than in other asylum cases (Employees at NOAS 15.03.2015).

Many persons are shocked at finding themselves in a Dublin process, as we return to in chapter seven. Dublin cases are often more complicated than other asylum cases because of the information that persons with a Dublin status might be transferred to another Member State. It is often hard to accept that this will lead to new delays in the examination of their asylum application, as we return to in chapter seven.

In Sweden, persons with a Dublin status receive information about the Dublin Regulation on arrival at the local Reception Unit:

Every applicant receives a lot of information already upon the lodged asylum application, such as information about the Dublin Regulation, Eurodac, the asylum procedure, the accommodation, not accompanied minors receive specific information about their specific rights and so on. The leaflets from the European Commission are also handed out when the application is lodged. This means the information about the Dublin procedure is given to every asylum applicant, regardless the future procedure, Dublin procedure, a procedure for establishing the member state

responsible for the examination of the asylum application or the regular asylum procedure where the asylum application is going to be examined (Public Servant Swedish Migration Agency 27.04.2015).

In contrast to Norway, since the beginning of 2015 asylum seekers in Sweden have received the information leaflets from the European Commission, which inform them about the Dublin regulation and the consequences for asylum seekers. Asylum seekers also received this kind of information before Dublin III. There was, however, a period of one year the Migration Agency could not give out this information because they did not have any translations of Dublin III.

The BAMF branch in Berlin conducts two Dublin interviews. As discussed above, the public servants who make the Dublin decisions also meet the asylum seekers. The interviews are conducted in line with a new guideline of March 2015 from BAMF centrally. The first interview has questions related to the aim of finding out whether the person should be given a Dublin status, and the questionnaire concentrates on the person's family relations, nationality and travel route (BAMF branch, Berlin 2015a).

In the second interview, public servants at BAMF Berlin ask questions related to family relations and health conditions. The German authorities also make use of a second interview in order to ensure the possibility to express if they have any special reasons for not being transferred to another Member State (BAMF Berlin 2015b). As we return to in chapter seven, some asylum seekers who are in a Dublin process might have problematic relations to a Member State.

In the second interview, BAMF also hands out a leaflet about the Dublin regulation (BAMF Berlin 2015c). This is translated into several languages, and the aim is to present this in a language every asylum seeker understands. Compared to the leaflet produced by the European Commission (2014b), this brochure is written in a bureaucratic manner and is without any figures, pictures, maps and colours. In contrast to their colleagues in Sweden, and similar to their colleagues in Norway, public servants in BAMF Berlin do not hand out the leaflets from the European Commission (2014b).

In all three countries, public servants emphasise that in the first registration interview persons who receive a Dublin status are not asked to explain the reasons why they are fleeing their country of origin and seeking asylum. The



aim is not to start the asylum interview and process before the Member State responsible is clearly identified. A Norwegian public servant expressed it like this:

When they (asylum seekers) come to Norway and become ‘Dubliners’, they are not asked to explain what happened to them in for example Iran or Eritrea, as we do not treat those arguments. It is not we – Norway – that should examine them (Public Servant NPIS 18.03.2015).

A similar quote could have been taken from Swedish and German public servants. The three countries seem to have similar practices. The government institutions in the three countries concentrate on technical questions related to the persons’ itinerary within Europe. As we examine thoroughly in chapter seven, this is frustrating for many asylum seekers who want to explain why they have fled and why it is crucial for them to receive international protection.

*In summary*, the institutions in Norway, Sweden and Germany conduct interviews with asylum seekers and inform them about the Dublin process, but they follow different procedures. The three countries provided different information to persons who are in a Dublin process. Norwegian institutions planned to hand out the leaflets from the European Commission, while Swedish institutions had handed out these leaflets since the beginning of 2015. BAMF Berlin handed out its own leaflets. German authorities conducted two interviews. However, in the first interview with asylum seekers the government institutions in all three countries concentrated on technical questions related to the persons’ itinerary within Europe. The aim is not to start the asylum interview and process before the Member State responsible is clearly identified.

#### *(b) Appeal procedures*

Similar to asylum seekers, persons with a Dublin decision have the right to appeal against a transfer decision before a court or a tribunal (Regulation EU) No 604/2013, art 27(1)). As discussed above, Member States must provide a reasonable period of time within which the person can exercise this right, and transfers shall be suspended as long as the application is under scrutiny. Member States must also ensure that the person has access to legal assistance and whenever necessary linguistic assistance.

The national authorities in Norway, Sweden and Germany practise this differently.

The Norwegian Directorate of Immigration makes a transfer decision when it has received acceptance from another Member State. When a transfer decision is made, the asylum seeker will automatically have the right to 2 hours free support from a lawyer. The Directorate sends the decision letter to the lawyer, who is responsible for informing his/her client. The letter is in Norwegian, and the Directorate of Immigration pays for a translator:

The lawyers get money for a certain number of hours, and they have a translator to tell the client about the content of the decision from us. With the first negative decision, we appoint a lawyer. The asylum seekers have the right to appeal the decision. They have two hours of free lawyer. Most of them appeal. (Public Servant Norwegian Directorate of Immigration 18.03.2015)

Norway has a separate tribunal for immigrant cases, The Immigration Appeals Board, which receives requests about a suspended transfer and appeal against the decision from the Directorate of Immigration. The Immigration Appeals Board evaluates whether there is new information in the case that should have an influence on the transfer decision, and as one public servant expressed:

There might be information that has not been visible earlier in the process. The Norwegian Immigration Appeals Board has established a practice in cases where there are health problems. We make concrete and individual assessments regarding severity of health issues, but we do assume that Member States have national legislation in accordance to ECHR article 3, and we refer asylum seekers in most cases to seek assistance by national authorities in the country responsible for examining their asylum application. However, in all cases we do follow recommendations and reports from UNHCR, and of course judgements from the European Court of Human Rights (Public Servant Norwegian Immigration Appeals Board 18.03.2015).

The Immigration Appeals Board seldom amends decisions the Directorate of Immigration makes in Dublin cases, and in 2014 this happened in only 2.6 per cent of cases (Norwegian Immigration Appeals Board 2015). If there is an acceptance to take back/take charge from another country, the public servants at the Appeals Board argue that there are not many reasons to change the

transfer decision. However, the public servants stated Dublin cases have become increasingly complex in recent years. There are more challenges related to persons' health, an increasing number of cases where family relations play a role in the decision, more cases of trafficking and finally an increasing number of unaccompanied minors.

From 1992 to 2006, Sweden had a migration tribunal, similar to the one in Norway. In 2007, Sweden established a Migration Court within the general court system with the aim of increasing transparency and giving asylum seekers the same rights as persons in other general courts. Until 2011, Dublin cases were handled in Gothenburg, Malmö and Stockholm, but now this is centralised in Stockholm. When a person with a Dublin status appeals against a transfer decision, this must be sent to the Migration Agency within three weeks of the person's receipt of the transfer decision. The Migration Agency will first review the appeal and determine whether the decision should be changed. If the Migration Agency does not amend the decision, the appeal will be forwarded to the Migration Court. In 2014 the Migration Court handled 1,586 Dublin cases, and in 2013 this number was 1,264 (Swedish Migration Court 2015).

In a similar way to Norway, judges at the Migration Court seldom amend decisions made by the Migration Agency in Dublin cases. Judges at the Migration Court emphasised the reasons for changing a decision are mainly humanitarian, while health conditions and family relations are also crucial. The decision of the Migration Court can be appealed against to the Migration Court of Appeal, but only if there are disagreements about the interpretation of a law. When the Migration Court of Appeal amends a decision, this decision provides guidance for decisions of the Swedish Migration Agency and the Migration Courts in similar matters.

In contrast to Norway, in Sweden persons with a Dublin status must find and pay for a lawyer themselves, as this is not guaranteed by the state. Judges at the Migration Court described disagreements about this:

Shortly after Dublin III came into force, there was disagreement about this right. While some judges granted lawyers, others did not. In December 2014, there was a decision in the Migration Court of Appeal, and since then hardly any persons with a Dublin status have the right to have a lawyer (Judge Swedish Migration Court 28.04.2015).

The Migration Court has only written communication with persons with a Dublin decision, and the Court always writes in Swedish. It is then up to the asylum seekers to find someone who can translate the letter.

Similar to Sweden, persons with a Dublin decision in Germany apply to the Administrative Court *Verwaltungsgericht*, and not a tribunal only for immigrant cases like in Norway. There are administrative courts in the Federal States, and many of them have made decisions on Dublin transfers (Bender and Bethke 2012). If an administrative court makes a negative decision it is possible to appeal to the higher administrative court. A person with a Dublin decision can also submit a petition to the Federal Parliament (Bundestag) or to the Parliament of the responsible Federal State. The petitions committee consists of members from the Parliament and can recommend changing the decision.

It is, however, difficult to prevent a Dublin transfer in Berlin. One reason is that Dublin decisions are delivered to the asylum seekers one day before the transfer, and the appeal has traditionally not had suspensive effect (Bender and Bethke 2012). Another reason is that in Berlin persons with a Dublin decision must find their own lawyer, and pay for the lawyer themselves. This practice differs from the Norwegian, but is similar to the practice in Sweden.

*In summary*, Norway has a separate tribunal for immigration cases, the Immigration Appeals Board, while Dublin decisions in Sweden and Germany are treated within the general court system. Norway gives persons with a Dublin decision access to appeal procedures and provides two hours of lawyer assistance free of charge, by lawyers appointed by the immigration authorities. This is not the case in Sweden or Germany, where asylum seekers must find and pay for any legal assistance themselves. Decisions in Dublin cases are seldom amended by court decisions.

### *(c) Detention before transfers*

One crucial problem for how the Dublin Regulation functions today in relation to its intention is that many persons with a Dublin status abscond. Some persons who have received a final transfer decision do not appear at the agreed time. As discussed above, Member States may *detain* a person in order to secure transfer procedures if there is a significant risk of absconding (Regulation (EU) No 604/2013 Art. 28). The risk of absconding must be evaluated in every individual case based on objective criteria defined by law (Art. 2 (n)).

The study referred to above of how eleven Member States apply the Dublin II in practice concludes detention is almost systematically used prior to transfer in most Member States (Ngalikpima and Hennessy 2013). This also seems to be the practice in Norway, Sweden and Germany.

In Norway, the police ensure persons with a transfer decision are transferred (Norwegian Directorate of Immigration 2014a). According to public servants at the Norwegian police, the practice is often to arrest in order to prevent people from absconding at the last minute:

If we believe it is likely that someone will abscond, we can arrest the person and hold him/her until a decision is made and we can transport the person out. Many return after they have been transported out. If they have a history showing that they often abscond, they will often be arrested. They are then transported to Trandum (Public Servant NPIS 25.03.2015).

NPIS is responsible for Trandum, which is the only detention centre in Norway with room for 127 persons. According to the police the centre is mainly used with the aim of implementing forced return and most migrants spend less than 24 hours at the centre, but they can also stay longer in certain cases (NPIS 2015). There has, however, been raised much critique about the conditions at the detention center from NGOs and in 2006 from the Council of Europe Committee on the Prevention of Torture (see e.g. Morgenbladet 2015).

According to public servants at the police, the reasons for using detention for persons with a Dublin status are rarely criminal acts. The police also told us that the police arrest persons with a Dublin status nearly every day, and they might be caught on the tram, in drug-infected environments or in the control of foreigners. This linking of immigration and detention can be seen as a kind of internal border control (Johansen, Ugelvik and Aas 2013). The access to detention under the Immigration Act has been extended, and is often practised in relation to returns (Punternvold Bø 2013; Suominen 2013).

Public servants at NPIS perceive it as a general problem that many migrants disappear and re-appear after 18 months. This is after the deadline for transfer, and Norway becomes responsible for the asylum application. After

these eighteen months a lawyer sends a petition about reversal to the Immigration Appeals Board, but according to the public servants only a few lawyers in Norway do this.

When a transfer decision is made in Sweden, the Operative Unit sends this information to the local Reception Unit, which is responsible for implementing the transfer. The Reception Unit gives information to the person about when the transfer will take place, the flight number etc., and it is then up to the person to appear at the airport. If a person does not cooperate with the local Reception Unit or does not arrive at the airport on time, the case is sent to the police. As one public servant expressed it:

If a person does not appear, he/she is registered as absconded. The person will, in accordance with the legislation not receive any more support from Swedish authorities since they thereby no longer have access to the reception system. The responsibility to transfer the person is handed over to the police (...). A lot of people abscond, which puts a heavy burden on the police. Overall around 40 to 50 per cent of all persons with a transfer decision abscond (Public Servant Swedish Migration Agency 29.04.2015).

As in Norway, Swedish public servants told us that some migrants return after 18 months, which is the deadline for transfer, with the aim of applying for asylum in Sweden.

The Swedish administration also detains migrants to prevent them from absconding, and as in Norway the reason for detention is rarely criminal acts. The reasons are rather that migrants have returned to Sweden several times, or the asylum seekers say they intend to disappear and will not cooperate with the Migration Agency. Sweden has five detention centres, with room for 235 migrants. Detention centres in Sweden have also been criticised by NGOs and the Council of Europe Committee on the Prevention of Torture (Caritas Sweden 2015).

In Germany, the BAMF branch in Dortmund has the central responsibility of coordinating all transfers between Germany and other Member States. This central institution prepares the laissez-passer and sends it to the Federal Border Police and to the local Immigrant Office. It also informs the responsible Member State. The cases are prepared by public servants in Nuremberg and by

Dublin Units at the branch offices. In Berlin, the Immigration Office is responsible for transferring people who have a Dublin decision (Immigration Office Berlin 2015). The Office books the flight, informs BAMF about the transfer date and then hands the task over to the Federal Border Police, who are then responsible for implementing the transfer.

Similar to the practice in Norway and Sweden, detention of persons with a Dublin status in Germany is usually ordered if a person who has already been transferred from Germany comes back. In addition, the German institutions detain migrants to prevent them from absconding. According to an investigation by Pro Asyl made in 2012, around 50 per cent of persons in German detention centres have a Dublin status (Pro Asyl 2013b).

There has been a controversy about the question of church asylum in Germany. Some asylum seekers with a Dublin status live in churches for six months, which is the deadline for transfer, and Germany must take the responsibility for the asylum application. The church sends letters to the Immigration Office to inform them where the asylum seekers are, to prevent them from prolonging the time to 18 months, which is the deadline for transfer if a person is hiding, with the argument that the persons are hiding. According to the Immigration Office, churches are trying to change the Dublin procedures in Germany, and thereby undermine the policy. In contrast, the *Evangelische Kirche* argued:

In 2014 there were 411 asylum seekers in German churches, and 269 of them had a Dublin status. In regard to the total of 35,115 Dublin cases (outgoing requests) in Germany that year, these were only a few people, which cannot make the Dublin regulation break down (Employee at the Evangelische Kirche Deutschland 23.04.2015).

The conflicting parties have agreed to meet again to evaluate the situation.

*In summary*, a huge problem for the functioning of the Dublin Regulation is that many persons with a Dublin decision abscond before the transfer. Norway, Sweden and Germany make use of detention before Dublin transfers. The reasons are rarely criminal acts, but rather that migrants have returned to the country several times, or express an intention to disappear and will not cooperate with authorities. In all three countries, some migrants disappear and reappear after 18 months, which is the limit for transfer. After the deadline for

transfer, the respective country becomes responsible for the asylum application. While some persons with a Dublin status in Germany live in churches, making use of the so-called Church Asylum, we have not seen similar cases in Norway and Sweden.

## How do the practices of CEAS lay premises for the Dublin Regulation?

According to the Dublin Regulation, the Dublin system is a cornerstone of the CEAS, as it clearly allocates responsibility among Member States for examination of applications for international protection (Regulation (EU) No 604/2013, recitals 7). Moreover, the European Commission DGs Migration and Home Affairs states Member States have a shared responsibility to ensure that asylum seekers are treated fairly and that their case is examined to uniform standards so that, no matter where an applicant applies, the outcome will be similar (European Commission 2015a).

Several studies show, however, that there is a huge discrepancy in the aims of how the CEAS should work and how it actually works in practice (Ngalikpima and Hennessy 2013; Guild et al. 2014; 2015). Fratzke (2015) concludes for example that essential differences remain in the asylum procedures, reception conditions, and integration capacity of Member States, and this undermines Dublin's core assumption that asylum applicants will receive equivalent consideration and treatment wherever they submit their claims.

With the aim of analysing how the contemporary practices of the CEAS lay premises for Norway, Sweden and Germany, we examine the experiences of government institutions applying the Dublin Regulation in these countries have in relation to the questions (as developed in the analytical framework in chapter three):

- How are the conditions for persons with a Dublin status in Norway, Sweden and Germany?
- How are the practices of the CEAS in various Member States influencing the implementation of the Dublin Regulation in Norway, Sweden and Germany?
- How are the three countries adapting national and European jurisprudence?



## CONDITIONS FOR PERSONS WITH A DUBLIN STATUS IN NORWAY, SWEDEN AND GERMANY

The Reception Conditions Directive (Directive (EU) No 33/2013) lays down the minimum standards for various aspects of the protection of asylum seekers, such as information, residence, freedom of movement, employment, and education. It emphasises asylum seekers should be offered an equivalent level of treatment as regards reception conditions. Norway is not a part of the CEAS, but adapts to the directives within CEAS (Brekke, 2011).

In Norway, Sweden and Germany asylum seekers have the right to accommodation, food, basic health service and pocket money. Reception centres in all three countries give the applicants accommodation and food. Some centres serve three meals a day, while others have cooking facilities the applicants can use to prepare food for themselves. In all three countries, most asylum seekers currently live in reception centres, but they can stay with friends or families as long as the reception centres and the police are informed about where they live. Those who find their own accommodation will also be responsible for their own living costs. An asylum seeker who lives in a reception centre in one of the three countries cannot choose where he/she wants to live, but must live where housing is available.

According to a Swedish public servant:

It is important for the Reception Units that the persons remain available so they can contact them. A person, who is hiding to prevent the Migration Agency from reaching him/her, will be deregistered from the reception system, and the person's right to accommodation is withdrawn (Public Servant Swedish Migration Agency 29.04.2015).

Persons who abscond in Norway and Sweden will not get access to more welfare support. In Berlin, migrants who are in a Dublin process have a notification obligation at the Immigration Office every third or sixth month. They must go personally to the Immigration Office and renew the permission to stay in Germany while they are waiting for a decision. This is a kind of internal immigration control (Bigo, Guild and Walker 2010), and a way to try to get an overview of who is living in the city.

In Norway, the provision to persons living in asylum seeker reception centres is approximately 50% of the recommended minimum social security benefit rates (Arbeids- og sosialdepartementet 2015, UDI 2015). In Berlin, the public servants described how the asylum seekers have access to welfare state provisions:

Our responsibility is their (asylum seekers') health, place to stay and food. We have our own German law for that – Asylbewerberleistungsgesetz. They have a right to necessary health treatment and pocket money. Earlier they had 60 % of normal social welfare support, but now it is as high as 90 % – even for people who have no legal residence here. After three months, the asylum seekers might work, and this is new from this year, as long as the jobs are not needed by Germans or by people with a residence permit (Leader of Immigration Office Berlin 22.04.2015).

These are the provisions asylum seekers receive after three months in Germany, while the first three months after arrival they mainly receive food and accommodation.

Germany and Sweden are among the most attractive countries for asylum seekers in Europe, and both countries have a long tradition of taking care of persons in need of international protection. Such experiences are crucial for the government institutions' ethos and practice (March and Olsen 1995; 2009). However, the high numbers of asylum seekers in Sweden and Germany pose challenges on reception capacity, and the authorities have huge problems finding accommodation. Sometimes, if there is no place in reception centres the authorities need to find apartments, and even schools and sports halls are converted in order to accommodate asylum seekers. In some German cities, they use tents to accommodate the increasing numbers of asylum seekers (ARD 2015). In Norway, there are discussions about the housing of asylum seekers (Norwegian Directorate of Immigration 2015), but the country is far from having the same type of challenges as Sweden and Germany.

*In summary*, government institutions applying the Dublin Regulation in Norway, Sweden and Germany emphasise the reception conditions are well organised. Persons in a Dublin process receive similar offers in the three countries while Germany provides the most generous and inclusive welfare allowances. There is, however, a difference in the level of internal border

control. In contrast to Norway and Sweden, the authorities in Berlin conduct internal control as persons in a Dublin process have a notification obligation at the Immigration Office every third or sixth month. Due to the high amount of asylum seekers in Sweden and Germany, the authorities have huge challenges finding accommodation.

#### THE PRACTICING OF THE CEAS – AND THE APPLICATION OF THE DUBLIN REGULATION

Norwegian policy is based on the perception that all Member States have established the required standard regarding asylum procedures, with Greece as the only exception. The practice is based on the institutional rules saying that foreigners are protected against transfers if there are reasons to believe that the asylum procedures and reception conditions do not have the required minimum standard (Norwegian Directorate of Immigration 2014a). Most of the public servants we talked with refer to considerable differences between the countries' welfare systems. According to public servants, these differences cannot prevent Norway from transferring an asylum seeker to another EU/Schengen Member State. As a Norwegian public servant stated:

We assume that the asylum procedures are equal throughout Europe. The challenge is that the socioeconomic conditions are very different. In relation to the threshold for protection, Norway must stand with its back straight and assume that this is completely equal. With regards to Greece, The Immigration Appeals Board have said that we doubt that the asylum procedures are followed and we have therefore stopped the transfer (Public Servant NPIS 25.03.2015).

While the Norwegian Directorate of Immigration, and not NPIS, is responsible for decisions under the Dublin Regulation, this quote indicates that it is well known that the socio-economic conditions are different in the Member States. Other studies have also shown reception conditions have a low standard and socio-economic conditions in some countries make it difficult to provide accommodation and food (Brockmann and Brekke 2014, Norwegian Ministry of Justice and Public Security 2015).

The Swedish Migration Agency's policy is not based on the assumption that asylum procedures are equal, or even equivalent, in all Member States. There are diverging standards. A central assumption for the public servants'

evaluation of how the Dublin Regulation works is the improvement of the implementation of CEAS. A Swedish public servant formulated how the Dublin Unit at the Migration Agency assumes the process is going in the right direction:

The asylum procedures in different Member States are more and more harmonized, mainly because of the common European asylum system consisting of directives and regulations. There are some differences regarding reception conditions in Europe but all MS have to respect the common minimum standard. The Nordic countries might have a bit higher standard, but all countries are more and more approaching each other even in that sense (Public Servant Swedish Migration Agency 27.04.2015).

In addition, the Swedish authorities make a clear distinction between the implementation of the directives within the CEAS, and the various Member States' socio economic conditions. While the former is seen as decisive for the functioning of the Dublin Regulation, the latter is not.

Government institutions handling the Dublin Regulation in Berlin emphasised that although there are diverging humanitarian conditions for asylum seekers in EU/Schengen Member States, they are all European States respecting the rule of law. German public servants argued that there are differences regarding welfare systems, but all countries could be perceived and treated as good for asylum seekers. As one German public servant expressed it:

There might be human rights violations and racism in some Member States, but this is not systemic. If it had been, there could not have been a European cooperation (Leader of Immigration Office Berlin 22.04.2015).

