



# The implementation of the Dublin III Regulation in 2021

September 2022



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## Introduction\*

In September 2020, the European Commission launched the new Pact on Migration and Asylum. Among the legislative proposals is the Regulation on Asylum and Migration Management (RAMM), which aims to repeal Dublin and introduce new rules on responsibility sharing, along with solidarity mechanisms. Significant concerns emerged from the analysis of the proposal, including the fact that the rules on allocation of responsibility remain very close to the current Dublin system, despite having been a significant source of conflict among Member States since the establishment of the Common European Asylum System (CEAS). Since the launch of the Pact, however, limited progress has been made on the reform, as Member States remain divided on the rules on the allocation of responsibility and on solidarity measures.

In the meantime, the Dublin III Regulation is the applicable legal framework for determining which Member State is responsible for an application for international protection. This briefing provides an update on developments in legislation, policy and practice relating to the application of the Dublin III Regulation in 2021. It draws on a series of other implementation assessments carried out by the European Council on Refugees and Exiles (ECRE) in recent years. It is based on information gathered through ECRE's databases, namely the Asylum Information Database (AIDA) and the European Database of Asylum Law (EDAL), as well as other sources where relevant. Data for the year 2021 in this update are based on information made available by national authorities, civil society organisations, and Eurostat.

Even though they did not reach pre-pandemic levels, the year 2021 was marked by an increase in the number of Dublin procedures compared to 2020. Nevertheless, the number of transfers implemented in practice remained low throughout the year, partly as a consequence of restrictive COVID-19 measures, but mostly as a continuation of the trend set in previous years: only a small number of transfers are actually implemented, compared to the number of requests submitted. This continuing trend can, by itself, be considered as proof of the inefficiencies and shortcomings of the Dublin system. This practice (of requesting transfer that cannot be completed), the disregard that most Member States have for the prioritisation of family provisions, and other shortcomings described below, call into question the operability of the current system, and that of any alternative which is not based on a deeper reform of rules on responsibility sharing among Member States.

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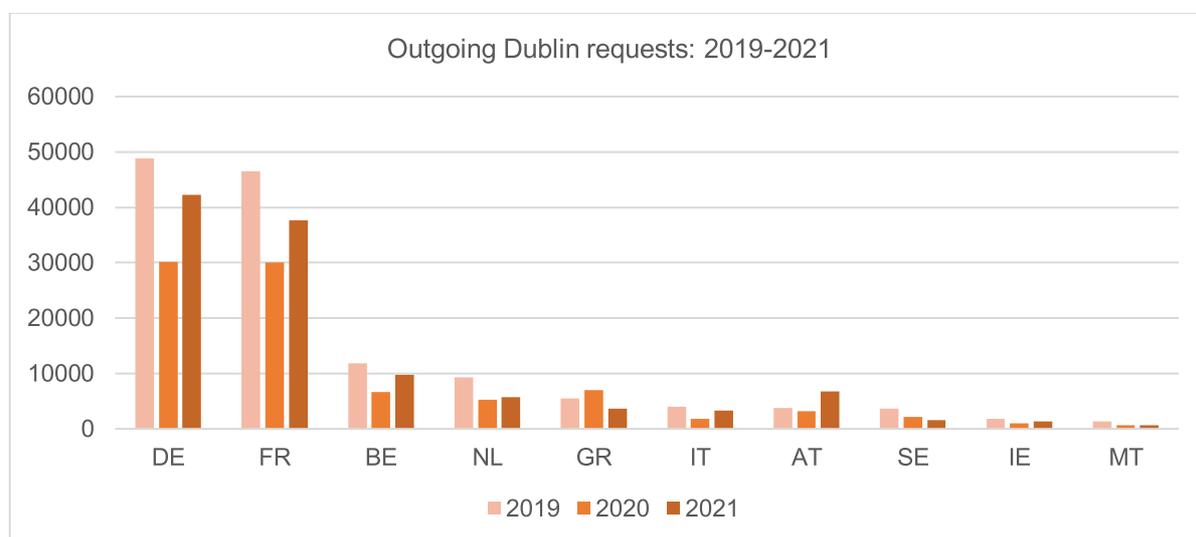
\* This report was written by Eleonora Testi and Charlotte Labrosse at ECRE. We would like to thank the AIDA experts as well as Member State authorities for the provision of Dublin statistics and relevant information. All errors remain our own.

## Key Dublin statistics for 2021

Compared to 2020, the year 2021 saw a sharp increase in the number of asylum applications in the EU and associated countries (EU+). While the low number of applications in the previous year was mainly attributable to travel restrictions resulting from the pandemic, it should be noted that some specific events in 2021 – such as the Taliban takeover of Afghanistan – generated more displacement than in the previous year. According to Eurostat, 632,185 people applied for international protection in 2021 in EU Member States, of whom 535,000 were first-time applicants.<sup>1</sup>

### Fluctuations in Dublin procedures in 2021

Comprehensive EU-wide statistics on the number of Dublin procedures continued to be lacking in 2021. According to information from the EU Agency for Asylum (EUAA), derived from exchanges with national authorities, around 114,300 decisions were issued in response to outgoing Dublin requests in 29 EU+ countries. This represented an increase of one-fifth compared to 2020.<sup>2</sup> Overall, however, the number of outgoing Dublin procedures still did not reach 2019 levels:



Source: AIDA. Figures on FR, NL and SE (for 2019 and 2020) were extracted from Eurostat.