German government institutions emphasise the European Union consists of countries respecting the rule of law. This is the main principle for the functioning of the CEAS, including the Dublin Regulation.

*In summary*, the point of departure for all institutions in Norway, Sweden and Germany handling the Dublin Regulation is that asylum procedures and reception conditions hold the required minimum standard in all Member States, with Greece as the only exception. Moreover, the public servants in all three countries describe differences between the socio-economic conditions in

the Member States. There are, however, differences in how public servants described the practice in the various Member States. Norwegian public servants described the asylum procedures and reception conditions as equal. Swedish institutions argue Member States' asylum procedures are not yet equal, but they are becoming increasingly equal. The authorities in Berlin base their policy on the respect of the rule of law by all Member States, which is not the same as equal procedures.

#### NATIONAL AND EUROPEAN JURISPRUDENCE

In 2014, the European Migration Network (EMN) made an Ad-hoc Query about the Member States' use of the sovereignty clause in the Dublin Regulation (Regulation (EC) No 343/2003, Art. 3.2 and Regulation (EU) No 604/2013, Art. 17.1). The sovereignty clause says a Member State may decide to examine an application for international asylum lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria in the Regulation. The EMN's Query shows Norway, Sweden and Germany apply the Sovereignty clause both on categories of persons and on a case-by-case basis. There are differences between how the institutions report. Norway refers to categories such as persons coming from safe countries and criminal applicants, and that Norway has a general rule for implementing the sovereignty clause in the Immigration Act 32(2) and the Immigration Regulation 7-4 (see Norwegian Directorate of Immigration 2014a; Norwegian Directorate of Immigration 2014b). Germany reports that persons are not transferred to Greece and Malta, while Sweden has not mentioned any examples of categories. The EMN (2014) emphasises this information does not necessarily represent official policy of Member States. This shows the evaluation of a situation and the use of discretion are different in the three countries.

However, on questions of whether to apply the sovereignty clause in relation to a Member State, Norwegian, Swedish and German authorities build on national and European jurisprudence. In line with European jurisprudence, none of the three countries transfer persons to Greece, which is in line with decisions made by the European Court of Human Rights in 2011 in the Case of *M.M.S. v. Belgium and Greece* (see e.g. Norwegian Immigration Appeals board 2010).

Moreover, public servants in Norway, Sweden and Germany said their main source for evaluation of the humanitarian conditions for asylum seekers in other EU/Schengen Member States is national and European jurisprudence. In Norway, the primary source of knowledge about the conditions in asylum seekers' countries of origin is *Landinfo*, a government office which administratively is part of the Directorate of Immigration, yet should provide independent information. The information provided by *Landinfo* is used both by the Directorate of Immigration and by the Immigration Appeals Board. Information about parties to the Dublin Regulation is not part of *Landinfo's* mandate, and the majority of public servants we interviewed in Norway said that had such information been available, this would have created a better basis for their Dublin decisions. The main challenge mentioned among all government institutions applying the Dublin Regulation were transfers to Italy. In all countries, the Tarakhel decision was mentioned as an example. Here the European Court of Human Rights decided in 2014 that Switzerland could not send a family with children back to Italy because of low standards of reception conditions. It argued that families could not be transferred to Italy without having first obtained individual guarantees from the Italian authorities that the applicants would be taken care of. In such cases, public servants have clear instructions, and they cannot make discretionary decisions (see e.g. Norwegian Ministry of Justice and Public Security 2015).

However, the diverging jurisprudence in the various countries leads to diverging practices. Only government institutions in Berlin mentioned transfers to Hungary as a problem. The leader of the Immigration Office in Berlin formulated this:

Single men are not sent back to Hungary. If single men apply for asylum in Hungary, they are imprisoned for 6 months in Hungary under bad conditions. This is why we do not return them. This is also a consideration for Bulgaria. According to article 3. this must be so (Leader of Immigration Office Berlin 22.04.2015).

This is due to a decision made by the administrative court in Berlin 19 January 2015. The court referred to the human rights conditions in Hungary and that UNHCR, Pro Asyl and the German Auswärtiges Amt had evidence asylum seekers were often detained for more than six months without any reason

(Verwaltungsgericht Berlin 2015). Seen in light of this court decision, it is interesting that Norwegian and Swedish authorities do not have any reservations against transferring people to Hungary.

However, according to both public servants and NGOs in Berlin, the administrative courts make diverging decisions in relation to the Dublin regulation. One NGO in Berlin described German policy as a lottery:

There is no equal decision practice. One chamber of the court thinks you cannot deport people back to Italy, or Hungary, the other chamber at the same level thinks you can. It is like a lottery. You get the right chamber, you win – you go to the wrong one, you lose (Council of Refugees Berlin 22.04.2015).

This indicates there are not only diverging practice between countries, but also within Germany. Moreover, as mentioned in the introduction, since 21 August 2015 BAMF has issued instructions suspending the Dublin procedure in respect of Syrian nationals, and Germany will be responsible for processing their claims (AIDA 2015: BAMF 2015a).

*In summary*, Norway, Sweden and Germany adapt differently to national and European jurisprudence regarding humanitarian conditions for asylum seekers. Diverging jurisprudence in these countries leads to different practices. At the time of our data collection, none of the countries transferred asylum seekers to Greece, and since the Tarakhel decision they had changed their practice in relation to transferring families to Italy. Berlin did not transfer single men to Hungary following a decision made by the administrative court in Berlin in January 2015, while this was still normal practice in Norway and Sweden.

## Onward migrations – the role of the Dublin Regulation

The Schengen Borders Code states internal borders may be crossed at any point without a border check on persons, irrespective of their nationality, being carried out (Regulation (EC) No 562/2006). As discussed in the introduction, this means all asylum seekers, and third-country nationals without the legal right to stay on the EU/Schengen territory, can move freely between the EU/Schengen Member States. Although third-country nationals are not checked at the borders, they do not necessarily have the right to stay in every

Member State – and most of them not more than 90 days. The lack of border control implies EU/Schengen Member States do not know who and how many third-country nationals are actually travelling between Member States. This has led to increased control inside the Member States (Guild 2009; Lyon 2009) and the borders are drawn into the territory (Ugelvik 2013).

We examine how government institutions in Norway, Sweden and Germany implementing the Dublin Regulation perceive the role of the Regulation regarding challenges posed by onward migration, and raise the question (as developed in the analytical framework in chapter three):

- To what extent and how is the Dublin Regulation perceived as an important political instrument to handle onward migration?

#### ONWARD MIGRATION – THE DUBLIN REGULATION AS A POLITICAL INSTRUMENT

Whether the government institutions implementing the Dublin Regulation perceive the Regulation as an important political instrument to handle onward migration is also a question about what kind of onward migration the Dublin Regulation covers. As we discussed in the introduction, we can distinguish four groups of third-country nationals involved in onward migration: (1) migrants who have entered irregularly; (2) migrants who have entered legally but are no longer entitled to stay in the EU/Schengen area legally (over-stayers); (3) migrants who have a residence permission in one Member State and (4) asylum seekers. The Dublin Regulation only regulates the onward migration of asylum seekers, and the Member States must find other political instruments to handle the other three types of onward migration.

Increased attention has been paid to this kind of migration in recent years, often termed secondary movements (EASO 2014a; Frontex 2014; Eurodac 2015), but there are hardly any statistical overviews of this onward migration. As discussed in chapter four, this kind of migration is problematic to count due to the lack of border control. The possibilities for onward migration are for example described as a pull factor for irregular border crossings at the EU/Schengen external borders (Frontex 2014).

There is a general view in all three countries that differences among the Member States' practices are crucial for asylum seekers' onward migration. A



precondition is, however, that asylum seekers have some knowledge about the Dublin Regulation and the various socio economic conditions in Member States. Norwegian public servants assume asylum seekers have this knowledge. They described how asylum seekers know how the system works, and how rumours about how to behave are spread among them. Swedish public servants referred to prognoses published by the Swedish Migration Agency (2015b). The Migration Agency assumes the number of asylum seekers from Syria to Sweden will decrease because of the long waiting time before their application is processed, while the asylum process in Germany goes much faster. Swedish public servants assume asylum seekers, and their helpers, have such knowledge and therefore adapt to the conditions in various countries. German public servants specified that not everyone knows everything about how the Dublin system works, but most have some knowledge. They know at least that they should not give their fingerprints on arrival.

Norwegian authorities' perception of the Dublin Regulation as an important political instrument is reflected in the resources used to implement the Regulation. The Dublin Unit at the Norwegian Directorate of Immigration has around 30 employees, and in 2014 Norway sent 3,319 outgoing requests and transferred 1,401 asylum seekers to other Member States, as discussed in chapter four. Norwegian authorities emphasise the Dublin Regulation can be used to determine the Member State responsible for examining an asylum application and to transfer migrants to the responsible Member States.

Swedish authorities seem to be more ambiguous on how the Dublin Regulation functions as a political instrument. Swedish authorities use a huge amount of resources to implement the Dublin Regulation. The Dublin Unit at the Swedish Migration Agency has around 80 employees, and in 2014 Sweden sent 10,760 outgoing requests and transferred 3,973 persons to other Member States. In line with these priorities, Swedish public servants described the Dublin Regulation as a useful tool, but they simultaneously underlined that the capacity was under pressure. One of the public servants we interviewed expressed the opinion that Europe had gone about the prevention of onward migration in the wrong order: the Dublin Regulation should have been set in motion when all its preconditions were in place. Instead, one started out with

enforcing the transfer of migrants to the first country, with the preconditions as distant future goals.

According to a Swedish public servant's personal view, it is not necessarily the Dublin regulation that has failed, but rather the whole asylum system. He argued that because European countries have diverging asylum procedures and reception conditions, asylum seekers will go to some countries and not to others. He also said that if a fair distribution of asylum seekers is the aim, the Dublin Regulation is not the right tool. Then, he argued, one must integrate the whole reception conditions in a country, and this is not a quick fix as long as Member States are as different as they are. He could not see any immediate solution.

In contrast to Norwegian and Swedish government institutions, the Immigration Office in Berlin emphasised the Dublin Regulation is only one tool in a larger toolbox. The Immigration Office is more concerned with the onward migration of people who already have a residence permission in one Member State, and live and work illegally in another. The Immigrant Office saw this type of onward migration as much larger and more crucial to prevent than Dublin cases. All persons holding a residence permit in one Member State can stay legally in another Member State for 90 days, but no one knows if they have stayed longer. The problem the Immigration Office described is that no one knows how many persons actually live illegally in Berlin or in any other European country.

The Immigration Office in Berlin is involved in the Dublin procedures by making the first registration interview, and by transferring persons to other Member States. The BAMF branch in Berlin, which is responsible for making Dublin decisions, has two employees working on Dublin cases, while the Immigration Office has only one. The public servants underlined the Immigration Office does not perceive the Dublin Regulation as a crucial political instrument:

Earlier we had 4 staff who worked with these cases, later 2, and now we have only one, and this person is ill – so in practice we have no one who works on this (Leader of Immigration Office Berlin 22.04.2015).

Moreover, the Immigration Office referred to the fact that in 2014, Berlin returned 602 persons and 68 of these were Dublin transfers (in 2013, Berlin returned 500 persons, and 69 of these were Dublin transfers). These numbers are even lower than the numbers of transfers we have seen in the German Dublin statistics above. In 2014 Germany sent 35,115 outgoing requests and transferred 4,772 asylum seekers to other Member States. The public servants at the Immigration Office in Berlin used the low numbers to document that the Dublin Regulation is not prioritised in the office's daily work, and it is not perceived as an important instrument in relation to onward migration. In 2014 the BAMF branch in Berlin handled 1,065 Dublin cases (BAMF branch Berlin 2015d).

Since the Schengen Borders Code (Regulation (EC) No 562/2006) says internal borders may be crossed at any point, without a border check on persons irrespective of their nationality, Member States conduct internal control of third-country nationals (Johansen, Ugelvik and Aas 2013). In all three countries, government institutions applying the Dublin Regulation described it as a problem that some Member States give a person refugee status or subsidiary protection, but once they have received this permission, the State gives neither accommodation nor financial support. In many Member States, it is nearly impossible for short-term residents to get a job. Many of these persons travel to other Member States, but as long as they have residence permission in one Member State they cannot apply for asylum in another Member State. These people are not categorised as Dublin cases. The person will be transferred to the Member State where he/she has a residence permit in line with the category safe third country. In Norway, these persons are handled by the Dublin Unit and transferred with reference to Foreign Law. Germany also uses the Dublin Regulation and fingerprint registration in Eurodac as important instruments for the Member State to be able to complete the transfer of third-country nationals to another Member State (Bender and Bethke 2012).

There are, however, various socio-economic conditions in Member States, which are crucial for migrants' onward migration within the EU/Schengen area. There have been discussions about the reintroduction of Schengen borders control (Die Welt 2015). In June 2015, French authorities

reintroduced borders control at the French-Italian borders in Ventimiglia (BBC News 2015). The Schengen Borders Code decrees Member States are not permitted to control the borders, but they can implement temporary border controls in exceptional circumstances.

*In summary*, there are diverging perceptions of what kind of role government institutions in Norway, Sweden and Germany think the Dublin Regulation has to handle onward migration. Implementation of the Regulation has a high priority in Norway, while Swedish institutions are more ambiguous to whether it actually works. In Berlin the Immigration Office emphasised the Dublin Regulation was not prioritised in the office's daily work. Public servants in Berlin were more concerned with the onward migration of people who already had a residence permission in one Member State, and lived and worked illegally in Germany. The Dublin Regulation can only be used to regulate onward migration of asylum seekers, and can therefore only play a minor role in relation to the challenges posed by all kinds of onward migration.

## Summary

Our analysis of how government institutions in Norway, Sweden and Germany apply the Dublin Regulation concentrates on three issues, in which we evaluate the Dublin Regulation from different perspectives. We examine the countries' practice *within the framework of the Regulation*, the countries' interpretations of premises defined and practised *outside the Regulation* and finally the *priority they give to the Dublin Regulation* as a means to handle onward migration.

(1) The first issue is the experiences government institutions in the three countries have by applying the criteria and procedures in the Dublin Regulation. Regarding the countries' practice *within the framework of the Regulation* we find the government institutions applying the Dublin Regulation in Norway, Sweden and Germany follow some procedures in a similar way, but there are also several differences.

All government institutions in the three countries have positive experiences with how administrative cooperation works at the operative level.

They mentioned some administrative challenges because not all members take fingerprints on arrival in the EU/Schengen territory. The Dublin system is only able to handle persons who are not registered in the first Member State of arrival as far as other Member States have the capacity to check asylum seekers' documents. All three countries mainly use the Eurodac fingerprint database and Visa data file as evidence to decide if a person should be given a Dublin status. Norwegian public servants said that they also check other documents. The Eurodac fingerprint database is a crucial tool in European border control. It can both be used as an external border control to check persons before they enter EU/Schengen territory and as an internal border control e.g. on the street inside each Member State (Bigo, Guild and Walker 2010).

All our public servant interviewees emphasised they applied the criteria in the prescribed hierarchical order to determine the Member State responsible for an application. In spite of public servants' own understanding of their application of criteria in the prescribed hierarchical order, a low-ranking criterion (application examined in the first Member State in which they arrived when entering the EU/Schengen territory) was the most frequently applied. Most likely, this is due to the relative ease of access to information that makes this criterion applicable, through the Eurodac fingerprint database. The information required to apply the higher ranked criteria has not been made similarly accessible through established instruments of cooperation.

While institutions in Norway, Sweden and Germany conduct interviews with asylum seekers and inform them about the Dublin process, they provide different information. In contrast to Norway and Sweden, German authorities gave persons in a Dublin process an extended possibility to express any special reasons for not being transferred to another Member State, through two separate Dublin interviews in addition to the initial registration interview. While government institutions in all three countries give persons in a Dublin process the possibility to express any special reasons for not being transferred to another Member State, they concentrate on technical questions related to the persons' itinerary within Europe, as the aim is not to start the asylum process before the responsible Member State is clearly identified.

In all three countries, bureaucratic decisions in Dublin cases were very rarely amended by subsequent court decisions. While Norway has a separate

tribunal for immigration cases, Dublin decisions in Sweden and Germany are treated within the general court system. Norway provides a minimal lawyer assistance free of charge by lawyers appointed by the immigration authorities; in Sweden and Germany persons with a Dublin decision who wish to appeal must find, and pay for, any legal assistance themselves. A huge problem for the functioning of the Dublin Regulation is that many persons with a Dublin decision abscond before the transfer. The Norwegian, Swedish and German government institutions therefore make use of detention before Dublin transfers. This may be seen as a kind of internal border control (Johansen, Ugelvik and Aas 2013).

(2) The second issue is how the contemporary practices of the CEAS lay premises for Norwegian, Swedish and German experiences with how the Dublin Regulation functions. In relation to the countries' interpretations of premises defined and practised *outside the Regulation* we find diverging interpretations in government institutions in Norway, Sweden and Germany.

Persons in a Dublin process received similar offers in the three countries. There was, however, a difference in level of internal border control. In contrast to Norway and Sweden, the authorities in Berlin conducted internal control as persons in a Dublin process had a notification obligation at the Immigration Office every third or sixth month. Although Swedish and German government institutions do have previous experiences with receiving large numbers of asylum seekers, the increasing numbers of asylum seekers now coming to these countries give the authorities huge challenges of finding accommodation. The challenges in Norway are minor compared to the situation in Germany (ARD 2015).

There were diverging views of if, and how, practices related to the asylum procedures and reception conditions directives within CEAS should influence the application of the Dublin Regulation. The point of departure for institutions applying the Dublin Regulation in all three countries was that asylum procedures and reception conditions do hold a required minimum standard in all Member States. However, public servants in all three countries described the socio-economic conditions for asylum seekers as different in the Member States. There were some nuances in these descriptions. Norwegian

public servants described the asylum procedures and reception conditions as equal. Swedish institutions described Member States' asylum procedures as not yet equal, but as becoming increasingly equal. The authorities in Berlin based their policy more widely on the respect of the rule of law by all Member States, which is not the same as equal procedures. According to one of the public servants we interviewed, the Dublin System had started out by enforcing the transfer of migrants with the preconditions set out in the CEAS directives as future goals, while the Dublin Regulation should only have been set in motion when all its preconditions were already in place.

All three countries transferred persons with a Dublin status to most Member States when we conducted our research. None of the three countries transferred persons to Greece, and they had changed their practice in relation to transferring families to Italy after the Tarakhel decision. The diverging national jurisprudence within the countries led to different practices. In Berlin, single men with a Dublin status had not been transferred to Hungary after a decision in the administrative court in Berlin. Norway and Sweden transferred persons to Hungary with no special reservation. In all countries, the practice was to transfer persons with a Dublin decision to all Member States, as long as there were no decisions to the contrary on the Member State concerned in national and European jurisprudence.

(3) The third issue is how government institutions in Norway, Sweden and Germany perceive the role of the Dublin Regulation regarding challenges posed by onward migration. On the question of *priority given to the Dublin Regulation* as a means of handling onward migration, we found diverging priorities in the three countries.

We have shown the implementation of the Regulation has a high priority in Norwegian government institutions. This is reflected in the institutional resources used to implement the Regulation and in the high numbers of Dublin transfers to other Member States.

Swedish institutions are more ambiguous to whether the Dublin Regulation actually works. Swedish institutions use fewer resources than Norwegian institutions to implement the Dublin Regulation, measured in relation to the high number of asylum seekers coming every year.

Government institutions in Berlin emphasised the Dublin Regulation was not prioritised in their daily work. Public servants in Berlin are more concerned with the onward migration of people who already have a residence permission in one Member State, and live and work illegally in another Member State. Although Berlin might not be representative of Germany as a whole, we find this low priority reflected in the low numbers of Dublin transfers from Germany to other Member States.

The differences we find in the application of criteria and procedures of the Dublin Regulation and in the interpretation of CEAS as a premise for the Regulation might be of less importance than the countries' diverging interpretations of how the Dublin Regulation can be used as a tool to control onward migration. A precondition for using the Dublin Regulation to regulate onward migration of asylum seekers is that all Member States' government institutions give the regulation high priority. However, as the Dublin Regulation can only be used in relation to asylum seekers, it can only play a minor role in relation to the overall challenges posed by all kinds of onward migration.





## 6 Review: Onward Migration in Europe and the Dublin Regulation

Our literature review in this chapter primarily aims at informing the subsequent analysis of interviews with migrants. The following questions have guided our selection and reading of the most relevant and up-to-date literature in this field:

- What are the most significant influences on asylum seekers' choices or decisions to travel to specific countries, especially when it comes to their secondary movements within Europe?
  - To what extent is the Dublin Regulation important for these choices or decisions?
  - What is the importance of other factors, such as the political or other framework conditions of each country for asylum seekers, their personal networks, and so on?
  - Which other effects does the Dublin Regulation have on asylum seekers' experiences?

There is very little literature focusing specifically and primarily on these questions. We have therefore included several publications that address the issues more indirectly, yet in ways we find to be relevant to our study.

### Decision-making and migration

How to explain and predict migration decision-making is a central topic in migration research, not least as a reflection of urgent political and administrative demands for migration governance tools. However, it is not always easy to define decision-making, and different definitions may draw on fundamentally different views of understanding how decisions are made, in turn producing very different findings. Drawing on Castles (2010); Iosifides (2011); Iosifides and Sporton (2009), in the following we identify three main ways of understanding that are especially prominent in research on migrants' decision-making: the two opposing approaches of 'rationalism' and 'relativism', and third-way approaches such as 'transformative perspectives' and 'critical realism'.

Such third-way approaches, though varied in their emphases and perspectives, have in common that they aim to bridge the opposition of rationalism versus relativism as well as related dichotomies such as agency/structure. As we aim to show, each approach has its strengths and weaknesses. Our intention in the following is to make some of these strengths and weaknesses clear to the reader, and to create a platform for our own analysis in the following chapter of migrants' decision making when it comes to onward migration after arrival in Europe.

Studies informed by rationalism, and especially individualist rationalism, are prevalent especially where the creation and development of models for prediction of migration patterns has been a predominant concern. Typical here are studies that aim to identify “push” and “pull” factors for migration patterns (Ravenstein, 1885; Lee, 1966; Schoorl, 2000). Rational choice theories, based on an understanding of rationality as the individual maximisation of goods, form the point of departure. For example, “The Harris-Todaro model that underpins the neo-classical approach assumes that movement is motivated by the desire for individual income maximisation, based on rational comparison of the relative costs and benefits of remaining at home or moving”, states Castles (2010: 1,572). He continues: “[this] model has not proved very useful for analysing and explaining actual migration experiences. Its narrow focus on income maximisation and its assumption of rational economic decision-making based on full information have little to do with the reality of most migration flows” (ibid: 1,573). More recent attempts to incorporate important parts of this reality, such as “family strategies for income maximisation and risk diversification” (ibid) still fail to grasp “non-economic factors that shape migration”, argues Castles (ibid). In order to include non-economic factors, Castles recommends “a conceptual framework would consist of a detailed mapping of the factors that influence migratory processes and of the connections between these factors” (ibid: 1,582).

This would entail exploring connections between decision-making and both economic and political factors in the relevant geographical and social contexts, and a large number of studies attempts to do just this. Many different factors have been shown, separately and together, to influence asylum seekers' and other migrants' choices of destination countries, not least when it comes

to onward migration within Europe. The political, democratic and socio-economic conditions in different receiving countries as well as conditions in the countries of origin are crucial factors. Equally important are differences between European countries when it comes to asylum, immigration and integration policies and historically formed bonds between certain European countries and their former colonies (Brekke & Aarset, 2009; Brekke & Brochmann, 2014; Hatton, 2009; Neumayer, 2004; E. R. Thielemann, 2004). Such explanations tend to highlight the decisions of migrants and asylum seekers as rational, well-informed choices.

However, such attempts, although avoiding the trap of overlooking the importance of family and social networks, are still based on the same basic rationality of benefit maximisation. In his article on “The dynamic relationship between asylum applications and recognition rates in Europe (1987-2010)”, Toshkov (2014) questions the validity of this premise in migration research. We review this article in the next part of this chapter. First, let us examine more closely what others have said about the necessary basis for informed, rational decisions.

Migrants’ direct access to and systematic use of available information vary considerably. Several studies find asylum seekers have very little knowledge about their destination countries before arrival and their ‘choices’ are largely made by facilitators or smugglers. They also find the presence of a social network of family members or friends who are already living in a European country may be the single most important factor (Brekke & Aarset, 2009; Crawley, 2011; Gilbert & Koser, 2006; Koser & Pinkerton, 2002; Neske, 2007; Nordlund & Pelling, 2012; Platts-Fowler & Robinson, 2011). Such studies highlight the importance of collectives and social context to migrant decision making, but may still implicitly regard human beings as primarily benefit-maximising actors, a view which has been heavily criticised as narrow and contrary to overwhelming evidence. Such evidence is especially clear in reciprocal relationships. Polanyi (1944) argued that mainstream economic theory, with its emphasis on individual maximisation as the only economic rationality, can only be applied to capitalist economies and that “as we now know, the behavior of man both in his primitive state and right through the course of history has been almost the opposite from that implied in this view”

(ibid: 142). One of his sources of inspiration was the work of Marcel Mauss, who “argued that there was no giving without receiving; thus gift exchange is a means of establishing social relations. This is also true in politics, relations of power and in hierarchy building. Mauss argues these exchanges are the foundation of society through forming moral obligations” (Seeberg & Kennet, 2008: 124). This fundamental insight informs many studies of migration, not least the work of Papadopoulos and Tsianos (2013), presented more extensively later in this chapter.

At the other end of the scale from ‘maximising rationality’- individualism we find methodological relativism. In its extremes, this mode of understanding reduces interviews to self-contained dynamics of representation and interpretation between migrant and researcher, with no reference to “social realities outside the life-history reconstruction” (Iosifides, 2012: 38). In our analysis, we build on Iosifides’ argument for using biographical interview data as an intake to understanding “the role of materiality, social relationality, structural and cultural contexts, unacknowledged conditions and unintended consequences of actions” (ibid).

## European discrepancies and migrant choices

Toshkov (2014) observes that while asylum seekers “could be assumed to act strategically”, trying to maximise their chances through “selecting the country in which to lodge their application” (ibid: 197), this model “crucially depends on the ability of asylum seekers to obtain rapidly reliable information about the changes in the policy, political and economic conditions in the host countries” (ibid: 198). “But”, Toshkov asks, “how plausible is this assumption? Getting precise and reliable information on the chances of an application having a positive decision might be difficult for individual asylum seekers” although, he concedes, “‘mediating’ agents can have the capacity and the incentives to acquire this information” (ibid). A comprehensive and sophisticated analysis of the relationships between “asylum applications, recognition rates, government positions on immigration/multiculturalism, and economic indicators such as GDP per capita and unemployment” (ibid: 209) shows only weak relations between these factors. Importantly, “changing the parameters of national asylum policy (...) affects asylum flows only marginally” (ibid).

Furthermore, Toshkov finds significant differences between European countries when it comes to the dynamics of recognition rates and asylum applications, and for this reason warns against generalising findings from one country. For example, in some countries “like the Netherlands and Switzerland, a picture of highly strategic asylum seekers and responsive governments would find empirical support. In others, strong effects of economic variables are present. In the majority of the countries, however, time series analysis would reveal no patterns at all” (ibid: 211).

A recent article by Norwegian authors Brekke and Brochmann (2014) takes as its point of departure that “National differences in reception conditions, access to integration measures and social rights’ encourage secondary migration within the EU” (Brekke & Brochmann, 2014: 2). The authors aim, in concordance with the individualist-rationalist paradigm, to analyse how discrepancies between European countries in refugee recognition rates, access to welfare goods and the labour market influence individual migrant strategies in terms of secondary movements within the European Economic Area. The paper is highly relevant to our study as it focuses on the following questions: how do the Dublin Regulation and national differences in reception conditions influence migrants’ strategies for secondary movements within Europe? Additionally, how do these secondary movements and national differences within the region challenge the Dublin Regulation? (Brekke & Brochmann, 2014: 2). The material covers Eritrean asylum seekers in, or between, Norway and Italy. The authors indicate around 750 Dublin applications from Norway to Italy each year pertain to Eritreans, and this makes them the largest group of “Dubliners” in Norway. The two states are described in a welfare state perspective and contrasted against each other. However, the definition of “reception conditions” is fuzzy. It is not clear which parts of the descriptions apply to the specific conditions for asylum seekers, strictly defined as individuals who are in the asylum seeking process – in fact, the description of Norway appears to refer to the conditions for everyone except asylum seekers:

In contrast, asylum seekers who are accepted in Norway encounter a well-organized reception system, a two-year comprehensive introductory programme, and extensive welfare benefits. Fuelled by the oil economy, Norway has, by and large, escaped the financial crisis, and its unemployment rate has been stable at a low level. Primary reception has been

organized under one directorate that controls approximately 130 reception centres. The secondary introductory programme includes guaranteed housing and a mandatory qualification course with language and job training. Its participants receive a salary higher than the basic welfare benefit (social assistance). Beyond this specialized training for newly arrived refugees and their family members, all legal residents have access to a wide range of universal social rights (Brekke & Brochmann, 2014: 5).

This description is not applicable to the conditions for asylum seekers in Norway. Although they are present and not illegally residing in the country, people who are in the process of seeking asylum are not considered to be residents and are not included in any of the regular welfare benefits available to other legal residents. Instead, they are kept on a separate scheme at a substantially lower level of welfare (Seeberg, Bagge, & Enger, 2006). The secondary introductory programme referred to in the quoted text is not available to them. This applies to all residents in the approximately 130 reception centres, including the (at the time of writing) about 5,000 individuals who have been granted residence but not yet been allocated a municipality for entering the secondary introductory programme. On the other hand, the conditions for asylum seekers in Italy, again strictly defined as individuals in the asylum process, are not necessarily applicable to onward migrants, many of whom have already completed the asylum process in Italy and have some form of legal residence there.

When it comes to migrants' access to information as a basis for rational decision-making, Brekke and Brochmann found that most of the Eritreans they met were very well informed about the Dublin Regulations and that most had some information about them before arriving in Europe. For example: "We interviewed a group of young Eritrean men who had arrived in Lampedusa on a boat carrying 54 asylum seekers. While at sea, everyone had agreed to collectively resist having their fingerprints taken once they arrived. This resulted in a confrontation between government officials and these new arrivals. In the end, they were all fingerprinted and registered" (Brekke & Brochmann, 2014: 11). However, knowledge about the conditions in different European countries was more dependent on individual resources such as education and networks, which varied widely.

The conclusion is relevant to us, and should be compared to our findings: “We found that the Eritrean asylum seekers remained highly motivated to apply in a second country despite the DR [Dublin Regulation]. Many of our informants planned to leave Italy or had already done so. National differences in the asylum reception system, the integration support, and the comprehensiveness of the welfare states fuelled these aspirations. Their immediate situation provided the potential spark. The DR contributed indirectly to creating the limbo that many of our informants experienced (...) One result is that migrants risk becoming stuck in the first country while aspiring to move on, so they do not try to integrate” (Brekke & Brochmann, 2014: 15-16).

Further highlighting the Italian situation, Rossi and Vitali (2014) report from a survey conducted in two Italian reception centres for asylum seekers, “where refugees without identity documents or who escaped border controls, are hosted while their application is still pending” (Rossi & Vitali, 2014: 170). The authors investigate the significance of push and pull factors, describe the conditions of the journeys to Italy, perceptions of life in the centres and outside the centres, perceptions of asylum procedures, and hopes and plans for the future. They find that respondents clearly state that push factors – reasons to leave their countries of origin – were more important than pull factors such as the existence of social networks, while Italy is their destination country “because of geographical factors or because the routes were decided by human traffickers” (Rossi & Vitali, 2014: 171). The refugees have typically travelled for a long time before reaching Europe and have often paid large sums of money to cross the Mediterranean. Three out of four refugees report they have no contact with Italians outside the centres, but are generally thankful for the hospitality and services provided within the centres. The biggest problem reported is ethnic tensions within the centres. Less than 20% reported any knowledge of asylum procedures before arrival in Italy, and a majority report an intention to stay in Italy mainly due to feeling secure and protected there. Very different conditions in the two centres play a large role in differences of responses. The following paragraph is highly relevant to our project, and we therefore cite it in its entirety:



Once the applicant has obtained a status, the process of integration in the Italian society is ready to begin. Due to welfare conditions in Italy, some difficulties arise, due to the lack of reception facilities, or inefficiencies of the SPRAR network (System of Protection for Asylum Seekers and Refugees), as clearly shown in the 2011 ASGI report. Many refugees remain in the reception center for an extended period even after receiving the decree granting the status. The conditions of the refugee, even with a residence permit, are too often marginalized and many are induced to seek better living conditions in other EU countries. European rules then sent many of them back to Italy after being located by local authorities. All this is in stark contrast to the true desires of the refugees. In our interviews they stated almost unanimously their will to remain in Italy” (p. 174) yet “some refugees may still be inclined to move further towards destinations of Northern Europe that provide better opportunities, and a reception that will allow them to immediately acquire a better standard of living, and consider Italy as a country of transit. The incentives to remain in one country may be categorized into four items: the job opportunities, the possibility of joining friends or relatives, the presence of a network of solidarity and support, the chance of a process of integration that improves their living conditions. The strongest incentives follows from the ability to get a job and integration on the territory. More than half of the respondents state as very important the possibility of getting a job, while 45 per cent of respondents said that a good integration is an important reason to remain in Italy. More than half of the respondents believe irrelevant the presence of the other two aspects (friends and networks)... The fact that many refugees leave Italy after being granted the status seems to be the consequence of the chronic lack of integration possibilities there, rather than because of the attraction from external pull factors.(...) The material reception conditions, referring to food, accommodation and social areas, are not perceived as very important by guests, except when unexpected inflows of asylum-seekers lead to appalling overcrowding. Although hospitality supplied by Italian facilities in many cases stands below North European standards, especially when compared to what is available in The Netherlands, Norway or Germany, asylum-seekers seem to get easily accustomed to basic living conditions (Rossi & Vitali, 2014: 175).

These findings are echoed in several other reports and briefings, among them a report on the Italian asylum system, published by the Norwegian

Organisation for Asylum Seekers, NOAS (Bertelsen, 2011). On the European level, the Dubliners Project Report (di Rado (ed.) 2010), published by the Italian Council for Refugees in cooperation with organizations from five other European countries, heavily critiques the Dublin II agreement. The main points of contention are the differences between the participating states' asylum systems on the one hand, and flaws in Dublin II itself on the other. The treatment of asylum seekers both in terms of living conditions and the asylum procedures are too different, according to this report, to make the Dublin Regulation viable. This report points out that people who find themselves under the Dublin Regulation are discriminated against not just in comparison to populations in general, but as compared to other asylum seekers. The lack of information provided to them also causes great concern.

### Through the eyes of migrants

The relevance of an article by Witteborn (2012) to our study is primarily in its drawing attention to the effects of asylum systems, such as CEAS, on the experiences of asylum seekers themselves. Through the concept of 'testimonio' (personal experiences narrated as eyewitness accounts and representing the experiences of a whole group), the author argues that the narratives of asylum seekers expose how detention centres and refugee camps are spaces of risk (cf. Ulrich Beck and others). While the 'risk society' is usually understood as underpinning the actions of states "engaged in efforts to minimize the social, economic and socio-political risks that asylum seekers might pose to the state and the nation" (Witteborn, 2012: 422), this study flips the image around and shows how states, through these very same practices, may well pose a risk to asylum seekers. The material was collected at three sites: in HK/China, the USA, and Germany. The German narratives are of the most interest in our context and derive from interviews with 33 asylum seekers from a wide variety of national backgrounds, different ages, both sexes and married, unmarried and with or without children.

State practices that were shown to create spaces of risk for the asylum seekers were typically a lack of privacy in accommodation, the power of shelter officials, long and uncertain asylum processes, communication with officials, social and physical immobility, and discursive criminalisation of asylum

seekers. Counter-practices that worked toward consolidating the asylum-seekers' senses of belonging and security were typically sociocultural practices that involved own-language communication, religious practices, familiar food practices and the use of social and mass media. They would also avoid identifying themselves as asylum seekers to avoid stigmatisation, and emphasised they were 'not just asylum seekers' but also contributed to German society, such as through work and tax payments. Testifying about the living conditions for asylum seekers was also such a counter-practice, which contributed to meaning making and a sense of self. They regarded speedy asylum processes as a way to minimise the exposure to risk, while legal labels like 'refugee' constituted a safety zone "by situating the body within the protection of the state and international asylum treaties" (Witteborn, 2012: 435). The author also points to aspects of the ethical dilemmas of research with asylum seekers, which we recognise from our own research: The researcher can do nothing to speed up the asylum process, yet is aligned with the state and holds the power to decide what to publish and what not to publish – while the asylum seeker always depends on others to access the public sphere with the testimonial.

Primarily theoretical yet based on extensive empirical research at several geographical sites, an article by Papadopoulos and Tsianos (2013) sheds light on the governance of migration in a way that is practically applicable. The authors argue that citizenship, national sovereignty and borders are mutually dependent, yet "Secure borders do not exist and cannot exist; sovereignty is the futile attempt to regulate the porosity of borders: this can be conceived of as *porocracy*" (Papadopoulos & Tsianos, 2013: 180). Differential inclusion of migrants reflects the need to "create different subjects of labour" in an age where "migration... recomposes what class is" and the issue is no longer how to stop migration but to make migration "productive and sustainable" (Papadopoulos & Tsianos, 2013: 179). As in Witteborn's paper presented above (Witteborn, 2012), the authors posit a need to shift the perspective from the needs of states to understanding "sovereignty through mobility, rather than the other way round" (Papadopoulos & Tsianos, 2013: 184). This implies regarding governance and regulations as responses to migration, rather than regarding the acts of migrants as responses to governance – in our context, it would mean giving primacy to the practices and choices of people moving from one European

country to another and analysing the practices of governance as responses to them. As argued in this article, “the autonomy of migration thesis is about training our senses to see movement before capital (but not independent from it) and mobility before control (but not as disconnected from it)” (ibid.). As a general approach to a host of different types of movements, the concept of autonomy of migration may enable us to ‘articulate their commonalities which stem from all these different *struggles for movement* that confront the regimes of mobility control’ (ibid: 185). Further, ‘mobile commons’ is introduced as a term denoting the space, virtual or physical, for mutual support and information: chatrooms, Facebook, email, camps, centres and neighbourhoods. This space needs to be continuously made, updated and extended, and it is the main reservoir of “resources and energies for migrants on the road ... a world of knowledge, of information, of tricks for survival, of mutual care, of social relations, of services exchange, of solidarity and sociability ... the gift economy of migration ... a world in the making” (ibid: 190). The mobile commons is what organises autonomous migration, and consists of (the entire bullet points below are quotes from pp. 191-192):

- the invisible knowledge of mobility that circulates between the people on the move (knowledge about border crossings, routes, shelters, hubs, escape routes, resting places; knowledge about policing and surveillance, ways to defy control, strategies against biosurveillance, etc.) but also between transmigrants attempting to settle in a place (knowledge about existing communities, social support, educational resources, access to health, ethnic economies, micro-banks, etc.).
- an infrastructure of connectivity which is crucial to distributing these knowledges and for facilitating the circular logistics of support to stay mobile: collecting, updating and evaluating knowledge by using a wide range of platforms and media – from the embodied knowledge travelling from mouth to mouth to social networks sites, geolocation technologies and alternative databases and communication streams.
- a multiplicity of informal economies. The mobile commons is not outside of existing relations of production, reproduction and even exploitation. It covers all these economic activities and services that cannot not be easily accessed through the public sector or privately:

how to find (and let alone pay) a doctor or a lawyer; how to find short-term work or more permanent working arrangements, send and receive money, communicate with friends, family and fellow travellers, make it through the economies of smuggling, get the necessary papers for your move, pay for your rent and find the right person 'to talk to'.

- diverse forms of transnational communities of justice: alliances and coalitions between different groups, local governments, political organisation, NGOs, etc.; access to power; the selective organisation of campaigns in collaboration with local groups and other social movements and civil society organisations; the organisation of camps or support actions.
- the last and probably most crucial dimension of the mobile commons is the politics of care, care as the general dimension of caring for the other as well as immediate relations of care and support: mutual cooperation, friendships, favours that you never return, affective support, trust, care for other people's relatives and children, transnational relations of care, the gift economy between mobile people, etc. (see an impressive account on this in Bishop 2011, see also Puig De La Bellacasa 2012).

Making systematic use of the mobile commons as 'the ontology of transmigration' (Papadopoulos & Tsianos, 2013: 192) could enable us to see the importance of and analyse dimensions of the 'mobile commons', and the role that it plays when it comes to responses to the Dublin Regulation. Even more importantly, it may reveal how adjustments and changes in the Regulation may be regarded as responses to activities in the commons. In a postscript, the authors quote a migrant who has decided to drop his well-founded asylum case in a country in Northern Europe, because "there is no love here, he said" (ibid: 193). It is not all about money.

Arguing that European Member States use Dublin II and Eurodac to minimise access to asylum, Schuster (2011) takes as the empirical basis the experiences of a group of young Afghan men living in Paris while the French state was seeking to return them to their first country of arrival in Europe, which in this case was Greece. On a more general level her findings also throw light on the experiences of other asylum seekers in Europe. It is pointed out

that although directives and regulations aim to standardise conditions for asylum seekers in all Member States, in reality there are large discrepancies that are likely to have a direct impact on migrants' choices and decisions. The example of recognition rates for Iraqis in 2007, taken from the 2008 ECRE Iraq survey (ECRE, 2008a) illustrates this: "85% were granted status in Germany, 82% in Sweden, 13% in the UK and 0% in Greece and Slovenia. [...] Hardly surprising then, that Iraqis [...] having entered the EU, would prefer not to seek asylum in Greece, but try to make their way to Germany or Sweden" (Ibid: 403). It may be argued that these statistics are too old to be relevant; however, as we have noted earlier, similar discrepancies in recognition rates remain: "even where the top ten countries of origin are the same or similar, the recognition rates are alarmingly diverse" (Guild 2014: 40). When it comes to effects of the Dublin Regulation, Schuster calls attention to the added waiting time while authorities are processing states' claims for Dublin implementation – a period where migrants have few rights and possibilities and very little control of their lives. Policies and practices based on the broad principles of the EU vary widely and the author argues that one needs a thorough knowledge of national and local processes in order to understand the practical significance of EU policies. The procedures of France and Greece are described. Of special relevance to our project is a reference to the 2008 Norwegian decision to suspend removals to Greece, because of Greece's inability to fulfil its obligations. The author indicates this suspension was partly reversed later the same year, and concludes this section as follows: "In this case, the clear and documented failure of a MS [Member State] to adhere to any of the minimum standards they have signed up to with the European framework and the grave consequences for those affected by these systemic failures are of little or no concern to MS primarily preoccupied with reducing (certainly not sharing) the 'asylum burden' " (pp. 407-408). The article also calls attention to the fact that while European states 'swap' asylum seekers through Dublin procedures, each country may well end up with an unaffected *number* of asylum seekers, while – at the expense of taxpayers – inflicting considerable additional suffering on the migrants in question (p. 405). As regards the asylum seekers, they mostly do not understand how the system works, even when they have been through the whole system. The documents

they receive are seldom translated into a language they know, which adds to the confusion faced with a highly complex and constantly changing system of rules, regulations, and practices. They are extremely frustrated, feeling trapped without seeing any way out, and they are desperate to find work or to study rather than being reduced to human ‘ping pong balls’ (p. 409). In Greece, the migrants described especially severe and widespread police harassment and the danger of being deported to Turkey. At the same time, they heard stories of success from other European countries, and in some cases expectations that the migrants join family or friends there. When it comes to France, the main problems described are the long delays in claims processes, and the lack of work permits and rights to benefits which in combination lead to long periods of destitution: “Young Afghans in Paris can spend many months outdoors” (p. 412), sleeping in the streets. “In these circumstances, the UK takes on a mythical status” (p. 412) and the existence of a large Afghan community supports the will to take the risk of being deported from the UK. In effect, a large proportion of the young Afghans will stay in France as “sans papiers” or “illegal immigrants”.

### Three shaky pillars

The review of this literature gives insights into many aspects of migrants’ decisions relative to the Dublin Regulation and its effects. This review indicates decisions to migrate onward within Europe are formed in a complex interplay between many agents and factors. They do not just depend on the two main ‘pillars’ of equal asylum procedures (uniform criteria) and outcomes and equal minimum standards of reception and waiting conditions (uniform conditions) but also on a third ‘pillar’, which corresponds to the third issue examined throughout this report (onward migration). As derived from the reviewed literature, this third pillar consists of onward migration to the country that offers some hope of future possibilities. From the point of view of the individual migrant, it is necessary to look ahead and think: “If I make it through the waiting period and if I gain protection in this country – will I have the means to survive here? Will I be able to work, to find adequate housing, to fulfil my family obligations, to complete my education, to find friends, to belong: will I have a life? If not, where might I be better able to build myself a

new life?” Such questions are not only answered on the individual, economic-rational level, but in terms of social realities such as the possibility of reciprocal relationships with other people.

As the review has shown, the discrepancies between the participating countries are great in all three ‘pillars’. Again from the point of view of the individual who needs to live his or her life in exile, which country offers the best opportunities will depend on individual, transnational and national characteristics. These may include factors such as the location of existing social networks, knowledge of and familiarity with different European languages and cultures, and which European country is likely to recognise their education and experience and to need their skills.





## 7 Migrants' experiences, views, and decisions

In this chapter, we turn our attention to the experiences of onward migrants in Norway and Germany. This means changing the perspective by 180 degrees, in order to regard the principles and practices described in the preceding chapters from the point of view of people who find themselves in the “migrant” category.

Aiming to get closer to understanding the complex processes of decision-making, we attempt to describe and impart what we know about their experiences and thoughts as accurately as possible, through their own narratives. From these narratives, we draw links to the realities they refer to by discussing the migrants' own perceptions of their experiences in light of our material on the aims, principles, and functioning of the Dublin Regulation as presented in earlier chapters.