As illustrated above, the number of requests rose, compared to 2020, in most of the countries that have been the main users of the Dublin system in the last three years. By way of illustration, requests rose by around 40% in Germany, 25% in France and by 45% in Belgium. The country that registered the sharpest increase in outgoing requests in 2021 was Austria, which issued 113% requests more than in the previous year. Austria was also one of the few countries to have almost doubled the number of outgoing requests compared to 2019.

Only 6 out of 27 Member States recorded a decrease in outgoing Dublin requests compared to 2020: namely Finland, Greece, Portugal, Slovenia, Spain and Sweden. The decrease in Dublin procedures was particularly significant in Greece and Spain, as the countries issued respectively -48% and -88% outgoing requests in comparison to the previous year.

After leaving the EU on 31 January 2020, the United Kingdom remained subject to the Dublin III Regulation during the transition period, that ended at 23h 00 on 31 December 2020. Statistics on Dublin

<sup>1</sup> Eurostat and EMN, Annual report on Asylum – Statistical annex, June 2021, available at: <https://bit.ly/39Ojx4y>.

<sup>2</sup> EUAA, *EUAA Asylum Report 2022*, available at: <https://bit.ly/3KzlvUe>, pp.99-100.

cases were produced annually until 2021 (relating to transfers in 2020) and the authorities have confirmed there will be no further updates. As the UK is no longer part of the Dublin Regulation, new guidance was issued to inform Home Office staff on how to deal with the remaining requests made prior to 31 December 2020.<sup>3</sup> The majority of requests to third countries were based on Eurodac hits, which are considered as objective and easy to identify for the authorities. If the applicant wished to be transferred out of the UK, a referral was made to the Third Country Unit (TCU) and the Home Office would not normally object. However, if the applicant wished to have his or her claim substantively considered in the UK, it was the obligation of the applicant or their legal representative to submit documentary evidence such as status papers, passports, asylum interview records etc. of family members, as well as representations explaining why the UK should consider the claim. Cases introduced after the transition period will be treated under the new inadmissibility rules on safe third countries.<sup>4</sup>

### Asylum applications and Dublin procedures

The increase in the number of Dublin procedures in 2021 confirmed the previous trend regarding the number and proportion of applicants subject to Dublin procedures throughout the year:

#### Share of Dublin procedures in the top 4 operators of the Dublin system: 2021



Source: AIDA. Figures on FR were extracted from Eurostat.

The charts above refer to the four countries (ordered left to right) which sent the majority of outgoing Dublin requests in 2021. Germany and France continued to be, as in previous years, both the main destination countries for asylum seekers and the main users of the Dublin system. In 2021, these two Member States received 190,816 and 120,685 asylum applicants respectively, and issued 42,284 and 37,611 outgoing Dublin requests. Compared to the previous year, Belgium substituted Greece as the 3<sup>rd</sup> main operator in the Dublin system, issuing a total of 9,808 outgoing requests. As noted above, the most significant increase was registered in Austria, that rose to 4<sup>th</sup> position for the number of issued requests.

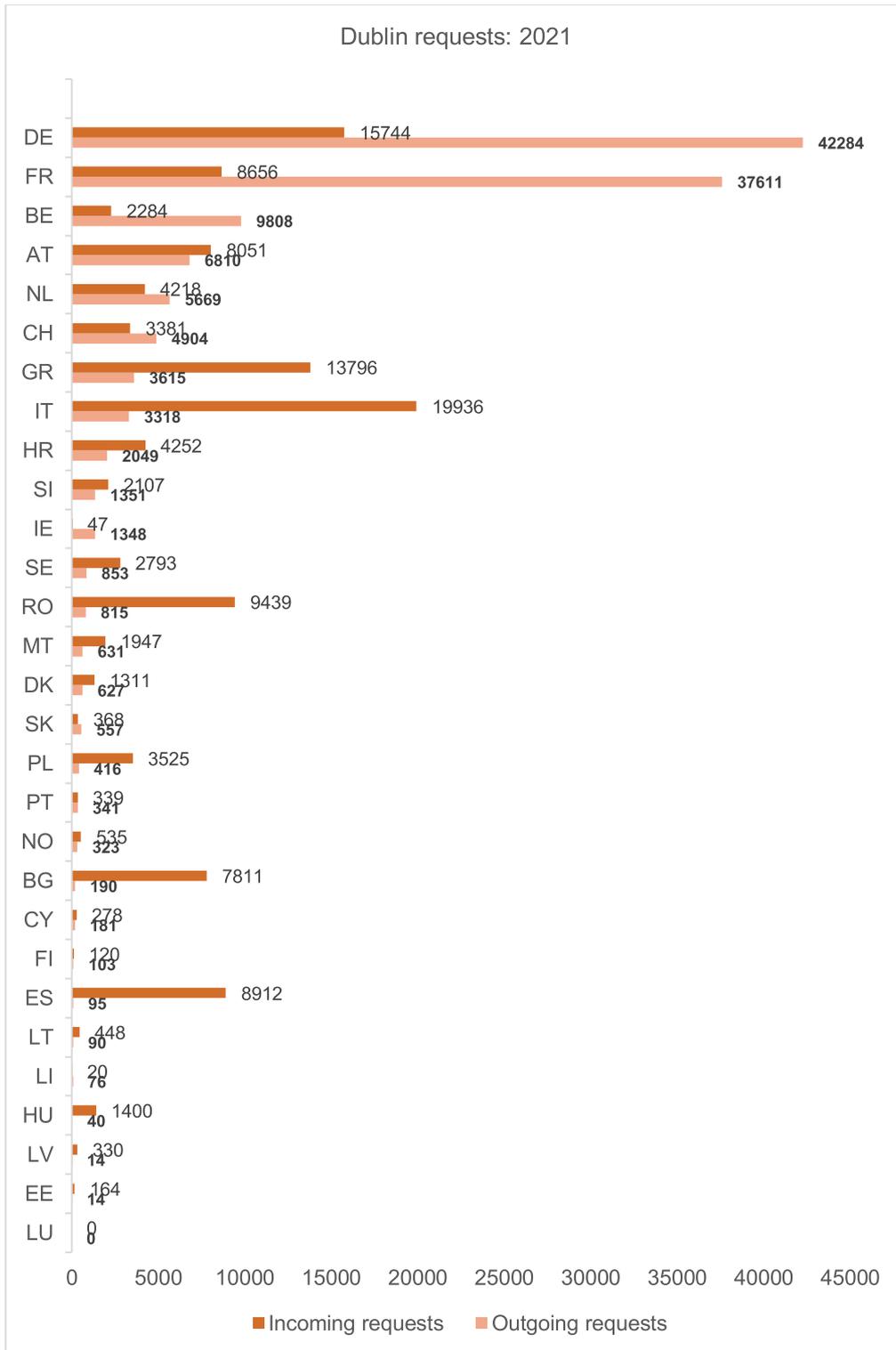
Furthermore, the charts illustrate how the proportion of applicants for international protection channelled into Dublin procedures remained significant in 2021; i.e. 24.4% of all applicants in Germany and 31.2% of all applicants in France were subject to a Dublin procedure in 2021. In Belgium, this figure was even higher, as more than 39% of all asylum seekers were channelled into a Dublin procedure. Other countries – in particular Croatia, Ireland and Switzerland – despite issuing a comparatively low number of requests compared to those previously mentioned, had an even higher share of applicants channelled into the Dublin procedure compared to the total number of applicants.

<sup>3</sup> Requests made to the UK under the Dublin III Regulation prior to the end of the transition period, available at: <https://bit.ly/3Bcll17>.

<sup>4</sup> AIDA, *Country report United Kingdom – Update on the year 2021*, April 2021, available at: <https://bit.ly/3RtRXJN>, pp.33-34.

## Outgoing and incoming procedures

In 2021, Member states received the following incoming and issued the following outgoing requests:



Source: AIDA. Figures on ES, EE, FI, FR, HR, GR, LI, LT, LU, LV, NL, SK, DK, and NO are based on Eurostat.

Similarly to previous years, the majority of countries received more incoming requests than the number of outgoing requests sent. Eight out of 29 countries constituted the – quite significant – exceptions to

this rule, notably **Germany, France, Belgium, the Netherlands, Ireland, Slovakia, Switzerland, and Lichtenstein**, which instead issued more outgoing requests than they received incoming requests.

**Italy** continued to be by far the country which receives the most incoming requests. In 2021, Italy submitted 3,318 outgoing requests and received 19,936 requests from other countries, mainly from Germany and France. It should be noted, however, that this figure still represented a decrease of 9.7% when compared to 2020, when Italy received 22,088 incoming requests.

Other countries which received a significant number of requests include **Germany, Greece and Spain**. The Spanish asylum authorities confirmed the trend of limited use of the Dublin procedure, issuing only 95 outgoing Dublin requests. As such, the application of the Dublin Regulation in the country concerned mainly incoming requests, where numbers reached 8,912 in 2021.

A striking increase (+55.5%) in the number of incoming requests can be noted for Greece, that received 13,796 requests in 2021 (in 2020, incoming requests were 8,869). This can be attributed to Germany's decision to resume transfers to Greece in 2021;<sup>5</sup> the consequence of this decision are illustrated by the fact that, out of 42,284 outgoing requests issued by Germany in 2021, 10,427 were directed to Greece.