The people we met had travelled far. While some had covered great distances in a few hours, many had also travelled for a long time – weeks, months, even years. Most had travelled through several countries even before they had reached Europe, and they had traversed deserts, mountains, rivers, cities and forests. Their means of transportation had included their own two feet, car, bus, boat, train, and airplane. Just over half of the people we interviewed had crossed the Mediterranean in migrant vessels, thus forming part of the contemporary “Mediterranean crisis”.

In the following, we make use of the interviews with migrants in order to address the following main questions:

- How did the migrants experience the processing of their Dublin cases and how did these experiences reflect the application of uniform criteria in Member States?
- How did the migrants experience the conditions for asylum seekers in European countries as uniform or different?
- What were the implications of these experiences for their decisions to migrate onward within Europe?

In accordance with the overarching analytical framework of this report, we discuss these questions towards the end of this chapter, through a specific focus on the migrants' experiences with Member States' diverging procedures and conditions, and the implications of these experiences on their decisions to migrate onward.

We have cited the migrants extensively. The citations have been translated between several languages and edited, so they are not exact – but we have endeavoured to keep as closely as possible to the original statements, and to ensuring that the content is what they told us. The analysis consists of identifying themes and developing concepts that are telling of the structural conditions in question. The broad presentation of this interview material is necessary in order to transmit to the reader, as accurately and transparently as possible, the basis of our analysis.

We have chosen to present the migrant interview material according to topic rather than according to whether we met each migrant in Norway or Germany. Precisely because these were onward migrants, their experiences reflect the Dublin system on a European level rather than within the national frameworks of each of these two countries. In the first section below, we present some of the migrants' narratives as integrated accounts of their journeys.

## **Itineraries and life trajectories – past, present, future**

In this initial section, we present the narratives of migrants originating from seven different countries, with very different reasons for seeking international protection, and at all stages of the asylum process.

### **BEHTAN**

We met a young woman, Behtan, in Germany. She told us:

When I had to leave Iran, I wanted to go to England. I got a visa to Spain. I had been there before, as a tourist. I have no friends or family in Germany. Germany was just an in-between place for me. I had to pass through here. My family is in England. I could not get a visa to the UK because they have no embassy in my country and it was too dangerous for me to travel to a country with a UK embassy.

Without the regulation, she could have made use of her valid tourist visa to Spain and from there travelled on to the UK where her family and friends would have provided a network and helped her to get on with her life. She turned to “a man”, a paid facilitator, in order to ensure her transit all the way to the UK:

I paid a man to help me get to England. He said he could only help me if I went through Germany. He met me at the airport and we travelled together. When we arrived in Germany, he put me in a house in the countryside and told me that he would organise the onward journey. I gave him more money. I never saw him again. I stayed in that house alone for many days and I was very afraid. I did not know what to do. I had no more money.

Depending on this man had turned out to be a mistake, and she found herself stranded in Germany:

When there was no more food in the house, I took my suitcase and I found my way to the city. I planned to go to the police. I met some people who spoke my language. They showed me where to go to seek asylum. The German authorities wanted to send me to Spain. I told them, it is not safe for me there as a woman. I cannot sleep outside. But if I have to go there, I want to go now. They said I had to wait six months. I got myself a lawyer and took my case to court. After four months, they agreed to interview me and two days later, they accepted me here.

According to Behtan, her life had not just been put on hold (cf. Ngalikpima and Hennessy 2013) because of the asylum procedures, but she had been forced to wait an extra four months and pay for a lawyer, because German authorities wanted to send her to Spain. Could she have decided to go to Spain on her own, thus shortening the total waiting time? She clearly did not think of this as an option. Firstly, because she regarded the reception conditions for asylum seekers in Spain as unsafe. This perception was closely linked to her reasons for seeking asylum, which were fears of sexual violence as a means of persecution of women of the opposition in Iran. She did not want to go to Spain; yet if she were to be involuntarily sent there, she would have preferred this to happen with no loss of time. Secondly, because German authorities had

told her she would have to wait for Spain's reply to the Dublin request. Thirdly, although she had no wish to stay in Germany, she wanted to go to England, not to Spain. The only reason why she was in Germany was that this had been presented to her as the route to England. However, she felt this was no longer possible:

I never got to England. I am not allowed to go there now. I have a residence permit in Germany but it does not allow me to go to England to stay. My friends and my family want me to come to England when I can. But I do not want to. I have already wasted so much of my life. I need to settle down. I do not want to start again in yet another country after suffering for so long and trying so hard here to learn the language and get a proper job.

Compared to many other asylum seekers, Behtan had not waited very long. Yet she felt that because so much time had passed and she had started to settle down and learn the language, she no longer had the time or energy to start all over again in England should this be possible later on. She presented this to us as a waste of time and resources: while she spoke fluent English before arriving in Europe, she knew no German or any other European languages. The extra waiting time of four months because of the Dublin Regulation together with the barriers to settling down in the UK with a German residence permit had made her give up her original plan. She found that she had to become as fluent as possible in a completely new language and try to build up a new social network. Resigned to her fate, and mainly just relieved to be out of Iran where she faced persecution, she still expressed frustration that she had waited so long, invested so much time, work and money, yet had not reached her ultimate goal of resettling in England. Because the Member States have not reached an agreement on a "system of mutual recognition of refugee status" (Granjon, 2014), the EU's freedom of mobility and establishment does not apply to refugees and Behtan would have had to wait until she had a long-term non-refugee residence permit or German citizenship before she could have contemplated moving to England. In summary, from Behtan's point of view, and as confirmed on a more general level in Ngalikpima and Hennessy (2013), the Dublin Regulation had contributed to a considerable setback in terms of time, life chances, and money.

#### ASKARI, BORYS, AND BIKUTWALA

Some people expressed that the urgent feeling of getting as far away as possible from the country of origin was the most important. This implies not just the number of kilometres distanced, but the need to be outside of the sphere of power exercised by the terror from which they were fleeing. Being returned to the country where they first entered Europe could be experienced as contrary to this need. Askari from Yemen said:

I travelled through Germany. I took the bus from Germany to Norway. Norway has no embassy in Yemen. It is a small, free and democratic country, far from the Arab world. Germany has agreements with Yemen. The former leadership in Yemen was close with Germany. I do not know how it is now. There may still be some agreements. Germany might agree to send me back to Yemen.

To Askari, the Dublin Regulation primarily meant that he could not have his claim for asylum processed in Norway, the country where he felt the safest. Although he formally had the right to seek asylum in Norway, this individual formal right was overruled by Norway's right to send him to Germany to have the application processed there. He did not so much fear or mind having to stay in Germany, as he wanted a guarantee from Norway that Germany would not send him back to Yemen. Norwegian authorities could not issue such a guarantee on behalf of Germany. A similar concern also applies to Borys from Ukraine, who had passed through Estonia and was waiting for the result of Norway's Dublin request to Estonia:

I really do not want to go there [to Estonia]. The Russian influence is very strong there. Everybody likes Putin. I felt totally out of place there, people have a mentality that scares me. I feel that Russia is coming after me now – Putin is moving closer.

Bikutwala had fled from his country of origin because of the persecution of homosexuals and was evidently very frightened when we met him, just two days after he had arrived in Norway. He had also come by bus from Germany. His main concern was to escape what he perceived as the general homophobia of Africans:

I came to Europe to ask for asylum. The man who helped me [get a visa to Germany] told me to avoid Africans, since they can take you back to [my country of origin]. When I arrived in Germany, I saw a lot of black people. I just panicked. I had not planned to go all the way to Norway. I just got really scared and so I continued travelling. That is why I am here.

For all these three – Askari, Borys and Bikutwala – with their very different backgrounds and reasons for fleeing their countries of origin, the Dublin Regulation meant a higher perceived risk of being returned to the countries of origin. Could they be sure that the first countries of entry would not be more sympathetic to their persecutors? They had no access to information about what they needed the most, such as the recognition rates for their nationalities in the first countries they had passed through in Europe. This created extremely stressful situations for Askari, Borys, and Bikutwala as well as for others with similar concerns.

#### RASHAD

Syrian Rashad<sup>1</sup> also feared the extended field of power of his persecutors. He had left his native Syria many years ago and moved to Hungary, where he was married and had children. In 2012, as the war in Syria escalated at the same time as the democratic situation in Hungary was deteriorating, he had moved back to Syria with his wife and children to join the side of the freedom fighters against Assad. However, he soon found that ‘his’ side in the war against the regime was not his kind of people, and he was threatened and maltreated by them. The family again left Syria, now travelling through Turkey, Denmark and Sweden to Norway. They had a valid Schengen visa to Hungary, and Norwegian authorities had requested that Hungary take them back. Hungary had accepted this at the time of the interview, and Rashad and his family were waiting to be removed to Hungary. They were extremely worried about this. Rashad said:

States like Hungary are not democratic and are not suited to receive asylum seekers. They offer no protection.

<sup>1</sup> Rashad’s story may be recognisable. However, he stated that he knew this when he specifically asked us to use it as a case in our report.

This strong distrust in the Hungarian authorities may be understood in the light of several reports on recent developments in this country. Amongst others, Amnesty International reports about serious breaches of human rights in Hungary, especially directed toward ethnic minorities and increasingly toward refugees and asylum seekers (Amnesty International Report 2012; Amnesty International Report 2013; Amnesty International Report 2014/15). The inadequacy of protection of refugees and asylum seekers is also reflected in the decision made by the administrative court in Berlin, mentioned in chapter 5 above, referring to evidence from UNHCR, Pro Asyl and the German Auswärtiges Amt (Verwaltungsgericht Berlin 2015).

Rashad stated that he and his family needed protection from a group of Syrian Islamists who were also present in Hungary. He explained to us that he had been in contact with Hungarian authorities before leaving Syria, asking for such protection for the family, but that this had been denied. The family did not trust Hungarian authorities after this. Other family members in Hungary had already received threats from this Islamist group, because of Rashad's activities in Syria. His wife stated:

The reason why we wanted to come all the way to Norway was because it is outside the European Union. We thought that EU is like a family and [one Member State] cannot say that [another] one of them is not good enough, but Norway is separate and could understand.

Rashad and his family's logic was that since Norway is not part of the EU, its international relations are more independent, also when it comes to deciding which countries are safe havens and which are not. Clearly, Norway is more 'part of the family' than Rashad had known. Another reason for choosing Norway as their destination was that they regarded this country as geographically distant from the conflict in Syria and politically distant from the influence of Islamist groups. Within this logic, helping people in the region of conflict makes little sense when the persecutor's sphere of influence extends into neighbouring countries and even, as Rashad and his family said they had experienced, into the border countries of Europe.

For Rashad, the Dublin cooperation implied Norway was much more closely integrated into the European Union and implicated in a bond of solidarity, the mutual trust between states, with all EU Member State



governments than he and his family had anticipated. To them, this meant being sent back to a country, which, according to their own perception of the situation, had already refused to protect their lives.

#### IBSITUU

We met others, too, who like Rashad did not quite fit the straightforward itinerary of country of origin – first European country – second European country. A young university graduate, Ibsituu, from Ethiopia, had a complex story where migration and persecution were intermingled:

I was on a political campaign tour among my compatriots in France last year, on a regular tourist visa. When I returned to Ethiopia, I was jailed and lost my job. When I was discharged on bail, the police came to my house and looked for me again. I realised that I had to leave, and this time I could not risk applying for a visa. The police must not find out that I wanted to leave. I paid a man who got me a forged passport and helped me through Kenya by car and onto a plane for Rome. From there, we travelled to Oslo via Stockholm. The whole route and destination were planned by the man – I did not really know where we were going. When I arrived in Oslo, I applied for asylum. Then they told me that as I had entered France and stayed there, I would be sent back to France to apply for asylum. They had no proof that I had been in Ethiopia in the meantime. I had no exit visa, I did not have my own passport any more to show them. My problem is that the Norwegian authorities do not understand that I have not been in France all this time – that I was in Ethiopia, and that all my problems there started when I returned from France!

For Ibsituu, it seemed obvious that if France agreed to take her back on the basis that she had been living in France since the time of her registered entry there last year, and thus travelled directly from there to Norway, the whole basis for her claim for asylum would be set aside. She thought France would not accept the Dublin request unless they believed she had been in France since last year, and she did not expect French authorities to be able to believe both that she had been living in France in all of the intervening period *and* that she had on the contrary not been living in France in this period but had been jailed in Ethiopia. Without the Dublin Regulation, there would have been no reason for Norwegian authorities to send her back to France. Her

asylum application would have been processed in Norway, and, she felt, Norwegian authorities would have had less reason to argue that she had not been in Ethiopia in the period in question. Whether this was a reasonable interpretation is a hypothetical question – without the Dublin Regulation, it is still a possibility that Norway would have found out that she had entered France last year and that there was no evidence of her having returned to Ethiopia. However, from Ibsituu's point of view, the routine practices and established system of cooperation following the Dublin Regulation was an added stress factor in an already precarious situation.

#### HAILE

Eritrean Haile did not express this kind of anxiety. His main concern was trying to survive in Europe. Far from describing a linear itinerary from Eritrea to first European country to Norway, where we met him, he described a life of onward migration. Now in his late twenties, he had left Eritrea about five years ago. He had travelled via Sudan and Libya and crossed the Mediterranean in a small boat full of people. He told us about his life in Europe from the day he landed in Italy:

We came to Lampedusa, and the police picked us up and told us that the next day they would take our fingerprints. We refused, because we had heard how difficult things were in Italy. We did not want to seek asylum in Italy. (...) In the end, I was granted an Italian residence permit for three years. I tried to find work. I worked for a farmer, I worked hard, but he did not pay me afterwards. I had no rights there. I left Italy because I could not make a living there and I went to Sweden. I threw my Italian papers away because I was scared to be sent back there, but they found out anyway. I don't know how. They took my fingerprints there too. After two months they told me that you don't belong here. In spite of this, I had to wait for six more months and they took my fingerprints again and told me I had to leave. I went into hiding. I hid for one and a half years. Then I got rejected again. That is when I travelled on to Norway. I came here because I was desperate. I had nothing to eat, nowhere to sleep. That's why I came here.

From the point of view of Haile and others we met who were in similar situations, it was – paradoxically, considering the explicit aim of eliminating onward migration of asylum seekers in Europe – the Dublin Regulation itself

that had caused them to continue a life of onward migration. People who are usually categorised as ‘absconded’ by the authorities may regard themselves as fleeing from the implementation of Dublin procedures. Their reasons for onward migration within Europe were, in the cases we came in touch with, linked to the issues of (a perceived lack of) uniform criteria, a uniform model of residence permit, and uniform conditions for asylum seekers. In the following section, we take a closer look at some parts of the interview material that especially highlight the issue of uniform conditions, as outlined in the analytical framework for this report.

### Uniform conditions?

As described in chapter 3 of this report, the EU directive laying down the standards of reception conditions for asylum seekers in the countries taking part in the Dublin Agreement states that it is “crucial that individuals, regardless of the Member State in which their application for international protection is made, are offered an equivalent level of treatment as regards reception conditions” (Directive (EU) No 33/2013). Indeed, as we have seen, this is one of the main instruments for limiting secondary migration: “The harmonisation of conditions for the reception of applicants should help to limit the secondary movements of applicants influenced by the variety of conditions for their reception” (ibid).

In the narratives cited above, we have already seen some of the migrants’ descriptions and perceptions of conditions for asylum seekers and migrants in first countries of arrival: Behtan’s on Spain and Haile’s on Italy. Haile had more to say about the conditions in Italy:

In Italy, a refugee has no right to get help. Many people have to live in tunnels and on the streets because of the Dublin agreement. Many people have been returned to Italy, and many of them are cold and have nothing to eat. The situation is very bad. In Rome there are two large buildings where people who have been sent back, live – about 2,000 persons in all. Most of the young people there end up using alcohol or drugs. I am scared of ending up like them.

Among several more authoritative reports of the conditions for asylum seekers and refugees in Italy mirroring Haile’s description we may find the following

“As reported by the UNHCR, in several Italian cities (Rome, Milan, Turin, Florence, Bare, Naples and Palermo) groups of Somali, Eritrean, Afghan and homeless refugees circulate ‘deprived of the dignity that the right to asylum should return them’. They find precarious refuge in abandoned buildings, squats without basic facilities. They are seen by local communities as a source of illegality, urban decay and a risk to the safety of residents. They do not have the means to provide for their own housing needs nor can they access reception centres or public housing facilities. Local authorities deny them residence, and therefore access to basic services, such as the ability to obtain an identity document, register with employment services, or access the National Health Service” (Ambrosini, 2014: 242). We therefore find little reason to doubt Haile’s and other migrants’ descriptions here; however, it is important to note here that while, as Eritrean Eyob told us, “thousands of Eritreans live in the railway station, they have no house and no food” this applies perhaps primarily to people who have been through the asylum process and no longer are asylum seekers.

The hitherto lack of a uniform status of asylum and subsidiary protection for nationals of third-countries, valid in all Member States, in spite of this being one of the aims of the Treaty of Lisbon (2007, article 78, see chapter 3 in this report), complicates the matter further. Significantly, Eyob continued his statement as follows: “If you get asylum in Italy they throw you out on the streets, and you have no future”. This also highlights the challenges involved in comparing conditions in different European countries. While existing conditions for asylum seekers, strictly defined, may at least to some extent reflect the “uniform conditions” or “equivalent level of treatment as regards reception conditions” (Directive (EU) No 33/2013) the conditions for persons who have received some form of residence permit clearly do not. Because Italy relatively quickly processes, recognises and grants different forms of residence permits to a large proportion and large numbers of asylum seekers, this means the problem of inadequate social and material conditions for persons already granted refugee or similar status, rather than for asylum seekers, may be a major cause of onward migration from Italy.

Interviewees who had passed through other first countries than Italy tended to emphasise the immediate reception conditions for asylum seekers,

strictly defined. We cite from some of these narrations below, under the heading “Fingerprints”, where migrants describe the conditions under which their fingerprints were taken or not taken. These other countries included Hungary and Malta – poorer countries on the margins of Europe – as well as France and Germany – wealthier countries in the heartlands of the European Union. The general message from these migrants was that while Germany extends help and offers possibilities to those who settle there, France does so to a smaller degree, while Hungary and Malta were not considered viable options. In addition to the inadequate material conditions in both these countries, Hungary was described to us as a country lacking in human rights for migrants. This view is mirrored in the statement from German public servants that single men who apply for asylum in Hungary are jailed for six months under bad conditions (see chapter 5), as well as the decision made by the administrative court in Berlin 19 January 2015 (Verwaltungsgericht Berlin 2015) and in numerous reports on the democratic crisis in Hungary (e.g. ECRI, 2015; Szikra, 2014)).

## Uniform criteria?

Our focus on the existence or lack of uniform criteria in this chapter focuses especially on the information available to our interviewees about the Dublin Regulation and on the consequences for them if different countries apply the criteria in different ways. Our interviewees were at different stages in their case processes: some had just arrived in Europe, others had been through the whole asylum process. This necessarily informed what they had to tell us.

### INFORMATION ABOUT DUBLIN

Information about the Dublin Regulation is available to the public through many channels. We asked our interviewees if, when, and how they had heard about it. A 19 year old boy from Syria, Raem, told us:

The first time I heard about it was at school, in 9th grade. We learned about the Dublin agreement in the European countries. We did not learn any details, but generally. I did not think it had anything to do with my life.

Raem had landed in Malta, but had no fingerprints or visas to show that he had been there. However, other documents might have indicated that he had been in Malta, and Raem did in fact have a Dublin code in his papers. When we asked him whether he had been informed about the Dublin Regulation in Norway, he first rejected the question as irrelevant: the Dublin Regulation still had nothing to do with his life. However, when asked in more detail about the information he had been given, the Dublin Regulation was part of what he perceived to be general information. This illustrates a common challenge for authorities and organisations responsible for providing asylum seekers with information: finding ways to communicate information as relevant to the receiver. Raem later in the interview expressed that he was kept in the dark about his own case, and was not susceptible to what he saw as general information.

Several moments, spaces, and sources form the larger picture of migrants' knowledge about the Dublin Regulation. For some, as in Raem's case, the information process had already started before one had considered leaving the country of origin. Some migrants had also contributed to others' knowledge in the country of origin, after having come to Europe and learned about the system. For instance, Sahra, from Somalia, told us:

I have contact with my people back home. They know about it now. More than I did. I came to Italy and I told them how difficult life was there and that I could not move on. And they tell other people in Somalia.

As is fairly well known and only to be expected, migrants share information about problems and possibilities in potential countries of immigration or refuge. In what Papadopoulos and Tsianos (2013) call the 'mobile commons', such information is crucial for navigating across borders and, ultimately, for survival.

Four of our interviewees referred to other migrants as their main, or one of their main, sources of information about the Dublin Regulation. These were people who had been on their way for a long time, or who had already been in Europe prior to seeking asylum. Hami, a man from Sudan who had previously spent some time in France, told us:

This information is shared among immigrants and asylum seekers in Europe. The main thing I heard is that fingerprints in one country mean that you have to stay in that country. Some countries do not take care of asylum seekers, or it is difficult to be granted asylum there. Those countries have a bad reputation and so one tries not to have one's fingerprint taken there.

Eyob, a boy of 19 who was an Eritrean citizen, said:

Well, I hadn't heard any of the rules before I came here. But we talked amongst ourselves in France when we were waiting to cross the border into the UK. And others told me that it would be difficult for me to get a permit there because I had a permit in Italy. But I wanted to try. Because I had nowhere to live.

As Eyob shows us, receiving advice from other migrants is not the same as knowing the regulations, just as receiving advice is not the same as following it.

Syrian Masoud, was his early twenties and had lived for some time in Egypt where he continued his education after having left Syria. He explained:

I heard some things in Egypt. That you must not give your fingerprints. But I did not hear any more details. When I came here [to Germany], I met many who had problems with Dublin and with fingerprints. I heard about this from other people and also on the Internet. Through Facebook. We have a page there where we share information. There are many pages like this, groups. The one I know is for Syrians, in Arabic. This information is stuff that actually happened to people, who share it with others. Things that have happened. The information is about persons and their stories. What I see there is real, I see my own friends there. I trust them more than I trust the authorities of any country.

As this quote shows, information is shared along the way, in countries of transit among people who want to find their ways elsewhere. For Masoud, who had higher education and easy access to the Internet, it was possible to supplement such rudimentary and erratic information with more of the same, until a more complete picture provided the basis for inferring some of the rules of play. To him, it seems that the nature of these rules had more in common with rules of nature than with rules of law – he wanted to know what was 'really' behind the practices of immigration authorities. This reality appeared

to be closer to the experiences of his friends than to the, to him fairly easily accessible, words of law, so that 'knowing the rules' was insufficient at best and could even be misleading. We also see that gaining this knowledge was a gradual process. This applies to all the migrants we spoke to: none of them could pinpoint a moment when they 'knew' the regulations. Rather, they would gradually put together little bits of information, which they assessed and reassessed in the light of newer or more reliable information.

The gradual nature of acquiring information is confirmed in the following, which Sahra from Somalia shared with us:

When you travel you hear a lot of things, when you travel through several countries. When you enter the boat, they say that in Italy, there is no life. When you are in the boat, you hear that many are sleeping in the streets. Better to travel on, to Sweden or Norway. Nobody knew that these things were called something about Dublin. (...) When I came here [to Norway] I got an information sheet with all the information about Dublin. I got that the other day when I had just arrived here. In Somali. And I understood that I am regarded as 'Italian' and I will be deported to Italy. Those who have a refugee status in one country will be sent there. I did not know that. But I do have a permit in Italy.