Despite extensive evidence of the deficiencies in the **Hungarian** asylum system, the country still received 1,400 incoming requests in 2021, mainly from Germany and France. It should be noted, however, that the trend might change for 2022, after the Grand Chamber of the European Court of Justice (CJEU) condemned Hungary, in November 2021, for failure to fulfil its obligations under both the Asylum Procedures Directive and the Reception Conditions Directive.<sup>6</sup>

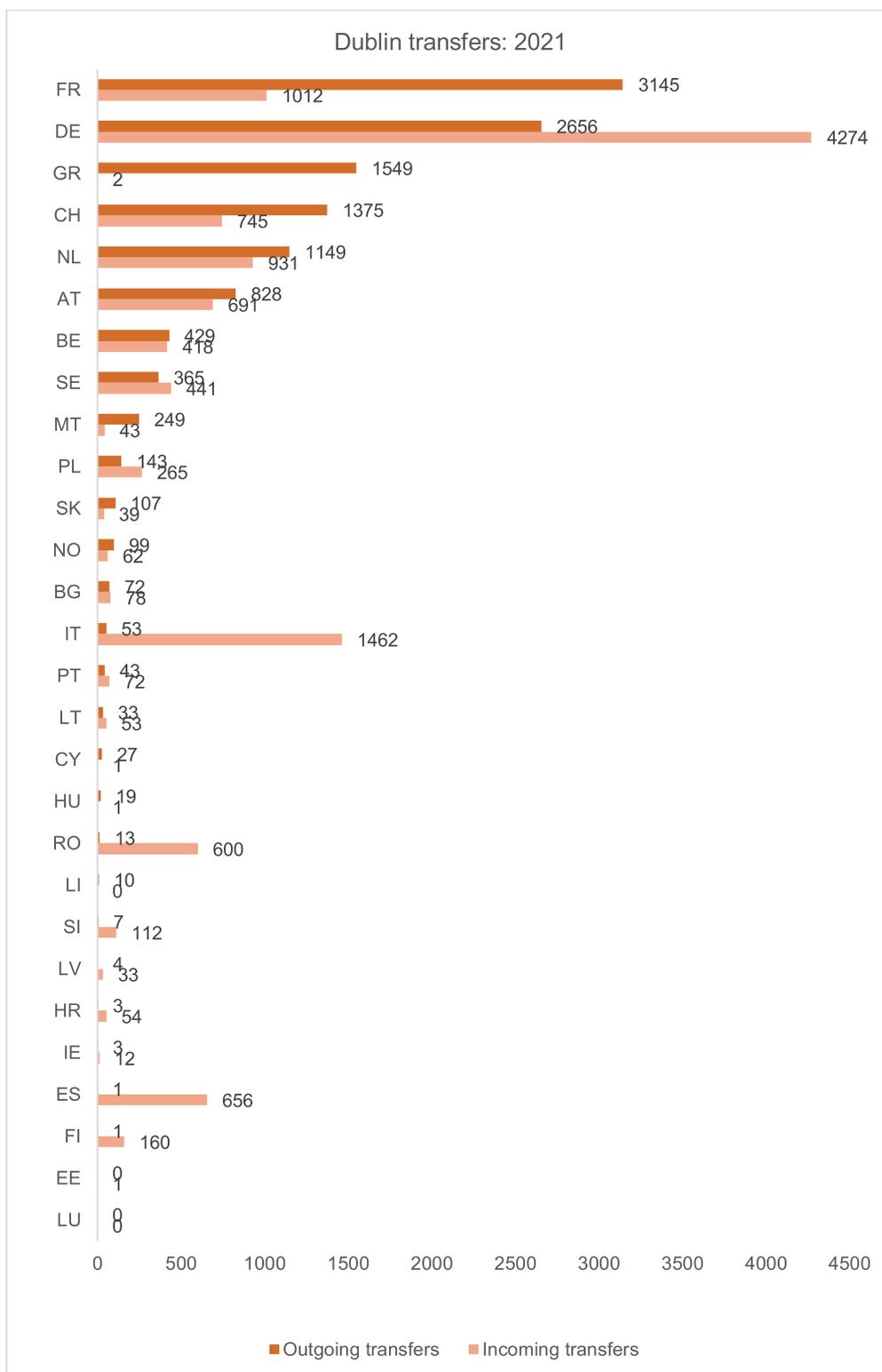
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<sup>5</sup> Federal Government, *Response to parliamentary question by The Left*, 20/861, 24 February 2022, 22,19/30849, 21 June 2021, 3.

<sup>6</sup> CJEU, Grand Chamber, C-821/19, 16 November 2021, available at: <https://bit.ly/3TrauZe>.

## Transfers

As regards actual transfers carried out under the Dublin Regulation, the figures available for 2021 point to the following outgoing and incoming transfers:



Source: AIDA. Figures on ES, EE, FI, FR, GR, LI, LT, LU, LV, NL, SK, DK, and NO are based on Eurostat.

The figures above indicate that **Germany** and **France** continue to be the two main operators of the Dublin system, as they received and carried out the majority of transfers in the EU.

### Outgoing transfers

For the second consecutive year, France carried out more transfers than Germany. Transfers from Germany significantly decreased during COVID-19 due to connected restrictions. In 2021, a total of 2,656 outgoing transfers were carried out, and Germany received a total of 4,274 incoming transfers.<sup>7</sup> Whilst suspended during the first outbreak of the pandemic, with the reopening of intra-European borders on 15 June 2020, transfers were gradually taken up again. A decree of the Federal Ministry of the interior (BAMF) provided that in a first step, transfers via land routes to neighbouring countries should be carried out, whereas flight transfers to other Member States would follow at a later stage. The BAMF has issued revocations to its previous suspension decision accordingly, for transfers to neighbouring countries in June and for further countries, including Greece and Italy, in July.<sup>8</sup> As of June 2021, transfers were still not taking place to Bulgaria, Slovenia and Latvia. Since 7 December 2021, transfers to and from Germany were only possible for persons with a negative Covid-19 test.<sup>9</sup>

Among the main countries to carry out outgoing transfers were **Greece** (1,549), **Switzerland** (1,375) and the **Netherlands** (1,149). For Greece, however, it should be mentioned that significant issues were registered in the first half of 2021 due to Covid-19 travel restrictions imposed by other Member States. As a consequence, a maximum number of applicants transferred per flight or per week was imposed in the first months of 2021. This meant the number of transfers did not match the pending cases, so many asylum seekers were not transferred within the time limit set in the Regulation. Another factor that significantly affected the procedure in the first months of 2021 was the delay in the signing of a memorandum of cooperation between the Greek Asylum Service and the travel agency which was to be responsible for booking the applicants' tickets. Consequently, deadlines were not met in many cases. When this happened, the Dublin Unit either proceeded to the transfer without taking further measures, or had to resend an outgoing item under Article 17.2.<sup>10</sup> Similar issues regarding the timing of transfers carried out were registered in the Netherlands, where in 2021 (until 1 December), the time limit to carry out the Dublin transfer was exceeded in approximately 440 cases.<sup>11</sup>

The number and rate of transfers implemented in practice remained low in 2021, partly as a consequence of COVID-19 measures that continued to have a direct impact on the various steps of the Dublin procedure.<sup>12</sup> The lack of transfers, however, cannot be attributed solely to COVID-19, as similar problems affected the Dublin system long before the pandemic.<sup>13</sup> The consistently low rate of transfers realised in practice, continues to call into question the efficiency and operability of the whole system. In particular, ECRE emphasises that Dublin transfers are not mandatory: the Dublin Regulation provides choices and discretion to Member States, which can decide to examine asylum claims themselves and thus avoid unnecessary human, administrative and financial costs.<sup>14</sup>

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<sup>7</sup> BAMF, *Aktuelle Zahlen, December 2021*, 10, available in German at: <https://bit.ly/3KBBaIG>. Federal Government, Response to parliamentary question by The Left, 19/30849, 21 June 2021, 32.

<sup>8</sup> PRO ASYL, 'Newsticker Coronavirus: Informationen für Geflüchtete und Unterstützer\*innen', available in German at: <https://bit.ly/3n5bqEe>.

<sup>9</sup> Transfers to Croatia took place "in limited ways only" according to the Federal Government, see Federal Government, Response to parliamentary question by The Left, 19/30849, 21 June 2021, 48, 49.

<sup>10</sup> AIDA, *Country report Greece – Update on the year 2021*, May 2022, available at: <https://bit.ly/3Rf5gOU>, p.82.