The majority of the migrants we spoke to described the immigrant authorities of the country they were currently in as their main source of information about the Dublin Regulation, either through direct contact with public servants or through the information programme conducted by NOAS on the behalf of Norwegian authorities. Partly, this was simply because, as another young man from Syria, Awwab said, they had not talked much with other migrants:

Most people have not been to Europe before and have no information about such agreements. In my case at least, I did not meet many people I could talk to about this before I came here.

Partly it may also be because information and stories swapped along the way were not perceived as information about the Dublin Regulation. Patchy and pragmatic, with no mention of intergovernmental agreements, it is indeed arguable to what extent it *was* information about the Dublin Regulation. For migrants, knowing about the practices of immigration authorities may be



more important than understanding the particular formalities behind each one of them.

Only one of the migrants specifically told us that his lawyer had explained the Dublin Regulation to him. This was a young Syrian man who had applied for asylum in Germany but had been registered with a fingerprint in Italy. Others, especially those we met in Germany, described processes where lawyers had advised them to stay in Germany, and how to do that, beyond Germany's six months' deadline for returning them to the first European country. However, this did not mean that the lawyers had shared detailed knowledge about the Dublin Regulation with their clients, or that they had understood this as the lawyer's task.

None of the migrants reported having received the information brochure issued by the European Commission. Since the public servants we met in Norway and Germany had not yet handed out these brochures, this came as no surprise to us, but it also means that we have no data on how the brochures, originally intended to be in use since January 2015, are received, understood, and used by migrants.

A combination of information from the immigration police and NGOs is prevalent as a main information source in the interviews. Both the Federal Office for Migration and Refugees and local Immigration Offices were cited as sources of information specifically about the Dublin Regulation. Behtan, for example, said:

I heard about the Dublin Agreement for the first time here in Hamburg.  
Some people who work at the Bundesamt told me about it.

In Norway, several of the migrants we spoke to had first heard about Dublin from the Norwegian police at their initial interview when they had applied for asylum, like Sahra:

Just after I arrived, the police told me I belong to the Dublin cases.  
Since I have a fingerprint in Italy.

Itimad, a young, university educated and married woman from Sudan, explained:

At the first reception centre, we were given some documents with information about the Dublin agreement. The police had mentioned it too, but without going into details.

Again, we see that information is transmitted and received gradually and partially before it comes together to form a (more or less) coherent picture to the individual migrant. Anbessa from Eritrea, a young man who had just completed upper secondary school, said:

When I had applied for asylum here they explained what Dublin means. It is an agreement between 32 European countries, and if an asylum seeker seeks asylum or gets fingerprinted in one country, he has no possibility to seek asylum in another country. They told me all this when I came to the first reception centre, not before that.

As described in chapter 5, in Norway, the NGO Norwegian Association for Asylum Seekers or NOAS, is responsible for informing all asylum seekers about the procedures of asylum, including the Dublin Regulation. This is a task they have been commissioned to do by the Directorate of Immigration for the past 10 years (Viblemo, 2014). At the time of our data collection, all asylum seekers in Norway initially spent a few days in one reception centre, called Refstad, in Oslo, where NOAS had an office. During this stay, they went through a compulsory health check and were called to a meeting with NOAS where they were given information about the asylum process in writing, through a film, and through being able to speak to NOAS' representatives. All the migrants we spoke to confirmed that they had met NOAS at Refstad and that the meaning of their Dublin codes, already issued by the police in most cases, were explained to them there.

In addition to these sources, a few of our interviewees mentioned that they actively searched the internet for reliable sources of information relevant to their cases. For instance, Rashad, the man from Syria whose Dublin request was to Hungary, had found reports and court cases to support his viewpoint of Hungary as an unsafe country. This search strategy is not available to many migrants, as it is demanding and requires a high level of skill as well as unrestrained internet access. Rashad had also found the following information in this way:

It says in one of the articles in the Dublin Regulation that if an asylum application is not properly processed in one country, one has the right to seek asylum in another place. But this possibility is not used very often.

For him, this was highly relevant information which he had found on his own, without the aid of responsible authorities or lawyers.

Not all the migrants felt that the information they got about the Dublin Regulation was relevant to them. In fact, a main point of frustration was the perceived lack of possibilities to give feedback to the authorities on the Dublin decision. This especially applies to the people who had more complex stories. As we have seen, Ibsituu, the young woman who had been incarcerated upon her return to Ethiopia, and Rashad, the Syrian with a Hungarian family, were both extremely worried that the decision to return them to the first European countries was wrong and would put them in danger. However, neither of them had received adequate information about any real opportunity to challenge the decision through the legal apparatus. Ibsituu was simply waiting and hoping for the best, while Rashad had tried to convey his point of view to everyone – his lawyer, the staff at the reception centre (which was located hours away from the offices of the authorities, NOAS, and his lawyer), NOAS, and finally us, in the hope that somehow, the information would reach the right person and change the course of his destiny.

## FINGERPRINTS

Upon our direct question, none of the migrants confirmed they knew what Eurodac was. The name of the European fingerprint database does not appear to be widely known; however, the fact that fingerprints are somehow important is widely known. This does not necessarily mean each migrant knows how the fingerprints are used, stored, and shared, or what the implications are – or may be – of giving one's fingerprints.

Many of the migrants told us about the conditions in which their fingerprints had been taken. Some had given them at embassies in order to obtain a visa, but most had their fingerprints taken either upon arrival in Europe or when they first applied for asylum. Wafa, a young teacher from Syria, wept when she shared with us her experiences with the Italian police:

They beat me, me and my three year old daughter. I was pregnant and I started bleeding. They threatened my daughter. They told me, through an interpreter, that giving the fingerprint had no implication for any future asylum case. Afterwards I have discovered that this information was wrong. After I came to Norway, I found out that there are copies of my fingerprints in my file.

This traumatising experience stands out in contrast to what Hami described. His Dublin request was to France where he had a valid visa, and not to Italy, where he had first landed in Europe:

The Italian police told me I could choose between giving my fingerprints there and travelling on. It was like this: I came there with a refugee boat and the police asked us if we wanted a meeting with them or if we just wanted to go somewhere else. We were 329 people who came on that boat, and all of us were given the choice.

Haile, on the other hand, had similar experiences to Wafa:

The Italian police used force. They held us locked up and refused to let us go before we had given our fingerprints. We refused for about ten days before we gave up because we were so tired and desperate.

This is very similar to what Abdu told us when we interviewed him in Germany:

When we arrived on the shore in Italy we were a large group, mostly Syrians. They did not give us food or water and they locked us up. And although we Syrians are not comfortable with men and women in the same room, here they put us all so we had to sit in the same room. There were pregnant women who were not given food or water. They forced people. They said: "Give us fingerprints, and you can go. No water, no food before fingerprints are given." I wanted to go to Germany, but I was forced to give my fingerprints in Italy. Everybody was telling each other, do not give your fingerprints, but one did not know why. Everybody just tells this to each other.

Young Eyob from Eritrea had spent some time in France, trying to get to the UK from Calais. He had not been fingerprinted by the French police because he was still a minor when he was there:

We told the police that we were sixteen years old. It wasn't actually true, but just to be on the safe side. The idea was that when the police came on their rounds to take fingerprints, tell them you are well under eighteen because if you are under eighteen they don't take your fingerprints. It doesn't mean that they treat you well, but they leave you alone with your fingerprints.

We also talked to Sahra, the Somali woman who had lived for a time in Italy, about her experiences with fingerprints:

Sahra: We were picked up from a boat that had set out from Libya, and in Italy the authorities came and took us in. We were taken on land, and then everyone began to give their fingerprints. I did not know why they did it.

Marie Louise: Did anyone protest?

Sahra: No.

Marie Louise: Do you know now what they do with the fingerprints?

Sahra: No, I don't.

Marie Louise: You told me that the Norwegian police found your fingerprints.

Sahra: Yes, that's what they said to me.

Marie Louise explains about Eurodac, where all the fingerprints are saved and shared with other Member States.

Sahra: Oh. Is it not possible to get one's fingerprints removed from that system?

Only a few migrants had experienced that they could choose, while more than half of the interviewees had experienced the fingerprinting as forced. As we have seen, not all migrants have been pre-warned not to give their fingerprints, nor do they necessarily understand the connection between fingerprints given in one country and found in another. The experiences with being fingerprinted in the first countries cover the whole range of will and force, from being able to choose freely whether to be fingerprinted or not to physical violence, direct verbal threats, and the withdrawal of food, water and immediate healthcare.

## HEALTH AND VULNERABILITY

Vulnerability is not defined in the Dublin Regulation: here, the only mention of the term is in connection with “unaccompanied minor asylum seekers”. However, as described in chapter 3 of this report, the recast *Reception Conditions Directive* (Directive (EU) No 33/2013) specifies Member States’ obligation to identify particular needs for vulnerable persons. Vulnerable groups in the context of asylum seekers in Europe are defined elsewhere as:

Persons in a vulnerable position, such as ‘Minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence. Note: Directive 2011/36/EU defines a position of vulnerability as a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.’<sup>2</sup>.

Two of our interviewees were pregnant, two of our interviewees had young children with them, four had left young children behind in their countries of origin, two identified as homosexual and had been the targets of state-encouraged violence, and several of our interviewees had been subject to serious cases of violence.

One of the pregnant women we spoke to was not able to eat the food served at the reception centre in Norway, and she was rapidly losing weight. The staff had appealed for her and her husband’s transfer to a centre where they could prepare their own food. As we spoke to the staff, it transpired that the transfer had just been granted and that the woman would be told about this the same day. This is the only incidence we picked up of any special considerations for especially vulnerable migrants in any of the three countries. Given that so many of our interviewees could be identified as vulnerable, this may indicate that the obligation to identify vulnerable persons and their special reception needs is only partially fulfilled. Although this is not a conclusion to be made based on such a small selection, it is supported by reports such as Brekke, Vevstad, and Sveaass (2010) and Kalkmann (2015).

<sup>2</sup> <http://www.asylumlawdatabase.eu/en/keywords/vulnerable-person>

One of the migrants we spoke to in Germany, Abdu, had been repeatedly traumatised through several incidents and periods of violence, exploitation, and war. He was brought to our attention by a close friend, who had been recruited to participate in our research. This friend, A'waan, was protective and clearly worried about Abdu, who broke down at several points during the interview. Together, with the additional help of an interpreter, they told us about Abdu's situation. Both Abdu and A'waan were young Syrian men; otherwise they had little in common. In order to reflect that his narrative was told only partly by himself, the "citation" below is written in the third person.

Abdu came from a poor family in Syria and had started working at a very early age. Like many others, he fled the war in Syria in 2012. He had an uncle and aunt in Libya and joined them there, taking a job in a cement factory. Work was hard, he did not mind. Life was hard; there were bombs, humiliations, and theft. He was robbed of everything. It was no better than Syria. His mental state began to deteriorate and he developed a chronic asthma. He decided to leave and found a place in a small boat. He survived. When they came to Italy, the police forced him to give his fingerprints (see previous section). He did not feel safe in Italy after this, and when they let him go, he immediately left for Germany where he applied for asylum. His responsibilities as the eldest son meant that he needed a job in order to help his parents and siblings who were still in Syria, and he wanted to live in Germany where there is work. After three months, German authorities told him he had to go to Italy and apply for asylum there. He protested, and so they have given him short periods of residence or extensions of the date of removal. Every time he has gone back to them and renewed it, but then they came for him in the night. Not uniformed, but police. They had his picture, asked for him, came to his room at four in the morning. Like the police in Syria. They held him down. They took him in and told him to sign a paper, but he did not sign. They said, we can sign it. So he destroyed the paper. He jumped out of the window. He wanted to die. They shouted. He was sent to the hospital. The people from the Immigration Office wanted to send him out anyway, but the police intervened and said that he needed to go to the hospital. The Immigration Office has special foreign security people who are worse than the police. Now he has no place to stay, and no food. He has one friend in Germany – A'waan – but in Italy, he would be all alone.

Abdu had brought with him to our interview a confirmation from a German doctor describing his poor health condition and asking that this was taken into account. This had not seemed to make any difference to the authorities when he had shown it to them. A'waan was trying to find out if Abdu could go into church asylum (*Kirchenasyl*, as discussed in chapter 5 above) to wait out the period until Germany had to let him stay.

According to our interviewees in NOAS, the Norwegian NGO, “it is not unimportant which country processes an asylum case. The most vulnerable are the hardest hit. It is no catastrophe to be sent to one of the tougher countries if you are healthy. For a vulnerable person, it is a big problem that you have no rights. In those cases, Dublin is terrible”.

## Onward migrants and the consequences of the Dublin Regulation

We asked the migrant interviewees to reflect on the general consequences of Dublin, and on what they would like us to emphasise in our report. In the following, we cite their replies to this question. Although they were widely different persons with very different backgrounds and migration experiences, none of the migrants we spoke to saw the Dublin Regulation as a solution to any of their own problems or to the problem of onward migration.

### DUBLIN AS AN ISSUE BETWEEN MEMBER STATES

The very first person we spoke to told us that he had studied law and was able to reflect on the Regulation as a legal instrument:

I would very much like you to focus on the fact that the Dublin agreement is not intended primarily look after the rights of asylum seekers, but rather provides a means for states to look after their own interests.

The same point although from a different perspective was phrased even more concisely by one of the public servants we spoke to in Sweden, also a person of law: “Dublin regulates the relations between states, not between person and state” (see chapter 5). This lucid statement provided a key insight that was included as part of our background analyses above.



Behtan, whom we met above, explained that also from a government point of view, the Dublin Regulation may have detrimental consequences. She told us it was not unusual for people who had obtained a residence permit in Italy to migrate to Germany for work, and said:

It is bad for the country, because in this way a lot of people are working illegally in Germany. [If you are the government,] what you want is for people to pay taxes and have insurance. The black economy in Germany is growing because of Dublin.

As long as there is no uniform status for refugees and persons with recognised subsidiary needs for international protection, legal residency and work are restricted to the national territory where their asylum claims have been positively processed (Granjon 2014). The combined effect of this fact and the Dublin Regulation is that working legally in a country other than the country of first entry is not possible. With unemployment rates ranging from 4.7% in Germany to 12.7% in Italy and youth unemployment rates showing a gap from 7.7% in Germany to 47.7% in Italy, onward migration from Italy to Germany should not come as a surprise (Eurostat, 2015e).

Although Dublin is primarily an instrument of intra-state regulation, it might not serve the Member States' best interests if Behtan was right and a growing number of migrants form part of the illegal labour market in states where their residence permits are not valid.

Unsurprisingly, however, most of the migrants we spoke to were more concerned with the consequences for migrants and spoke from their own points of view.

#### DUBLIN AND INTERNATIONAL PROTECTION

Several people were concerned Dublin jeopardised refugees' very right to protection:

Different people have different problems, and that means each case is different. If you do not hear the asylum claim, you will not know why you should not send this person back to the first country. Fingerprints are not good measurements of protection needs.

Being forcibly returned to Hungary is the same as being returned to Syria, because human rights are missing in all parts of society.

If a woman does not have a safe place to sleep, it is a terrible thing. The worst thing that could happen is to be violated. If those countries had safe dwellings and food, it would be different.

Dublin means you are forced to stay in a country which is just as bad for you as the one you came from.

If the point is to protect people, this is not a good way to do it.

An Eritrean who had already migrated between three European countries and was contemplating a fourth, summed up his own conclusion like this:

If you have no place to live in peace, you must find new places all the time.

For the recently arrived with the terrors they had fled from very fresh in mind, not being returned to the country of origin was paramount:

If you can promise every asylum case will be properly considered in the first country, this is the most important thing.

I was told they will take me to Germany. I can go to Germany, but I am so scared they will not stop at that. How do I know Germany will not send me back? I do not want to go back. I will be killed!

These concerns about the need for international protection vary in content, but all express a lack of confidence in the abilities of first countries of entry to protect migrants' human rights. This lack of confidence stands out in contrast to a central premise underpinning the Dublin Regulation, namely the principle of mutual trust between Member States, as outlined in chapter 3 above. As all evidence shows, it does undeniably make a difference for asylum seekers where they file their claim, in terms of criteria, status and conditions.

#### DUBLIN AND THE HUMAN COSTS OF WAITING TIME AND UNCERTAINTY

The added, passive waiting period, the added uncertainties and the combined toll these take on people who are already in a precarious situation were a concern for many:

When you are labelled as a Dubliner your case is delayed and you get very little information.

Dublin means cases take longer, because you have to wait for the other country to reply to the request. You cannot just go there, you must wait for months before you can even start to apply for asylum.

Waiting means that there are more conflicts between asylum seekers. People are mentally affected by the pointless waiting, they have nothing to do and take it out on others.

I think Dublin destroys people.

Dublin is terrible. It makes people sick and depressed. There was a man at the centre who wanted to burn himself up. He is young. He was in England for five years. And they wanted to send him back. Norway wanted to send him to England. He did not want to go to England, and so he went to Germany. Germany also wants to send him to England. He is not normal. He just sits in a corner and wants to burn himself up.

The Dublin Regulation is not intended to add extra waiting time to the asylum process, and as shown in Chapter 3 there are specific and quite strict criteria for how long the Dublin Process may take. Some public servants we spoke to told us that there was actually nothing to stop migrants returning to the first country on their own initiative and thus skipping the time allocated to first countries to processing requests. This was not information they were necessarily free to share with applicants. However, in our view, such individual initiative on the part of migrants could also be interpreted as absconding and a disruption to the Dublin process, potentially leaving the migrant in limbo.

When it comes to the descriptions of negative psychological effects of waiting time and uncertainty on asylum seekers, such effects are amply documented in the literature (e.g. Brekke, 2004; Lindencrona, Ekblad, & Hauff, 2008; Ryan, Benson, & Dooley, 2008; Sourander, 2003). In their recent book, DeBono and colleagues describe how migrants in Sweden experience the workings of CEAS and the Dublin Regulation, and write:

Many of the interviewees themselves described their mental health problems as depression. Some had had thoughts about – or had even attempted – to commit suicide. Kader portrays the complete desperation he felt after he received his third negative decision (from the Migration Court of Appeal) and became homeless – he had left the SMA's housing so that the deporting authorities would not be able to find him. He felt completely lost and overwhelmed, as though there was

no way out of his misery. Sweden did not allow him stay, going back to Afghanistan was too dangerous an option, and the Dublin Convention made it impossible for him to apply for asylum in other European countries. Kader recalls this desperation: ‘The only solution you have is to finish yourself. Yeah I tried lots of times [to kill myself] but fortunately [I failed]’. This desperation, because of which some interviewees had attempted to take their own lives, was also described by Kader as ‘burning’: ‘...most of the immigrants are coming because they want to live in paradise, but which kind of paradise is this which is burning you without fire yeah? You’re burning without fire in Sweden’. ((DeBono, Ronnqvist, & Magnusson, 2015b: 142)

Whether the added time and uncertainty involved in a Dublin process exacerbates levels of emotional distress is less researched, but in line with the findings of DeBono and colleagues, our interviews indicate this may be the case.

#### DUBLIN PERCEIVED AS UNFAIR

Many of the migrants highlighted that, to them, Dublin procedures appeared random and unpredictable:

Dublin is a bad idea. All the countries on the Mediterranean, the edge of Europe – Turkey, Libya, Italy, Morocco and Spain and so on are bad for refugees. Everyone who wants to come here needs to travel through these countries.

Some people are forced to leave their fingerprints and others are not. Many people who have been in transit elsewhere are still allowed to stay here.

Some people with a Dublin case travel onward to a new country and manage to get asylum there.

The Dublin agreement is not just, because almost all asylum seekers have to travel through several countries to get here.

I am an honest man. I do not hide anything. The likelihood of Norway taking my case on is diminished because of this. I could have thrown my passport away, but I didn’t, so my risk of being thrown out is higher.

They said they had found my fingerprints in Hungary, but then they said that I could stay here and now I have a residence permit in Germany for three years. I don’t know why they didn’t send me back

to Hungary. I have discussed it with other people and everyone agrees that there seems to be no logic to these decisions. It's like magic – I was just lucky!

Because nearly all asylum seekers in Sweden, Germany and Norway have in fact passed through one or more European countries on their way, but only a very few are singled out for possible return, and even fewer actually returned, the Dublin system emerges as unjust. This perception is strengthened when people who abscond and reappear with asylum claims in other European countries are known to have obtained protection. DeBono, Ronnqvist, & Magnusson (2015b) find a similar lack of logical coherence and transparency in the image of the Dublin system rendered through their interviews with migrants in Sweden:

When we met him, Tarek was rather incomprehensively trying to explain his navigation of the ‘European’ system. As an individual who had originally applied for asylum in Italy, he thought that, under the Dublin Convention, he should have been returned there from Sweden. However, Sweden was seeking to remove him out of the EU and back to his country of origin. He was unclear as to why he was moved to a detention centre when he had not yet served his sentence. And whenever he resisted or became aggressive, he ended up in isolation, and was sometimes moved to another remand centre. His story was that of a person who had been seeking asylum for years, whilst unsuccessfully navigating a system which was too legally and systemically complex for him to understand. More critically, perhaps, it was the story of a person whose punishment and detention, often for an ‘irregular stay’, seemed totally disproportionate to the offences committed. It was an individual story, but one which reflected a pattern amongst our interviewees of failing to grasp the system: a system which was often not transparent, and which was reliant on various relationships between countries which change over time, where, although the countries might use similar terminology, European law was applied in different ways by the Member States. (DeBono, Ronnqvist, & Magnusson, 2015b: 177).

#### DUBLIN VIOLATES HUMAN DIGNITY

The sense of being denied human agency and dignity, of being harassed, rendered suspect, and pushed about, was pervasive in the interviews. None of our interviewees expressed it as clearly and explicitly as these two:

I feel humiliated. They force you to give your fingerprints and decide where you must live your life. People should decide for themselves.

All European countries are not the same! People do not want to live in a place they do not like, where they have no family, where they have no possibilities. We did not come here to be supported, we came to be protected, to live our lives, to work and be part of society.

Put together, these excerpts of the migrants' narratives illustrate what the Dublin Regulation meant to them in terms of asylum decisions and onward movement within Europe. In summary, these migrants did not feel the Dublin Regulation works as a solution to their problems, nor indeed as the answer to any conceivably logical question – rather the contrary.

### Summary of the migrants' views of how the Dublin Regulation works

As the initial section presenting the trajectories of migrants' shows, the Dublin Regulation is only a small part of migrant's own experiences. To them, its significance lies in the ways in which it interacts with other elements and factors. In combination with these, they describe how it works as a largely unforeseen barrier or a setback in relation to their primary goals and aspirations. Those interviewees who had been through the whole asylum process and had obtained legal residency in a European country were very happy about just that. Yet they described the added uncertainty of being defined as a Dublin case as overcoming an unpredictable and illogical obstacle which had added to the difficulties they had to overcome and had taken its additional tolls on their health and well-being. Not least was their concern with the basis for the mutual trust between European countries, more specifically the premise that all Member States are able and willing to offer equivalent standards when it comes to refugee or subsidiary status, reception conditions, and criteria for processing claims for international protection and for applying the Dublin Regulation. Although Member States may adhere to the principle of mutual trust, this trust was clearly not shared by the migrants – nor by the representatives of NGOs that we also spoke to in all three countries. Importantly, while one state cannot issue a guarantee of non-refoulement on behalf of another, such a guarantee is implicit in the Dublin Regulation and the

necessary trust between Member States. The interviews with migrants, along with reviewed background information on the conditions in individual Member States, reveal weaknesses in the premise that all Member States are able and willing to offer equivalent standards in refugee or subsidiary status, reception conditions, and criteria for processing claims for international protection and for applying the Dublin Regulation.

#### UNIFORM CONDITIONS AND ASYLUM PROCESSES?

Defined in the Receptions Conditions Directive as an “equivalent level of treatment as regards reception conditions” (Directive (EU) No 33/2013), this is clearly a goal rather than a description of existing conditions on the ground in all Member States. The material and social conditions for asylum seekers evidently diverge widely across Member States. However, our interviewees were less concerned with the conditions for asylum seekers as such than with the means of survival in general. In other words, they were concerned not so much with the – highly relative – comfort of Northern European reception facilities as with the lack of access to any facilities at all in Southern and Eastern European countries, or with a risk of human rights violations directed at asylum seekers and migrants in these countries of first entry. Such violations may include the use of various forms of force in fingerprinting for Eurodac, a practice widely described in our material.

The assessment of equivalence in reception conditions across Europe is difficult because general social conditions vary widely among Member States and because of the lack of a uniform refugee and subsidiary status and residence permit across the EU. As no such standard exists, the social and legal rights of people who have been recognised as being in need of international protection varies, and a permit of residency in one country is limited to the territory of that one country. While residency may be granted, means of subsistence do not follow. This is especially a problem for people with refugee status in the Mediterranean countries, where an ongoing economic crisis, high rates of unemployment and a family based welfare regime mean that refugees have very limited access to welfare services and labour and housing markets.

About half of the migrants we interviewed stated that they feared desolation, homelessness and violence in the first country of entry (one case: Malta; two cases: Spain; five cases: Italy; one case: France). None of the migrants

we interviewed in Norway stated that they had any opportunity to explain these fears fully to case workers, while migrants in Germany reported they had this opportunity. As described in chapter 5, out of the three countries only Germany had a system where case workers who made Dublin decisions met the asylum seekers, which means that had we interviewed migrants in Sweden we would have been likely to find the same lack of communication here.

When it comes to the implementation of the criteria specified in the Dublin Regulation, our interviewees described variation not just between Member States but also within the two countries where they were interviewed. It was highly unclear to migrants what the criteria were for identifying and assessing Dublin cases. When it comes to Dublin procedures, including the obligation to inform migrants of the Dublin Regulation, we found wide variation. While most had some prior knowledge of the existence of a common European asylum system, there were significant variations among them as to how much and how reliable and specific information they had, and when they had gained this information. Most of our interviewees named the immigration authorities as their main sources of information. Although most of the interviewees had received relevant information, their different concerns and abilities evidently made it difficult to apply the information to their own cases. When information is not regarded as applicable, it is seldom fully received. At the same time, since the many specific criteria used in the procedure were not widely known, and case workers and judges were known to practice the criteria differently, this is a possible source of the general picture of Dublin outcomes as largely random.

None of our informants confirmed they had heard of Eurodac before we spoke to them, but all by the time we spoke to them had an idea about the central role of fingerprints in the European Asylum System. The specific role of fingerprints in their own cases was usually understood and resented. They described having been forced to give fingerprints, or having been wrongly informed that the fingerprints would not have any impact on their asylum procedures. From the point of view of migrants, understanding the criteria and procedures of the Dublin Regulation as a system is less relevant than identifying the possibilities and obstacles that this system poses to them. It is hard to generalise on the access to information needed in such an assessment. To a large extent, because of the complexity involved, access to the specific



information relevant to a specific case depends on help from agents specialised in asylum procedures, such as NGOs and lawyers.

#### DECISION MAKING

Their presence in Norway or Germany, only in a few cases their first countries of entry into Europe, clearly bears witness to the fact that the majority of our interviewees had migrated onward within Europe. How were the decisions to do so made? Who made the decisions? Where were the decisions made, and at which point of their itineraries? Our interview material shows the answers to these questions are as many as there are migrants – or more, since each decision is multifaceted and often emerges over a period of time.

More than half of the migrants we interviewed had made a decision about their final country of destination before leaving the country of origin. These decisions were based on different combinations of reasons. Finding themselves in peril and deciding to leave the country of origin was the first step in a series of decisions: “I have to leave”. The second step was the question: “How can I get out?” a question that is very closely linked to the next one, namely “Where can I go?” This is, of course, because finding a route out of a dangerous situation means finding ways to enter a safer place – through the help of friends or family or other contact persons, as well as obtaining the means to enter in the form of visas and regular transportation or in the form of a place on a smugglers’ route. In other words, what is possible considerably narrows down the options. Contrary to the connotations of “asylum shopping”, freedom of choice is very limited, as the very narrow range of possibilities considerably narrows down the options. The likelihood of reaching a country offering democracy and human rights, safety, peace, education and work was the top priority. Our interviews indicate that within what was seen as possible before departure, the presence in other countries of family, friends or an ethnic network was an important consideration, as was familiarity with the language and culture of the destination country.

Although the decision was made before departure, some of the interviewees had unwillingly changed their plans en route. The reasons for this included not being able to cross borders into the desired destination country (two cases: the UK), and fearing persecution or refoulement in the first country of entry (two cases: Germany; one case: Estonia).

## ONWARD MIGRATION

It is not unimportant for individual persons where their claim is processed. On the contrary, it makes a huge difference for asylum seekers where they file their claim – in terms of criteria, status and conditions. While the main thing is to be safe from human rights violations, even this most basic need is not equally met in all Member States. Other basic needs, such as the need for subsistence, are also met differently across Europe, as are less immediate but important concerns about education, employment, a feeling of acceptance, access to social networks, and housing in the longer term.

As a consequence of the Dublin Regulation and the CEAS many migrants – asylum seekers, recognised refugees and others with related residence permits – are confined to countries where they have little or no access to such essentials. It is therefore likely that refugees and persons with related reasons for seeking protection as recognised by such Member States increasingly and by necessity will form part of the illegal labour market in other Member States, where their residence permits are currently not valid.

Most asylum seekers in Sweden, Germany and Norway must have passed through one or more European countries on their way. Yet only a few are singled out for possible return, and even fewer actually returned. This outcome causes the Dublin system to appear fundamentally unjust to migrants. Seeking asylum is well known to be a situation of psychological and emotional stress and frustration. Our interviews indicate the added time and uncertainty involved in a Dublin process exacerbates levels of emotional distress.

Being identified as a Dublin case and caused to wait passively for a response from another country reinforced the migrants' sense of being denied human agency and dignity, of being harassed, rendered suspect, and pushed about.

In summary, the interviews show the migrants did not feel the Dublin Regulation works as a solution to their problems, nor indeed as the answer to any conceivable logical question – on the contrary, being defined as a 'Dublin case' adds to the uncertainty, passivity and waiting already characterising the situation of persons seeking international protection in Europe.



## 8 Conclusion and recommendations

At the beginning of this report, we raised the following questions:

1. What characterises the people who migrate onward within Europe, in terms of migration patterns, citizenship, gender and age?
2. How does the Dublin Regulation work in practice as seen from the points of view of immigration bureaucracies?
3. How does the Dublin Regulation work in practice as seen from the points of view of migrants, and what are the implications of the Dublin Regulation for their decisions to travel onward within Europe?

After describing our methods and approaches to the questions in chapter 2 and presenting the European border control and asylum systems as the main background for the Dublin Regulation in chapter 3, we addressed the first question extensively in chapter 4 where we presented, compared and discussed statistics on onward migration in Europe with particular reference to Norway, Sweden and Germany.

On the background of chapters 3 and 4, the second research question was addressed in depth in chapters 5 and 7, based on interviews with public servants, reviews of public documents, and interviews with migrants and NGOs representing migrants' interests in the three countries.

The third research question was addressed in chapters 6 and 7, based on the existing knowledge about this topic generated through previous studies as well as on our own interviews with migrants and NGOs, again referring to the presentations and discussions in the preceding chapters.

We analysed our qualitative material according to the analytical framework presented towards the end of chapter 3. The framework consisted of the following three issues:

- Uniform Dublin criteria and procedures: how the Dublin Regulation functions in practice today in relation to its intention
- Uniform asylum procedures and reception conditions: how the contemporary practices of the CEAS lay premises for how the Dublin Regulation functions today in relation to the intention
- Onward migration: what kind of role the Dublin Regulation plays in relation to onward migration

In this final chapter, we sum up our main findings and make some recommendations based on these findings. These recommendations are especially directed towards Norwegian authorities.

### What characterises the people who migrate onward after arrival in Europe?

EU/Schengen Member States' statistics provide no clear overview of who and how many people travel between Member States nor of who lives in their territory. On the contrary, our review and discussions of European statistics in chapter 4 reveals their limited ability to show key characteristics of people who migrate onward within Europe. Although there is an ongoing process to adapt European countries' various statistical categories and sources to each other, this work has only just begun. *Frontex and EASO* have begun to collect statistics, but these statistics are not yet publicly available. However, *Eurodac* statistics, based on the fingerprints taken of third-country nationals arriving in Europe do show some patterns of onward migration. Eurodac 2014 statistics show most asylum seekers who had previously lodged an application in another country went to Germany. It also shows most persons who have irregularly entered a Member State, and not applied for asylum, travel to Germany, Sweden and Austria. Moreover, Eurodac statistics show those Member States where most persons were found present after having applied for asylum in another Member State were in Germany, Switzerland and Norway. However, Eurodac statistics cannot be linked to *Eurostat Dublin statistics* as these statistics are based on diverging categories. Eurostat Dublin statistics have several weaknesses in the quality of the collected data. The statistics do not include the categories citizenship, sex and gender, and it is therefore not

possible to say anything about this based on these statistics. Moreover, some data are not included in the statistics and there is a time interval between the registrations of the stages in the procedure which means that it is not possible to follow the movements of individuals.

Despite these limitations, we found Eurostat Dublin statistics from 2008 to 2014 did show some patterns. Notably, EU-border countries receive the most incoming requests from other Member States, and are also the countries the asylum seekers travel onward from. The most attractive countries for asylum seekers have the most outgoing requests. However, there is also a circulation of requests among countries in North-West Europe, as is also confirmed by data we have received from Norway, Sweden and Germany showing these three countries send requests to each other, and mutually transfer asylum seekers with similar nationalities – mostly people originating in Eritrea and Syria. The patterns are similar between Norway and Sweden, while Germany sends more requests to neighbouring countries on the continent.

While Eurostat Dublin statistics do not show the nationality of those who are travelling, Norwegian, Swedish and German *national statistics* show most incoming and outgoing requests and transfers concern asylum seekers from Syria, Eritrea, Afghanistan, Somalia and Sudan. While neither Eurostat nor German statistics have Dublin statistics on age and gender, Norwegian and Swedish statistics do provide information on these characteristics. In 2014, most outgoing and incoming requests registered both in Norway and Sweden concerned males between 17 and 60 years old, with a wide peak around the age of 30. This means most of the registered Dublin cases of onward migration comprised men between the ages of 20-40. There was also a significant number of persons below the age of 18, but only a few above 60. A significant number of boys and some girls under the age of 18 as well as women are also among these onward migrants. There is also a circulation of transfers between the countries, although several reports confirm a low total number of Dublin transfers. This means for most onward migrants, the chances of having one's asylum claim processed in their second or third European country is high.

Reports from the European Parliament (Guild et al. 2014) and EASO (2014a) operate with a distinction between three categories of percentages. The three categories of percentages refer to: 1) outgoing Dublin requests/total asylum applicants; 2) accepted Dublin requests/total asylum applicants; 3)

effectuated Dublin transfers/total asylum applicants. When we apply the same distinction to Norway, Sweden and Germany in 2014, we find the following:

1) In Norway, the proportion outgoing requests out of the total number of first asylum applications was 30.3 per cent, while the corresponding number for Sweden was 14.3 per cent and for Germany 20.3 per cent. 2) While the proportion of the accepted outgoing requests of first asylum applications to Norway was 15 per cent, the corresponding number for Sweden was 10.8 per cent and for Germany 15.7 per cent. 3) The proportion of effectuated Dublin transfers out of the total number of first asylum applications to Norway in 2014 was 12.8 per cent, while the corresponding number for Sweden was 5.29 per cent and for Germany 2.8 per cent.

Moreover, we find differences between the three countries regarding the percentages of effectuated Dublin transfers measured in relation to outgoing requests accepted by other Member States in 2014. In Norway, the proportion of effectuated Dublin transfers of all accepted outgoing requests was 85.2 per cent. The corresponding number for Sweden was 49.2 per cent and for Germany 39.3 per cent.

These numbers are deceptively accurate and should only be interpreted as indicators, as the real proportion of Dublin transfers must be measured at an individual level and over more than one year. Numbers showing such real proportions are not available. The number of asylum applications registered one year will for various reasons not necessarily reflect the number of applications processed by the government in the same year. Although the transfers often occur in the calendar year after a request submission and acceptance, this number is quite stable over several years.

Taking into account all the reservations regarding what the statistics show, we conclude with Guild et al (2014) and EASO (2014) that these differences indicate differences between the countries regarding how the Dublin Regulation functions. Of the total numbers of asylum seekers, the numbers of Dublin transfers are low, and especially in Germany and Sweden. The number is higher in Norway. Regarding Norway, the relatively high ratio of effectuated Dublin transfers of accepted outgoing requests may indicate a priority to use the Dublin Regulation as a means to transfer asylum seekers to other Member States.

## How does the Dublin Regulation work in practice, as seen from the immigration bureaucracies?

In chapter 3, we revealed a broad consensus among scholars and policy makers about recognised weaknesses both in the foundation of the Dublin system, CEAS, and in the Dublin Regulation itself. Although the main purpose of the Dublin Regulation is to determine the Member State responsible for examining an application for international protection, other understandings also circulate, such as the prevention of “asylum seekers in orbit” and “asylum shopping” scenarios, and the function as a “burden sharing” mechanism between Member States. The reasons for these added understandings, or misunderstandings, of the purpose of the Dublin Regulation we found in the shortcomings of the Common European Asylum System (CEAS), which is the foundation of the Dublin Regulation. The main problems *for* the Dublin system lie in the CEAS, with Member States’ diverging asylum procedures, reception conditions and capacity to integrate refugees. The Dublin system is the only current framework for allocating responsibility for asylum claims in Europe and therefore also has consequences beyond the immediate purpose of the Regulation. The main weaknesses of the Dublin Regulation itself we found to be notably vast differences in how Member States apply the Regulation, low effective transfer rates, and continuing high rates of onward migration after the nearly two decades since the Dublin Convention first came into force. While Dublin III, effective since January 2014, introduced several reforms aimed at improving the Dublin system, the reforms have proved inadequate and major changes are needed both within the Dublin Regulation and in CEAS as a whole.

In our analysis of how government institutions in Norway, Sweden and Germany explained to us how they applied the Dublin Regulation, we examine the presented practices *within the framework of the Regulation*, the countries’ interpretations of premises defined and practised *outside the Regulation* and the *priority they give to the Dublin Regulation* as an instrument in the handling of onward migration.

*Within the framework of the Regulation*, all the public servants we spoke to in the three countries had positive experiences with administrative cooperation at the operative level.



When it comes to persons not registered in the first Member State of arrival, the Dublin system is only able to handle these cases to the extent that other Member States have the capacity to check asylum seekers' travel documents. While Norwegian authorities reported that they have this capacity, Swedish and German authorities almost exclusively use the Eurodac fingerprint database and VISA data files to identify Dublin cases.

Immigration bureaucracies in all three countries concentrated on technical questions related to the persons' itinerary within Europe, as the aim is not to start the asylum process before the responsible Member State is identified. In contrast to Norway and Sweden, however, German authorities gave persons in a Dublin process an extended possibility to express any special reasons for not being transferred to another Member State, through two separate Dublin interviews in addition to the initial registration interview.

All our public servant interviewees emphasised they applied the criteria in the prescribed hierarchical order to determine the Member State responsible for an application. In spite of public servants' own understanding of their application of criteria in the prescribed hierarchical order, a low-ranking criterion (application examined in the first Member State in which they arrived when entering the EU/Schengen territory) was the most frequently applied. Most likely, this is due to the relative ease of access to information that makes this criterion applicable, through the Eurodac fingerprint database. The information required to apply the higher ranked criteria has not been made similarly accessible through established instruments of cooperation.

While institutions in Norway, Sweden and Germany conducted interviews with asylum seekers and informed them about the Dublin process, they provided different information.

In all three countries, bureaucratic decisions in Dublin cases were very rarely amended by subsequent court decisions. While Norway has a separate tribunal for immigration cases, Dublin decisions in Sweden and Germany are treated within the general court system. Norway gives persons with a Dublin decision access to appeal procedures and provides a minimal lawyer assistance free of charge by lawyers appointed by the immigration authorities; in Sweden and Germany persons with a Dublin decision who wish to appeal must find, and pay for, any legal assistance themselves.

An obstacle to the functioning of the Dublin Regulation is that many persons with a Dublin decision abscond before the transfer. Norwegian, Swedish and German government institutions therefore make use of detention before Dublin transfers as a kind of internal border control.

When it comes to government institutions' interpretations of CEAS premises defined and practised *outside the Regulation* we found divergence between Norway, Sweden and Germany. In contrast to Norway and Sweden, the authorities in Berlin conducted internal control, as persons in a Dublin process were obliged to register at the Immigration Office every third or sixth month. The increasing numbers of asylum seekers coming to Sweden and Germany poses huge challenges in finding accommodation. Corresponding challenges in Norway are small, especially compared to Germany.

There were diverging views of how and whether Member States differences in asylum procedures and reception conditions should influence application of the Dublin Regulation. The point of departure for Norwegian institutions applying the Dublin Regulation was that the asylum procedures are equivalent in all Member States. In contrast, Swedish representatives argued Member States' asylum procedures were not yet equal, but that they were becoming increasingly equal. The authorities in Berlin based their policy on the premise all Member States respect the rule of law, which is not the same as equal procedures. These diverging interpretations indicate an imbalance in the Dublin system. Such imbalance is also reflected in the opinion expressed by one of the public servants we interviewed. He expressed that one had started out with enforcing the transfer of migrants to the first country with the preconditions as distant future goals, while the Dublin Regulation should only have been set in motion when all its preconditions were already in place.

All three countries transferred persons with a Dublin status to most Member States when we conducted our research. None of the three countries transferred persons to Greece, and they had changed their practice in relation to transferring families to Italy after the Tarakhel decision.

Diverging national jurisprudence within the three countries leads to different practices. In Berlin, single men with a Dublin status had not been transferred to Hungary since a decision in the administrative court in Berlin.

Norway and Sweden conducted transfers to Hungary with no special reservations. In all three countries, the practice was to transfer persons with a Dublin decision to all Member States, as long as there were no decisions to the contrary on the Member State concerned from national or European courts.

When it comes to the question of the *priority given to the Dublin Regulation* as a way to handle onward migration, we found diverging priorities in the three countries. Implementation of the Regulation had high priority in Norwegian government institutions, as reflected in the institutional resources used to implement the Regulation and in the relatively high numbers of Dublin transfers to other Member States. Swedish institutions were more ambiguous and used less resources than Norwegian institutions to implement the Dublin Regulation, measured in relation to the higher number of asylum seekers in Sweden. Government institutions in Berlin emphasised the Dublin Regulation was not a priority in their daily work. They were more concerned with the onward migration of people who already had a residence permit in another Member State, and lived and worked illegally in Germany. Although Berlin might not be representative of Germany as a whole, we nevertheless found this low priority reflected in the low numbers of Dublin transfers from Germany to other Member States. A precondition for using the Dublin Regulation to regulate onward migration of asylum seekers is that all Member States' government institutions give the regulation high priority. However, as the Dublin Regulation can only be applied to asylum seekers, not to recognised refugees or others with a residence permit in one Member State, nor to persons with negative asylum decisions or for other reasons lacking residence permits, it can only play a minor role in the larger context of challenges posed by the onward migration of other categories of third-country nationals.

## What are the implications of the Dublin Regulation for the migrants' decisions?

The literature review in chapter 6 gives insights into many aspects of *migrants' decisions* relative to onward migration and to the Dublin Regulation. This review indicates decisions to migrate onward within Europe are formed in a complex interplay between many agents and factors. They do not just depend on *the two main 'pillars' of equal asylum procedures and outcomes and equivalent*

*standards of reception and waiting conditions but also on a third 'pillar' of future possibilities.* For the individual migrant, it makes sense to ask: "If I make it through the waiting period and if I gain protection in this country – will I have the means to survive here? Will I be able to work, to find adequate housing, to fulfil my family obligations, to complete my education, to find friends, to belong: will I have a life? If not, where might I be better able to build myself a new life?" Such questions are answered not only on the individual, economic-rational level, but also in terms of social realities such as the possibility of reciprocal relationships with other people. Which country offers the best future opportunities will depend on individual, transnational and national factors such as the location of existing social networks, knowledge of and familiarity with different European languages and cultures, and which European country is likely to recognise their education and experience and to need their skills. *The discrepancies between the participating countries are large in all three 'pillars'.*

As shown in chapter 7, the Dublin Regulation is only a small part of *migrants' own experiences.* To them, its significance lies in the ways in which it interacts with other elements and factors. They describe how "Dublin" works as a largely unforeseen barrier to their plans and aspirations. Those interviewees who had been through the whole asylum process and had obtained legal residency in a European country were certainly relieved and grateful, yet they described having been defined as a Dublin case as adding to the many difficulties they had to overcome and as taking its additional tolls on their health and well-being.

Although policies and practices are built on the *principle of mutual trust between Member States,* this trust was clearly not shared by the migrants – nor by the representatives of NGOs we also spoke to in all three countries. Importantly, while one state cannot issue a guarantee of non-refoulement on behalf of another, such a guarantee is implicit in the Dublin Regulation and the necessary trust between Member States. The interviews with migrants, along with reviewed background information on the conditions in individual Member States, reveal weaknesses in the premise that all Member States are able and willing to offer equivalent standards in refugee or subsidiary status, reception conditions, and criteria for processing claims for international protection and for applying the Dublin Regulation.

The *material and social conditions for asylum seekers* evidently diverge widely across Member States. Nevertheless, our interviewees were less concerned with the conditions for asylum seekers as such than with their own means of survival. They expressed concern with the lack of access to basic facilities, as well as with human rights violations directed at asylum seekers and migrants in some countries of first entry. Over half of the people interviewed stated they feared desolation, homelessness and violence in the first country of entry. None of the migrants interviewed in Norway stated they had had any opportunity to explain these fears fully to case workers, while migrants in Germany reported that they had this opportunity.

The assessment of *equivalence in reception conditions* across Europe is difficult because general social conditions vary widely among Member States and because of the lack of a uniform refugee and subsidiary status and residence permit across the EU. As no such standard exists, the social and legal rights of people who have been recognised as being in need of international protection varies, and a permit of residency in one country is limited to the territory of that one country. While residency may be granted, means of subsistence do not follow. This is especially a problem for people with refugee status in the Mediterranean countries, where an ongoing economic crisis, high rates of unemployment and a family based welfare regime mean that refugees have very limited access to welfare services and labour and housing markets.