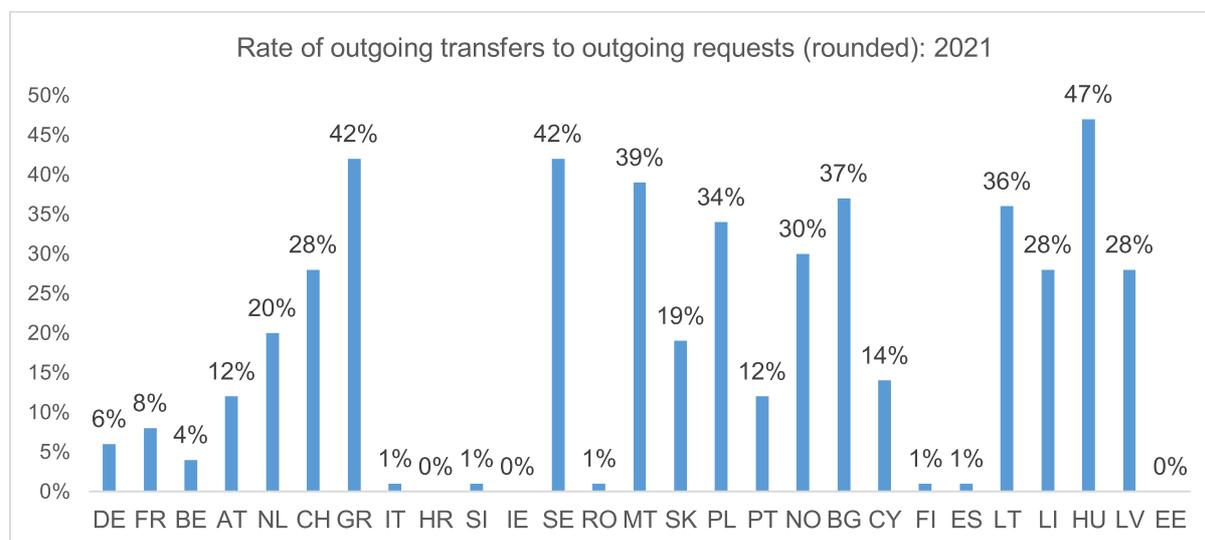
<sup>11</sup> Answer to Parliamentary Questions nr. 805, Secretary of State, 5 November 2021, available in Dutch at: <https://bit.ly/3G4zHRY>.

<sup>12</sup> EUAA, *EUAA Asylum Report 2022*, available at: <https://bit.ly/3KzlvUe>, p.96.

<sup>13</sup> See ECRE, *The implementation of the Dublin III Regulation in 2018*, March 2019, available at: <https://bit.ly/3pZMVsw>.

<sup>14</sup> See for example: ECRE, *The implementation of the Dublin III Regulation in 2020*, September 2021, available at: <https://bit.ly/3B4Yt4w>; ECRE, *To Dublin or not to Dublin?*, November 2018, available at:

The rate of Dublin transfers effected compared to outgoing requests for different countries was as follows:



Source: AIDA. Figures on ES, EE, FI, FR, GR, LI, LT, LV, NL, SK, and NO are based on Eurostat. Figures on CZ and DK were not available; LU did not carry out any transfer nor issue outgoing requests. As there is a certain time that runs between a request being sent and the person being transferred, i.e. requests sent in a calendar year and transfers implemented in another calendar year — the figures above may not relate to the same group of people.

The countries shown in the graph have been sorted from left to right according to the number of Dublin procedures initiated, i.e. the number of outgoing Dublin requests sent in 2021. It demonstrates that the transfer rates are particularly low in the 6 countries that registered the highest numbers of outgoing Dublin procedures (on the left side of the graph), compared to those with fewer Dublin procedures (on the right side of the graph). Of the 27 countries represented, only **Hungary** achieved Dublin transfers in almost half of the procedures initiated (47%). The figure should be read with caution, however, as it refers to very few applicants, specifically 19 people transferred from Hungary to another country.

While transfer rates increased in various countries (e.g. Greece, Poland, Sweden) as compared to the previous year, 19 out of 27 countries registered a transfer rate below 30%, varying from 28% in **Switzerland**, 20% in the **Netherlands**, 13% in **Poland**, 12% in **Austria**, to as low as 4% in **Belgium**, 1% in **Finland**, **Italy**, **Spain** and **Slovenia**; and less than 1% in **Croatia** and **Ireland**.

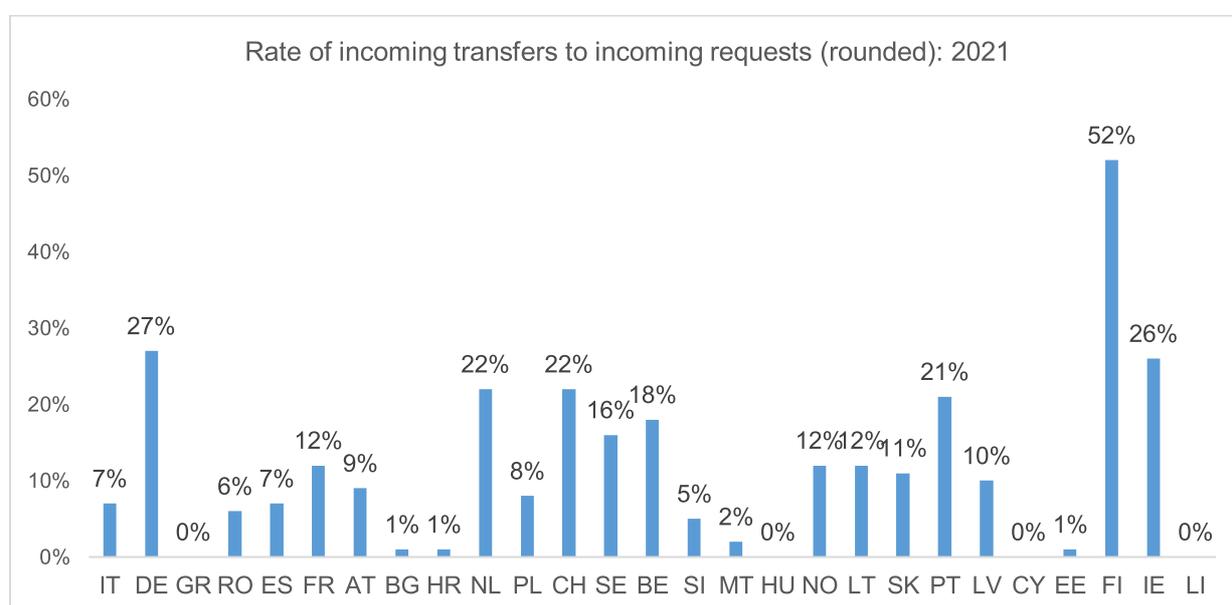
The very low transfer rate for the top three operators of the Dublin system in 2021, **Germany**, **France** and **Belgium**, deserves particular attention. **Germany** implemented 2,656 transfers out of 42,284 requests in 2021, marking a transfer rate of only 6%, even lower than in the previous year (when transfers were carried out in 10% of cases). A low transfer rate was also reported in previous years (17% in both 2018 and 2019) which suggests structural problems in the Dublin system, rather than obstacles resulting from COVID-19 restrictions. Similar observations apply to **France**, where the transfer rate also decreased as compared to previous years (11% in both 2020 and 2019). Only 3,145 persons were transferred out of 37,611 requests, thus marking a transfer rate of 8%. The transfer rate was even lower in **Belgium**, where only 429 transfers were completed, of the 9,808 requests (4% transfer rate).

<https://bit.ly/2EbDosN>. See also CJEU, Case C-56/17 *Fathi*, Judgment of 4 October 2018, EDAL, available at: <https://bit.ly/2TUdfap>, para 53.

Overall, the comparison between outgoing requests and actual transfers demonstrates that only a small fraction of Dublin procedures led to a transfer in 2020. European countries channelled too many applicants into a Dublin procedure that was not to reach its final stages. This confirms ECRE's assessment that the majority of countries applying the Dublin Regulation make a conscious policy choice to subject both asylum seekers and their own administration to lengthy Dublin procedures even though they know in advance that these procedures will not end in a transfer. The consequences are particularly damaging for applicants as they face a prolonged state of limbo, lengthy asylum procedures, and limited rights and guarantees.<sup>15</sup>

### Incoming transfers

For incoming transfers, more took place towards **Germany** than any other country, with 4,274 applicants received from other countries. Other countries which received a significant number of transfers in 2021 include **Italy** (1,462), **France** (1,112) and the **Netherlands** (931). However, these figures should also be read in proportion to the incoming requests received per country:



Source: AIDA. Figures on ES, EE, FI, FR, GR, LI, LT, LV, NL, SK, and NO are based on Eurostat. Figures on CZ and DK were not available; LU did not receive any incoming request. As there is a certain time that runs between a request being received and the person being transferred in the country, i.e. requests sent in a calendar year and transfers implemented in another calendar year — the figures above may not relate to the same group of people.

From the chart (ordered from left to right according to how many incoming requests were received in 2021), both Italy and France registered low rates of transfers when compared to the total amount of requests received (7% and 12% respectively).

Despite being the 3<sup>rd</sup> country in terms of incoming requests, **Greece** only received 2 persons following a Dublin transfer in 2021. Only 1 country out of 27 (Finland) implemented an incoming transfer in more than half the cases in which it received a transfer request. It should be noted, however, that the rate concerns only 62 applicants as received by the country.

<sup>15</sup> See further, EPRS/ECRE, *Dublin Regulation on international protection applications*, February 2020, p.62, available at: <https://bit.ly/2NJvdqp>, p.62. For an overview of procedural safeguards during the Dublin procedure in practice, see also: AIDA, *The implementation of the Dublin III Regulation in 2019 and during COVID-19*, August 2020, available at: <https://bit.ly/3gdh5V2>, p. 20-23.

It is also important to note that one person was transferred to **Hungary** from Germany in 2021. This took place after the German authorities submitted a request for the provision of individualised guarantees, which was agreed by Hungarian authorities.<sup>16</sup> No further information is available on the case, and it is unclear whether it represents a general change in practice on the side of either the German or the Hungarian authorities.<sup>17</sup>