When it comes to *Dublin procedures*, including the obligation to inform migrants of the Dublin Regulation, we found wide differences. To all the interviewed migrants, the criteria for identifying and assessing Dublin cases were highly unclear, and the general picture gained from the migrants was that of Dublin outcomes as predominantly random.

Most interviewees named the immigration authorities as their main *sources of information* about the Dublin Regulation. Although most interviewees had received general information, their different concerns and abilities made it difficult for them to apply the information to their own cases. While most had some prior knowledge of the existence of a common European asylum system, there were significant variations among them as to how much and how reliable and specific information they had, and when they had gained this information. Understanding the criteria and procedures of the Dublin

Regulation as a system was less relevant to the migrants than identifying the specific possibilities and obstacles that this system posed to them. Access to information relevant to a specific case largely depends on agents specialised in asylum procedures.

None of our informants confirmed that they had heard of Eurodac before we spoke to them, but all had an idea about the central role of fingerprints in the European asylum system. The specific role of fingerprints in their own cases was resented. They described having been forced to give their fingerprints, or having been wrongly informed that the fingerprints would not have any impact on their asylum procedures.

More than half of the migrants we interviewed had made a *decision about their final country of destination* before leaving the country of origin. These decisions were based on a combination of reasons. Finding themselves in peril and deciding to leave the country of origin was the first step in a series of decisions. The second step was the question: “How can I get out?” which led to “Where can I go?” Finding a route, travelling and crossing closely controlled borders in most cases requires the help of others. Contrary to the connotations of “asylum shopping”, freedom of choice is very limited, as the very narrow range of possibilities considerably narrows down the options. The likelihood of reaching a country offering democracy and human rights, safety, peace, education and work was the top priority. Our interviews indicate that within what was seen as possible before departure, the presence in other countries of family, friends or an ethnic network was an important consideration, as was familiarity with the language and culture of the destination country. Some of the interviewees had unwillingly changed their plans en route. The reasons for this included not being able to cross borders into the desired destination country and fearing persecution or refoulement in the first country of entry.

As we have shown, it does make a difference for asylum seekers where they file their claim – in terms of criteria, status and conditions. While the main thing is to be safe, even this most basic need is not equally met in all Member States. Other basic needs, such as the need for subsistence, is also met differently across Europe, as are less immediate but important concerns about education, employment, acceptance, social networks, and housing. As a consequence of the Dublin Regulation and the CEAS, many migrants –

asylum seekers, recognised refugees and others with related residence permits – are confined to countries where they have little or no access to such essentials. It is therefore likely that refugees and persons with related reasons for seeking protection as recognised by such Member States increasingly and by necessity will form part of the illegal labour market in other Member States, where their residence permits are currently not valid.

Most asylum seekers in Norway, Sweden and Germany must have passed through one or more European countries on their way. Only few of these are categorised as Dublin cases, and even fewer are returned to their first country of entry. The Dublin system therefore appears fundamentally unfair to migrants. Seeking asylum is well known to be a situation of psychological and emotional stress and frustration. Our interviews with migrants indicate the added time and uncertainty involved in a Dublin process exacerbates levels of emotional distress. Being identified as a Dublin case and having to wait passively for a response from another country reinforced the migrants' sense of being denied human agency and dignity, of being harassed, rendered suspect, and pushed about.

In summary, the interviews show the migrants did not feel the Dublin Regulation works as a solution to their problems, nor indeed as the answer to any conceivable logical question.

## Questions and Answers

As we have seen, the Dublin Regulation aims to answer the question: "Which Member State is responsible for examining an application for international protection lodged in one Member State by a third-country national or a stateless person?" In doing so, it raises new questions. Emerging from our analysis, some of these questions are directly related to how the Dublin Regulation works, and to its explicit goals:

- *Has the Dublin Regulation led to closer and better cooperation between Member States in the field of asylum and refugees?* The answer to this question is "Yes".
- *Is the Dublin Regulation cost effective?* As it regulates cooperation between states, the focus and resources have been concentrated on this cooperation, as exemplified by large bureaucratic apparatuses on the

national and European levels and extremely costly instruments and investments. Statistics show a generally low rate of Dublin transfers, many of which take the form of circular and mutual transfers between countries. Although it is beyond the scope of this report to conduct economic analyses of the Dublin Regulation, and as far as we know such analyses do not exist, the economic cost per transfer is undoubtedly high for all Member States. Our answer to this question is therefore “No”.

- *Does the Dublin Regulation lead to lower rates of serial applications for protection in several Member States?* Although such serial applications are costly and time consuming for migrants and governments alike, there is also an important element of protection in this practice, given the divergence in the asylum procedures and refugee recognition rates among Member States. The Dublin Regulation, with its close cooperation between Member States, has made this practice more difficult for asylum seekers, but some asylum seekers still lodge their applications in several Member States. Available statistics indicate the answer to this question is “No”.

The Dublin Regulation also leads to questions related to often implicit expectations of what it should solve, in the absence of adequate solutions in other parts of European cooperation:

- *Does the Dublin Regulation lead to lower rates of onward migration of asylum seekers in Europe?* Although this is not an explicit aim of the Dublin Regulation, our review shows this is one of the expectations. Given the shortcomings in statistics, the question is difficult to answer with certainty. However, our material indicates the answer to this question is “No”.
- *Does the Dublin Regulation ensure fair and equal examination of claims for asylum?* Given the diverging rates of refugee recognition between Member States, the answer to this question must also be “No”.
- *Has the Dublin Regulation contributed to better “burden sharing” among Member States?* Although this is not an objective of the Dublin Regulation, the answer to this is “No”. Furthermore, the notion of “burden sharing” as emerging from the problems of the CEAS in dispersing asylum seekers and refugees within Europe contributes to a



negative public depiction of this population group, which is likely to hinder integration and acceptance. A system for sharing the rising numbers of asylum seekers in Europe among Member States is needed, and as we write, this work has begun. A sharing system should be based on a combination of Member States' economic capacity, population size, existing social networks including beyond the immediate nuclear family, and matching skills with labour market needs.

Our material shows the Dublin Regulation also leads to questions about conditions the Regulation does not aim to solve, neither explicitly nor implicitly. Nevertheless, these questions are crucial because they are an integrated part of the Common European Asylum System:

- *Does the Dublin Regulation ensure that persons seeking international protection have access to basic but adequate housing, food and health services while they are waiting for their claims to be examined?* The Dublin Regulation was not meant to ensure this. On the contrary, the Dublin Regulation presupposes that the three directives forming the Common European Asylum System (CEAS), regarding common standards for international protection, conditions for asylum seekers, and asylum procedures, are being met in all Member States. This is not the case. Again, the answer to this question is "No".
- *Does the Dublin Regulation facilitate efficient use of human resources and speedy integration of recognised refugees in Europe?* Given that refugee status in one Member State does not give the right to live and work in any other Member State, the mobility of refugees as part of the European labour force is obstructed, and the answer to this question is "No".

## Recommendations

As shown in our report and as widely reflected in other studies and in current EU activities, the Dublin Regulation is in dire need of revision. Our recommendations are especially directed towards the Norwegian authorities. Norway is a signatory to the Schengen agreement and the Dublin Regulation, and the country adapts to the directives in the CEAS. The Norwegian Directorate of Immigration has specifically requested our recommendations on the following:

1. How should Norwegian authorities handle the fact that many third-country nationals are not registered in their first country of arrival in Europe?
2. Is it possible to reduce the ratio of persons who claim asylum in more than one European country? If so, how?

1. HOW SHOULD NORWEGIAN AUTHORITIES HANDLE THE FACT THAT MANY THIRD-COUNTRY NATIONALS ARE NOT REGISTERED IN THEIR FIRST COUNTRY OF ARRIVAL IN EUROPE?

Our recommendations here necessarily depend on how the authorities' aim is defined.

*If the aim is to transfer asylum seekers to the first country of entry in Europe,* Norwegian authorities could make an even stronger effort to check travel documents and other sources of information and use these as evidence to prove the person has been in another Member State. However, this would demand even more resources than are currently spent on Dublin processing in Norway, it would have considerable human costs, and most likely be inefficient in economic terms. We would therefore not recommend this.

*If the aim is to increase the number of registrations,* Norwegian authorities could provide more support to EU agencies' establishment of so-called Hotspots for the European border countries' registration of asylum seekers. However, the establishment of such Hotspots and the implied forced registration of all third-country nationals who cross the borders into Europe in irregular ways involves yet new logistical challenges for the border countries, as well as complex human rights challenges. We would therefore only recommend this on condition the human rights challenges are adequately met before the establishment of such Hotspots. This would require thorough preparations.

*If the aim is to give persons in need of protection the possibility to lodge their applications,* Norway could refrain from requesting Dublin transfers and instead examine their applications. This complies with the Dublin Regulation and thus requires no revision. This would also make the considerable human and economic resources now spent on Dublin cases and on (the often mutual) transfer of asylum seekers between countries available for the direct assessments of asylum applications. We would recommend this as an immediate action.

## 2. IS IT POSSIBLE TO REDUCE THE RATIO OF PERSONS WHO CLAIM ASYLUM IN MORE THAN ONE EUROPEAN COUNTRY? IF SO, HOW?

The exact ratio of persons seeking asylum in more than one European country is not known; however, the low ratio of Dublin requests may indicate that such multiple applications are less common than is often assumed. Effectively reducing the ratio of persons who claim asylum in more than one European country is only possible under certain circumstances. Under the current Dublin Regulation, these circumstances are, in order of importance: equal asylum procedures resulting in equal recognition rates, equal future possibilities, and equal reception conditions for asylum seekers. The first and last of these are already defined as a foundation of the Regulation, but as goals rather than as preconditions. As we have shown, this does not work. The second circumstance, equal future possibilities, goes far beyond the CEAS, as it depends on the economies of Member States and on the characteristics of individual asylum seekers. The Norwegian Directorate of Immigration can do very little to influence any of these circumstances.

### OTHER RECOMMENDATIONS – RELATED TO NORWEGIAN IMMIGRATION BUREAUCRACY

With regard to the organisation and distribution of tasks and responsibilities within Norway, on the basis of our study we recommend.

*The role of the police in Dublin cases should be reconsidered.* If an asylum seeker is identified as a Dublin case in connection with the initial registration conducted by the police, his or her opportunity to communicate with the Directorate of Immigration is rigorously limited. In Sweden and Germany, our research shows this line of communication is more available to all asylum seekers, thus potentially providing an opportunity to defend the case for claiming asylum in these countries. Although the police today are required to ask for such information, this is done upon arrival in Norway, in a situation where large amounts of information are to be exchanged and the asylum seekers have little understanding of the procedures in Norway. Asylum seekers, having been identified as Dublin cases, should therefore be provided the opportunity to present their reasons to the Directorate of Immigration in a later, separate interview. This would facilitate case workers' access to information necessary to applying the higher ranked criteria in the Dublin Regulation.

*Independent and systematic information about conditions and developments in Member States as relevant to Dublin decisions should be available to the Directorate of Immigration and the Immigration Appeals Board.* Such information should be included in Landinfo's mandate. In order to ensure the transparency and independence of the decisions of these two institutions, the Immigration Appeals Board's sources of information should, however, not be limited to Landinfo but include reports from a wider range of national and international sources.

In order to ensure immigration appeals including Dublin appeals the same degree of objectivity and transparency as other court appeals, Norway should consider following Sweden's example and *replace the Immigration Appeals Board with a Migration Court placed within the general tribunal system.* Norwegian authorities should examine Sweden's experiences with this change.

#### OTHER RECOMMENDATIONS TO NORWEGIAN AUTHORITIES

Based on our analyses of how the Dublin Regulation worked in the months immediately preceding the summer of 2015 when the number of asylum seekers coming to Europe rose dramatically, and in light of the current critical situation, we would like to extend the following additional recommendations to Norwegian authorities.

*Immediately suspend the Dublin procedure* for asylum seekers from Syria, and thus take over the responsibility for processing their claims, also considering this measure for other nationality groups. Like Germany, Norway should seek solutions on the European level. The current challenges have been created on the European level, and separate national solutions are therefore not likely to succeed.

In the longer term, commit to a revision of the Dublin Regulation in which the Regulation is based on *mutual recognition of refugee status and related residence and work permits*, so that recognition, and not just rejection, is valid on a European level. Any revision of the Dublin Regulation should also include a mutually binding definition of vulnerability. The announced revision should build on the main achievement of the Dublin system to date, which consists of *well-established and functioning networks and instruments of cooperation among the immigration administrations of Member States.*

*Continuous research is needed* on the consequences of the immediate and long-term developments in EU's common asylum policy. The Dublin Regulation should not be seen in isolation but rather as an integrated part of a system in crisis. Special attention should be paid to what will happen to the future asylum system and to persons seeking international protection in this system, depending on the degree and nature of an agreement among all Member States on the distribution of asylum seekers in Europe.

We view the following research topics as especially urgent:

- The consequences of any European level agreement on the distribution of asylum seekers, or on the lack thereof.
- The consequences of a revised Dublin Regulation for Member States and for migrants.
- Changes in border control policies and practices at the inner and outer Schengen borders.
- How civil society and governments act, legitimate their actions, and adapt to one another, especially considering the identification of possible synergy effects and areas of tension.
- Research should also focus on refugee related changes internally in the Member States' educational systems, labour and housing markets and other important societal fields, and examine the possibilities for a harmonisation of integration instruments on a European level.

# Sammendrag

I dette prosjektet har vi undersøkt Dublinforordningens betydning for såkalt sekundærmigrasjon eller videre migrasjon i Europa, der asylsøkere reiser videre i EU/Schengen-området fra det første europeiske landet de kommer til. Utlendingsdirektoratet har vært vår oppdragsgiver. Datamaterialet ble samlet inn i Norge, Sverige og Tyskland i perioden fra februar til april 2015. Tidsrommet for datainnsamlingen har stor betydning for våre funn, på grunn av de raske og dramatiske endringene på dette området. Analysene og anbefalingene våre er basert på dette datamaterialet og dette tidsrommet, samtidig som vi beskriver et system som har store innebygde svakheter og er på vei inn i en krise. Denne krisen ligger latent i det systemet vi beskriver, og har utfoldet seg mens vi har skrevet rapporten. Vår ambisjon er dermed at denne rapporten kan inngå i det nødvendige kunnskapsgrunnlaget for revisjonen av Dublinforordningen som EU-kommisjonen har annonsert vil komme i mars 2016.

Hensikten med Dublinforordningen er å bestemme hvilket medlemsland som har ansvar for å behandle en søknad fra en tredjelandsborger eller statsløs person om internasjonal beskyttelse. Hvordan Dublinforordningen anvendes i praksis, avgjør langt på vei hvor hver enkelt asylsøker kommer til å bo i fremtiden. Innvilget flyktningstatus i ett medlemsland gir nemlig ikke rett til å leve eller arbeide som flyktning i andre medlemsland, mens ett enkelt medlemslands avslag på asyl derimot gjelder som avslag på søknaden i alle medlemsland.

*Dublinforordningen* er en integrert del av det felles europeiske asylsystemet. Målet med asylsystemet er å harmonisere den interne lovgivningen slik at det blir en felles standard for asylsøkere i alle EUs medlemsland. *Det felles europeiske asylsystemet* består av tre direktiver, henholdsvis statusdirektivet (om hva som kvalifiserer for flyktningstatus og hva slik status innebærer), mottaksdirektivet (om mottaksforhold for asylsøkere) og prosedyredirektivet (om asylprosedyrer). I tillegg består asylsystemet av to forordninger: Dublinforordningen og *Eurodac-forordningen*, som omfatter bruken av fingeravtrykk for personer over 14 år som ikke er europeiske borgere. Dublinforordningen og Eurodac-forordningen utgjør til sammen *Dublinsystemet*.

EU/Schengen-medlemsstater har ulike former for medlemskap på asyl- og migrasjonsfeltet. Det felles europeiske asylsystemet omfatter EUs medlemsland. Norge, Island, Sveits og Liechtenstein er ikke formelt med i det overordnede, felles europeiske asylsystemet, men deltar i Dublinsystemet og inngår også i *Schengen-samarbeidet* om en felles europeisk yttergrense og bortfall av grensekontroll innenfor yttergrensen. Schengen-samarbeidet omfatter for øvrig EUs medlemsland, med unntak av Storbritannia, Irland, Romania, Bulgaria, Kypros og Kroatia. I denne rapporten bruker vi begrepet medlemsland om landene som tar del i Dublinsystemet: de 28 EU-medlemsstatene samt Norge, Sveits, Island og Liechtenstein.

Forskningsprosjektet har hatt som formål å identifisere de viktigste konsekvensene av Dublinforordningen, både fra medlemslandenes og migrantenes perspektiv. I rapporten belyser vi følgende tre forskningsspørsmål:

- 1 Hva kjennetegner personene som reiser videre etter at de har kommet til Europa, med hensyn til reiseruter, statsborgerskap, kjønn og alder?
- 2 Hvordan fungerer Dublinforordningen i praksis, sett fra utlendingsforvaltningenes ståsted?
- 3 Hvordan fungerer Dublinforordningen i praksis, sett fra migrantenes ståsted, og hvilken betydning har Dublinforordningen for migranters beslutninger om å reise videre i Europa?

1. HVA KJENNETEGNER MIGRANTENE SOM REISER VIDERE ETTER AT DE HAR KOMMET TIL EUROPA, MED HENSYN TIL REISERUTER, STATSBOGERSKAP, KJØNN OG ALDER?

Europeisk statistikk på migrasjonsfeltet er forholdsvis ny, og gir begrenset oversikt over de viktigste kjennetegnene og reisemønstrene til personer som reiser videre innad i Europa. Vi har undersøkt statistikk som er knyttet til håndtering av Dublinforordningen, og den er bare delvis oppdatert til og med 2014. EUs grensekontrollorganer Frontex og EASO har nylig begynt å samle inn statistikk om personer som reiser videre innad i Europa, men disse statistikkene er foreløpig ikke tilgjengelig for offentligheten.

Det er to hovedkilder til denne statistikken på europeisk nivå, Eurodac-statistikk og Eurostat-statistikk. Fordi disse statistikkene bygger på forskjellige kategorier, kan ikke Eurodac-statistikk kobles med Eurostats statistikk over *anmodninger om å ta tilbake / ansvar for asylsøkere* mellom medlemsland, om

overføring av asylsøkere og innvilgelser og *gjennomføringer* av slike overføringer.

Det er lav kvalitet på Eurostats dublinstatistikk i den forstand at mange data ikke er inkludert i statistikkene. Statistikken inneholder ikke kategoriene statsborgerskap, kjønn og alder, og det er dermed ikke mulig å si noe om disse kjennetegnene ut fra denne statistikken. Det er også et tidsspenn mellom registreringene i de ulike fasene i prosedyrene. Dette innebærer at det ikke er mulig å følge enkeltpersoners bevegelser. Anmodninger ett år vil ofte føre til overføringer som registreres først året etter.

### *Europeisk statistikk*

De fleste av dem som reiste irregulært inn i et medlemsland og senere søkte om asyl i et annet medlemsland, reiste til Tyskland og Sverige. Tyskland, Sveits og Norge var de medlemslandene hvor man fant flest personer som oppholdt seg irregulært, etter at de hadde søkt om asyl i et annet medlemsland.

Eurostats dublinstatistikk fra 2008 til 2014 viser at land som utgjør EUs yttergrense hadde flest innkommende anmodninger fra andre medlemsland. I 2014 sendte Tyskland, Sveits og Sverige flest utgående anmodninger til andre medlemsland. Det var også en sirkulering av anmodninger mellom land i Nordvest-Europa.

### *Nasjonal statistikk*

Norsk, svensk og tysk nasjonal statistikk fra 2014 viser at antall gjennomførte Dublinoverføringer, der asylsøkere sendes fra ett medlemsland til et annet etter dublinvedtak, er generelt lavt i de tre landene. De tre landene sendte anmodninger til hverandre og overførte asylsøkere med samme nasjonale bakgrunn – flest fra Eritrea og Syria. Mønstrene var like i Norge og Sverige, mens Tyskland i tillegg sendte flere anmodninger til naboland på kontinentet. De fleste innkomne og utgående anmodningene og overføringene var asylsøkere fra Syria, Eritrea, Afghanistan, Somalia og Sudan.

Mens verken Eurostats eller Tysklands dublinstatistikker omfatter alder og kjønn, gir norsk og svensk statistikk informasjon om dette. Menn mellom 20 og 40 år utgjorde den største gruppen personer som var registrert med dublinstatus og som reiste videre til Norge og Sverige. Det var også et betydelig



antall personer under 18 år og kvinner blant dem som reiste videre, mens det var få over 60 år.

Rapporter fra Europaparlamentet (Guild et al. 2014) og EASO (2014a) skiller mellom tre former for prosentutregninger: 1) utgående dublinanmodninger som andel av det totale antall asylsøknader; 2) aksepterte dublinanmodninger som andel av det totale antall asylsøknader og 3) gjennomførte dublinoverføringer som andel av det totale antall asylsøknader. Når vi bruker tilsvarende skille for norske, svenske og tyske tall fra 2014, finner vi følgende:

1) I Norge var andelen utgående dublinanmodninger av det totale antallet asylsøknader 30 prosent. Tilsvarende tall for Sverige var 14 prosent og for Tyskland var det 20 prosent. 2) Andelen aksepterte dublinanmodninger som andel av det totale antall asylsøknader i Norge var 15 prosent, mens tilsvarende tall for Sverige var 11 prosent og for Tyskland 16 prosent. 3) Andelen gjennomførte dublinoverføringer av det totale antall asylsøknader var 13 prosent i Norge, mens andelen var 5 prosent i Sverige og 3 prosent i Tyskland.

Når vi i tillegg ser på prosentandelen av gjennomførte dublinoverføringer målt i forhold til utgående anmodninger som er akseptert av andre medlemsland, finner vi også forskjeller mellom de tre landenes tall for 2014. I Norge var denne andelen 85 prosent, mens tilsvarende tall var 49 prosent i Sverige og 39 prosent i Tyskland.

Vi må ta en rekke forbehold i forhold til hva disse tallene viser. Antallet asylsøknader registrert innkommet ett år tilsvarer av forskjellige grunner ikke nødvendigvis antallet søknader som er behandlet av myndighetene det samme året. Dette gjelder likevel likt for alle tre land, og forskjellene mellom dublinoverføringene i de tre landene er såpass store at de viser et tydelig mønster. Sannsynligheten for at asylsøkere vil få sine søknader behandlet i et medlemsland de har reist videre til, er dermed større når dette er Tyskland og Sverige enn når det er Norge. Forskjellene kan se ut til å gjenspeile at Norge i større grad bruker Dublinforordningen som et instrument til å overføre asylsøkere til andre medlemsland.

## 2. HVORDAN FUNGERER DUBLINFORORDNINGEN I PRAKSIS, SETT FRA UTLENDINGSFORVALTNINGENES STÅSTED?

### *Studier av Dublinforordningen*

Vår gjennomgang og analyse av rapporter og statistisk materiale avdekker en bred enighet blant forskere og politikere om svakheter i det felles europeiske asylsystemet og i Dublinforordningen. Som en følge av svakhetene i det felles europeiske asylsystemet er Dublinforordningen tillagt flere implisitte mål, i tillegg til sitt eksplisitte mål om å identifisere den medlemsstaten som er ansvarlig for behandlingen av den enkelte søknad om internasjonal beskyttelse. Dublinforordningen er det eneste instrumentet man har for å fordele asylsøkere mellom europeiske land, men den kan ikke sørge for en jevn fordeling av ansvar mellom medlemslandene. Dublinsystemets største svakhet ligger i at det er store forskjeller mellom medlemslandene når det gjelder anvendelse av Dublinforordningen, at det er få asylsøkere som overføres som resultat av dublinvedtak, og ingen målbar nedgang i videre migrasjon nesten 20 år etter at Dublinsystemet først ble iverksatt. I tillegg kommer at grunnlaget for forordningen spriker, fordi den er basert på et asylsystem der medlemslandene fortsatt har svært ulike asylprosedyrer, mottaksforhold og kapasitet til å integrere flyktninger.

### *Utlendingsforvaltningens erfaringer*

I undersøkelsene av de tre landenes anvendelse av Dublinforordningen fant vi at alle de offentlige ansatte vi snakket med i de tre landene, hadde overveiende positive erfaringer med det administrative samarbeidet på operativt nivå. Den viktigste positive effekten vi fant av Dublinforordningen var det etablerte administrative samarbeidet mellom landene.

Når det gjelder personer som ikke er registrert i første ankomstland, kan Dublinforordningen bare anvendes i den grad andre medlemsland har kapasitet til å sjekke asylsøkeres dokumenter. Mens offentlig ansatte i Norge fortalte at de hadde denne kapasiteten, brukte svenske og tyske myndigheter nesten utelukkende fingeravtrykksdatabasen Eurodac og visumdata-basen VISA for å identifisere dublintilfeller.

Fordi selve asylprosessen ikke skal iverksettes før det ansvarlige medlemslandet er identifisert, konsentrerte utlendingsforvaltningene i alle tre land seg om tekniske spørsmål knyttet til personenes reiserute innad i Europa. I

motsetning til Norge og Sverige ga likevel tyske myndigheter personer som var i en dublinprosess, en utvidet mulighet til å forklare om de hadde noen spesielle grunner for ikke å bli overført til et annet medlemsland, gjennom to separate dublinintervjuer i tillegg til ankomstintervjuet.

Alle de offentlig ansatte vi intervjuet, la vekt på at de anvendte kriteriene i den oppsatte hierarkiske rekkefølgen som er bestemt i Dublinforordningen for å bestemme hvilket medlemsland som er ansvarlig for en søknad. Samtidig hadde byråkratene i de tre landene ulike forståelser av grunnlaget for å anvende skjønnsvurderinger. Til tross for at de offentlige ansatte anvendte kriteriene i den foreskrevne hierarkiske rekkefølgen, resulterte anvendelsen i at et lavt rangert kriterium var mest brukt (søknad behandlet i det første EU/Schengen-medlemslandet en person ankommer). Dette henger sammen med at informasjonsgrunnlaget for dette kriteriet, Eurodac-databasen over fingeravtrykk, er godt utbygd og lett tilgjengelig, mens informasjonsgrunnlaget for anvendelse av de høyere rangerte kriteriene ikke er tilsvarende utbygd.

Mens Norge har en egen, separat nemd for utlendingssaker, blir dublinvedtak i Sverige og Tyskland behandlet av domstoler innenfor det allmenne rettsapparatet. Norge gir personer med dublinvedtak tilgang til klageprosedyrer og to timer gratis bistand fra en advokat oppnevnt av myndighetene, mens personer med dublinvedtak i Sverige og Tyskland må finne advokat og betale for det selv. I alle tre land ble byråkratiske beslutninger i dublinsaker svært sjelden endret gjennom senere rettsavgjørelser, til tross for disse forskjellene.

Et hinder for et velfungerende dublinsystem er at personer med et dublinvedtak forsvinner før de skal overføres til et annet medlemsland. Norske, svenske og tyske myndigheter fengsler derfor personer som skal overføres, når det anses nødvendig. Slik fengsling fungerer som en del av en intern grensekontroll.

Vi fant ulike syn på om, og hvordan, forskjeller i medlemslandenes asylprosedyrer og mottaksforhold burde ha betydning for hvordan Dublinforordningen anvendes. Slike vurderinger er ikke en del av Dublinforordningen, men av dublinsystemet. Dette indikerer at dublinsystemet er implementert i feil rekkefølge: istedenfor å vente med anvendelsen av dublinsystemet til forutsetningene som er beskrevet i direktivene var på plass, har

man begynt med å overføre migranter til det første landet de ankommer – på grunnlag av et fremtidig mål om en felles standard for vilkårene for asylsøkere.

Forskjellig nasjonal rettspraksis fører altså til ulik praksis for anvendelsen av Dublinforordningen. Ingen av de tre landene overførte personer til Hellas, og de hadde endret praksis i forhold til å overføre barnefamilier til Italia etter Tarakhel-dommen. Norge og Sverige overførte uten forbehold personer til Ungarn, mens Tyskland (Berlin) sjeldnere gjør dette, på bakgrunn av en dom i forvaltningsdomstolen i Berlin.

Dublinsystemet er ikke like høyt prioritert i utlendingsforvaltningene i de tre landene. Vi fant at norske myndigheter gir kriteriet om første ankomstland i Dublinavtalen høy prioritet, slik det vises gjennom både ressursbruk og faktisk overføring av asylsøkere til andre medlemsland. Svenske myndigheter har en mer ambivalent praksis. De avsetter mindre ressurser og gjennomfører færre overføringer enn Norge, målt i forhold til antall asylsøkere. Tyske myndigheter overfører svært få asylsøkere i tråd med Dublinforordningen, målt i forhold til antall asylsøkere. Utlendingsforvaltningen i Berlin framhevet overfor oss at saker som kom inn under Dublinforordningen, utgjorde en ubetydelig del av deres daglige arbeid, mens andre former for videre migrasjon i Europa var langt viktigere.

I sum viser undersøkelsen at utlendingsforvaltningene i de tre landene prioriterer ulikt i sin anvendelse av Dublinforordningen.

### 3. HVORDAN FUNGERER DUBLINFORORDNINGEN I PRAKSIS, SETT FRA MIGRANTENES STÅSTED, OG HVILKEN BETYDNING HAR DUBLINFORORDNINGEN FOR MIGRANTERS BESLUTNING OM Å REISE VIDERE I EUROPA?

#### *Beslutninger om videre migrasjon*

Litteraturgjennomgangen viser at beslutningene om å reise videre fra første ankomstland i Europa skjer i et samspill mellom mange aktører og faktorer, og ikke bare er avhengig av asylprosedyrer og -utfall og av mottaksforhold, men enda mer av framtidsmuligheter. For den enkelte migrant er det hensiktsmessig å spørre seg: «Hvis jeg får beskyttelse i dette landet – vil jeg da ha mulighet til å overleve her? Hvis ikke, hvor kan jeg bli bedre i stand til å bygge meg et nytt liv?» Slike spørsmål besvares ikke bare på det individuelle, økonomisk-rasjonelle nivået, men er også tett forbundet med bredere sosiale forhold, som muligheten

for gjensidige og likestilte relasjoner med andre mennesker. Hvilke land som tilbyr de beste framtidsmulighetene, vil være avhengig av individuelle, transnasjonale og nasjonale faktorer som for eksempel eksisterende sosiale nettverk, kunnskap om og kjennskap til ulike europeiske språk og kulturer og hvilket europeisk land som vil godkjenne deres kompetanse og har behov for deres arbeidskraft.

### *Migrantenes erfaringer med dublinsystemet*

Gjennom intervjuene fant vi at Dublinforordningen bare utgjør en liten del av migrantenes egne erfaringer. Forordningen har betydning i et samspill med andre elementer og faktorer. 'Dublin' fungerer i stor grad som en uforutsett hindring for migrantenes planer og forhåpninger. Det å være definert som et 'dublinterfelle' fører med seg nye vanskeligheter i tillegg til utfordringene det innebærer å være asylsøker, og gir dermed også ekstra belastninger på helse og trivsel.

Der politikk og praksis bygger på prinsippet om gjensidig tillit mellom medlemsstatene, delte ikke migrantene denne tilliten til første ankomstland. Personene vi intervjuet var mindre opptatt av å sammenligne de materielle forholdene for asylsøkere i ulike land, og mer opptatt av sin egen umiddelbare tilgang til livsnødvendigheter som husrom, helsetjenester, mat og arbeid. De var også opptatt av brudd på asylsøkeres og andre migranternes menneskerettigheter i enkelte av de første ankomstlandene. Over halvparten av personene vi intervjuet uttalte at de fryktet å bli utsatt for, eller hadde blitt utsatt for, nød, hjemløshet og/eller vold i det første ankomstlandet. Ingen av migrantene vi intervjuet i Norge, fortalte at det var lagt til rette for å forklare og begrunne denne frykten overfor saksbehandlere, mens migrantene vi intervjuet i Tyskland hadde fått anledning til å legge fram slike forklaringer. En innvilget asylsøknad innebærer ikke alltid en mulighet til livsopphold. Dette er et vesentlig problem spesielt for mennesker med flyktningstatus i landene ved Middelhavet, der flyktninger i begrenset grad har tilgang til velferdstilbud og bolig- og arbeidsmarked.

I forhold til dublinprosedyrene, inkludert medlemslandenes plikt til å informere migrantene om Dublinforordningen, fant vi at det generelle bildet migrantene tegnet var at utfallet av beslutninger basert på Dublinforordningen var helt vilkårlig.

De fleste av dem vi intervjuet viste til at myndighetene (i Norge gir NOAS informasjon på oppdrag fra UDI) var deres viktigste kilde til informasjon om Dublinforordningen. Selv om de fleste vi intervjuet hadde fått generell informasjon, var det vanskelig for dem å overføre denne informasjonen til egen sak. Det å forstå hvordan generell informasjon kan være relevant for en spesiell sak, er avhengig av tilgang til spesialistkompetanse i asylprosedyrer. Migrantere oppfattet det som mindre viktig å forstå kriteriene og prosedyrene i Dublinforordningen enn å forstå de spesifikke mulighetene og hindringene dette systemet påførte dem.

Ingen av våre informanter hadde hørt om Eurodac før vi snakket med dem, men alle hadde en forestilling om den sentrale rollen fingeravtrykk spiller i det europeiske asylsystemet. Mange følte seg krenket av den rollen fingeravtrykket spilte i deres egne saker. Fingeravtrykkene var ofte avlagt under tvang eller falske forutsetninger om at det ikke ville ha noen konsekvenser for deres asylsøknader.

Mer enn halvparten av migrantene vi intervjuet hadde tatt en beslutning om hvilket land de ville reise til, før de forlot sitt opprinnelsesland. Disse beslutningene var basert på en kombinasjon av grunner. Å komme til et land preget av demokrati, menneskerettigheter, trygghet, fred, utdanning og arbeid hadde førsteprioritet. Tilstedeværelse av familie, venner eller et etnisk nettverk og kjennskap til språk og kultur i det nye landet hadde også stor betydning. Endringer av planer underveis ble forårsaket av uventet stengte grenser og frykt for forfølgelse og utsendelse (*refoulement*) av migranter og flyktninger i første ankomstland.

Vårt materiale viser at det er avgjørende for asylsøkere hvor deres søknad om beskyttelse behandles. Dette gjelder både i forhold til kriterier, status og vilkår, som er innholdet i de tre direktivene i det felles europeiske asylsystemet. Det viktigste målet er å være i trygghet, men heller ikke dette grunnleggende behovet er dekket i alle medlemsland. Andre umiddelbare behov, som grunnlag for livsopphold, er ulikt dekket i de europeiske landene. Det er også forskjeller i mer langsiktige, men viktige livsvilkår som tilgang til bolig, utdanning, arbeid og sosiale nettverk.

Som en konsekvens av Dublinforordningen og det felles europeiske asylsystemet er mange migranter med status som asylsøkere, anerkjente flyktninger

og andre med relaterte oppholdstillatelser henvist til å oppholde seg i land hvor de har liten eller ingen tilgang til slike nødvendige livsvilkår.

Våre intervjuer viser at dublinsystemet ble oppfattet som sterkt urettferdig av de relativt få asylsøkerne som plukkes ut som dublintilfeller. Mens de fleste asylsøkere i Norge, Sverige og Tyskland nødvendigvis må ha passert gjennom ett eller flere europeiske land på veien, blir likevel svært få av disse asylsøkerne kategorisert som dublintilfeller, og enda færre overført til sitt første ankomstland. Den ekstra usikkerheten og tiden det tok å være del av en dublinprosess, økte det emosjonelle stressnivået. Det å være definert som et dublintilfelle og å måtte vente passivt på respons fra et annet land, forsterket migrantenes følelse av å fratas handlekraft og menneskeverd, og av å bli trakassert, mistenkeliggjort og skjøvet rundt fra land til land.

I sum viser intervjuene at migrantene ikke ser Dublinforordningen som en løsning på sine problemer, og heller ikke som noe svar på andre tenkelige, logiske spørsmål.

## Anbefalinger

Det framgår av vår rapport, som av flere andre studier og av de pågående aktivitetene i EU, at det er presserende nødvendig å revidere Dublinforordningen. En slik revisjon må være en del av en større revisjon av det felles europeiske asylsystemet. Våre anbefalinger er spesielt rettet mot norske myndigheter. Norge har undertegnet og tar del i Schengen-samarbeidet og Dublinforordningen, og tilpasser seg frivillig til direktivene i det felles europeiske asylsystemet. Oppdragsgiver har spesielt ønsket våre anbefalinger i forhold til følgende to spørsmål:

1. Hvordan kan myndighetene møte situasjonen hvor mange tredjelandsborgere ikke registreres i ankomstlandet?
2. Hvilke grep kan vi ta for om mulig å redusere andelen som søker asyl i flere land?

## 1. HVORDAN KAN MYNDIGHETENE MØTE SITUASJONEN HVOR MANGE TREDJELANDBORGERE IKKE REGISTRERES I ANKOMSTLANDET?

Her vil våre anbefalinger være knyttet til hvordan myndighetenes mål er definert.

*Hvis målet er å overføre asylsøkere til det første ankomstlandet i Europa,* kan norske myndigheter prioritere enda høyere å sjekke reisedokumenter og andre kilder i tillegg til Eurodac og VIS for å dokumentere at personer har vært i et annet medlemsland. Dette er svært ressurskrevende, har store menneskelige kostnader, og er sannsynligvis lite økonomisk effektivt. Vi vil derfor ikke anbefale dette.

*Hvis målet er å øke andelen som registreres i første ankomstland,* kan norske myndigheter prioritere støtte til EUs planlagte etablering av Hotspots for å hjelpe EU/Schengens grenseland med å registrere asylsøkere. Etableringen av Hotspots, og dermed (om nødvendig tvungen) registrering av alle tredjelandsborgere som irregulært krysser Europas yttergrenser, innebærer nye logistiske utfordringer for EU/Schengens grenseland og kan gjøre det vanskelig å ivareta asylsøkernes humanitære rettigheter og behov. Vi kan derfor bare anbefale dette under forutsetning av at det blir tatt tilstrekkelig hensyn til disse utfordringene når man etablerer slike Hotspots, noe som vil kreve et svært grundig og tidkrevende forarbeid.

*Hvis målet er å legge til rette for at personer med behov for internasjonal beskyttelse får muligheten til å søke om asyl,* kan Norge avstå fra å anmode om overføringer i tråd med Dublinforordningen, og behandle alle søknader om asyl i Norge. Dette er mulig innenfor Dublinforordningen slik den er i dag. Det ville innebære at de betydelige menneskelige og økonomiske ressursene som nå brukes til behandlingen av Dublinsaker og (ofte gjensidige) overføringer av asylsøkere mellom land, heller kan brukes til å behandle asylsøknader. Vi vil anbefale dette som et umiddelbart tiltak.

## 2. HVILKE GREP KAN VI TA FOR OM MULIG Å REDUSERE ANDELEN SOM SØKER ASYL I FLERE LAND?

Den nøyaktige andelen eller antallet personer som søker asyl i mer enn ett europeisk land, er ikke kjent, men den lave andelen dublinanmodninger kan tyde på at slike gjentatte søknader ikke er så vanlig som ofte antatt.



En effektiv reduksjon i andelen personer som søker asyl i mer enn ett europeisk land, vil bare være mulig under spesielle betingelser. Disse betingelsene er, rangert etter betydning: like asylprosedyrer som gir lik innvilgelsesprosent i alle medlemsland, like muligheter for framtiden og like mottaksforhold for asylsøkere. Like asylprosedyrer og mottaksforhold inngår allerede i det felles europeiske asylsystemet og dermed i grunnlaget for Dublinforordningen, men i praksis behandles dette som mål og ikke som forutsetninger for forordningen. Vi har vist i vår rapport at dette bygger på en sviktende logikk og derfor gir et dårlig resultat, både med tanke på asylsøkeres rettssikkerhet og landenes behov for å minimere sekundærmigrasjonen. Den andre betingelsen, like framtidssikter, går langt ut over bestemmelsene i det felles europeiske asylsystemet. Framtidssiktene er avhengig av medlemslandenes økonomi og av den enkelte asylsøkers forutsetninger. Det er lite norske myndigheter kan gjøre for å endre noen av disse forholdene.

#### ØVRIGE ANBEFALINGER – NORGES UTLENDINGSFORVALTNING

På bakgrunn av vårt materiale ønsker vi også å gi noen anbefalinger for organiseringen og fordelingen av oppgaver og ansvar i Norges utlendingsforvaltning.

*PU's rolle i Dublinsaker bør revurderes.* For en asylsøker som er identifisert som et Dublintilfelle i forbindelse med den første registreringen hos PU, vil muligheten til å kommunisere med UDI i dag være svært begrenset. Vår forskning viser at i Sverige og Tyskland er denne typen kommunikasjon mer tilgjengelig for alle asylsøkere, noe som gir dem en potensiell mulighet til å forklare seg om eventuelle gode grunner de kan ha for at asylsøknaden, i henhold til Dublinforordningen, ikke bør behandles i et annet land. Selv om PU skal innhente informasjon om slike grunner, skjer dette like etter ankomst i Norge, i en situasjon hvor mange er sterkt belastet. Det er store mengder informasjon skal utveksles, og de nyankomne asylsøkerne har i liten grad oversikt over saksgangen videre. Asylsøkere med dublinstatus bør derfor få anledning til å presentere sine grunner for UDI i minst ett senere, separat intervju, slik at all nødvendig informasjon for å anvende også de første kriteriene i Dublinforordningen er tilgjengelig for saksbehandlerne.

*Uavhengig, løpende oppdatert og systematisk informasjon om forholdene og utviklingen i medlemslandene, som er relevant for Dublinvedtak, bør gjøres tilgjengelig for UDI og for UNE. Slik informasjon bør inkluderes i Landinfos mandat. For å sikre åpenhet og uavhengighet i beslutningsgrunnlaget, bør UNEs kilder til informasjon likevel ikke være begrenset til Landinfo, men også inkludere andre nasjonale og internasjonale kilder.*

For å sikre at klager i dublinsaker og andre utlendingssaker har samme grad av objektivitet og åpenhet som andre klagesaker, bør Norge vurdere å følge Sveriges eksempel og *erstatte UNE med en migrasjonsdomstol som en del av forvaltningsdomstolen*. Norske myndigheter bør undersøke svenske erfaringer med en slik endring.

#### ØVRIGE ANBEFALINGER FOR NORSKE MYNDIGHETER

Basert på våre analyser av hvordan Dublinforordningen fungerte i månedene rett før sommeren 2015, da antallet asylsøkere som kom til Europa økte dramatisk, og i lys av dagens kritiske situasjon lengre sør og øst i Europa, vil vi anbefale følgende for norske myndigheter:

Umiddelbart å *oppheve Dublinprosedyren* for asylsøkere fra Syria, og dermed overta ansvaret for å behandle deres søknader, samt vurdere tilsvarende tiltak for andre nasjonale grupper. Fordi dagens utfordringer har vokst fram som del av et felles europeisk system, er det lite sannsynlig at den enkelte nasjonalstat kan løse dette alene. Her bør Norge, på samme måte som Tyskland, søke etter felles europeiske løsninger.

På lang sikt å gå inn for en revidering av Dublinforordningen der forordningen baseres på *gjensidig anerkjennelse av flyktningstatus* og relaterte oppholds- og arbeidstillatelser landene imellom. Dermed vil innvilgelser – og ikke bare avslag – bli gyldige på et europeisk nivå. En revidert Dublinforordning bør videre inkludere en gjensidig bindende definisjon av sårbarhet. Revisjonen bør bygge på *Dublinsystemets hittil sterkeste resultat, som består av godt etablerte og fungerende nettverk og instrumenter for samarbeid mellom medlemslandenes utlendingsforvaltninger*.

Det er et *presserende behov for videre forskning* om konsekvensene av de løpende utviklingene i EUs felles asylpolitikk. Dublinforordningen kan ikke vurderes isolert, men må forstås som en integrert del av et system i krise. Man bør vie spesiell oppmerksomhet til hva som skjer med asylsystemet i framtiden,

og med personer som søker om internasjonal beskyttelse i dette systemet. Vi ser følgende forskningstema som særlig aktuelle:

- Konsekvensene av en eventuell avtale mellom medlemslandene om fordeling av asylsøkere i Europa, eller av mangelen på en slik avtale.
- Konsekvensene av en revidert Dublinavtale for medlemsland.
- Konsekvensene av en revidert Dublinavtale for migranter, og med spesiell oppmerksomhet rettet mot barn og sårbare grupper.
- Endringer av grensekontrollen ved Schengens ytter- og innergrenser.
- Hvordan sivilsamfunn og myndigheter handler, begrunner sine handlinger, og tilpasser seg hverandre, spesielt med tanke på å identifisere mulige synergieffekter og spenningsfelt.

Forskningen bør også rette oppmerksomheten mot flyktningrelaterte endringer internt i medlemsstatenes utdanningssystem, arbeids- og boligmarkeder og andre viktige samfunnsområder, og undersøke mulighetene for harmonisering av integreringsvirkemidler på europeisk nivå.

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This report describes a Dublin System on the brink of a major crisis. The report examines the significance of the Dublin Regulation for the onward migration of asylum seekers within Europe, based on data collected in Norway, Sweden, and Germany from February to April 2015. Our findings from this period are currently confirmed and strengthened with the increasing numbers of asylum seekers coming to Europe.

The purpose of the Dublin Regulation is to determine the Member State responsible for examining an application for international protection lodged in one of the Member States. It is crucial how the Dublin Regulation is applied, as this decides where migrants will live in the future. This research project aimed to identify the most important effects of the Dublin Regulation from the points of view of Member States as well as from migrants' perspectives.

The sharing of responsibility for asylum seekers in Europe is controversial. While the Dublin Regulation is the only current framework for allocating responsibility for individual asylum claims among the European countries, it is not designed to be an instrument for the general sharing of responsibility between Member States. The absence of adequate instruments for such sharing has detrimental results for Member States, the European Union, and migrants alike.