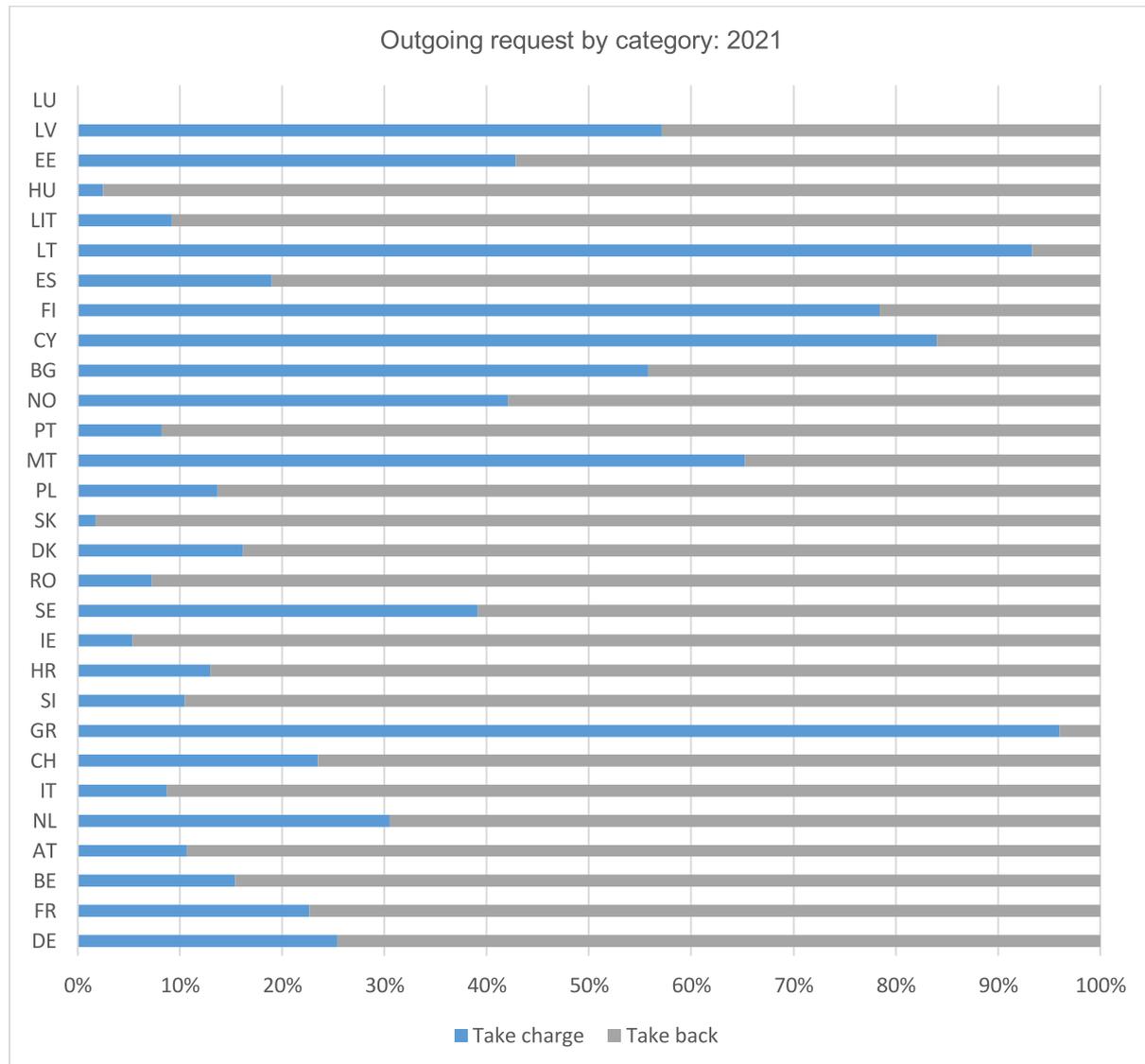
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<sup>16</sup> Federal Government, Response to parliamentary question by The Left, 19/30849, 21 June 2021, 47.

<sup>17</sup> AIDA, *Country report Germany – Update on the year 2021*, April 2022, available at: <https://bit.ly/3Rb5jev>, p.49.

## The responsibility criteria

Chapter III of the Dublin Regulation lays down a hierarchy of criteria for determining which country is responsible for examining the asylum application. Disaggregated statistics on outgoing and incoming requests by ground are available for 29 countries as follows:



Source: AIDA. Figures on GR, SE, FR, DE, NL and DK are based on Eurostat. LU received no requests in 2021.<sup>18</sup>

The graph above demonstrates the prevalence of take back requests based on Articles 18 and 20(5) of the Regulation (represented in grey), i.e. cases where the applicant has already lodged an asylum application in one Member State and then travels on to another Member State. The latter then initiates proceedings to see which Member State is responsible for “taking back” the applicant. “Take back” requests made up more than 70% of the total number of requests in 17 of the 29 countries.

<sup>18</sup> Note that for Switzerland, there is a significant difference between figures on “take charge” outgoing requests provided by the State Secretariat for Migration (SEM) and those available on Eurostat (1,159 on AIDA v. 31 based on Eurostat). The discrepancy could be due to the fact that in SEM statistics, the date of the asylum decision is decisive, while Eurostat refers to the date of legal validity. As a result, Eurostat statistics might lag behind the SEM figures, which can be identified as a significant factor in the case of fluctuating completion figures. The statistics provided by the SEM to Eurostat are not publicly accessible and the graph above refers to figures from AIDA.

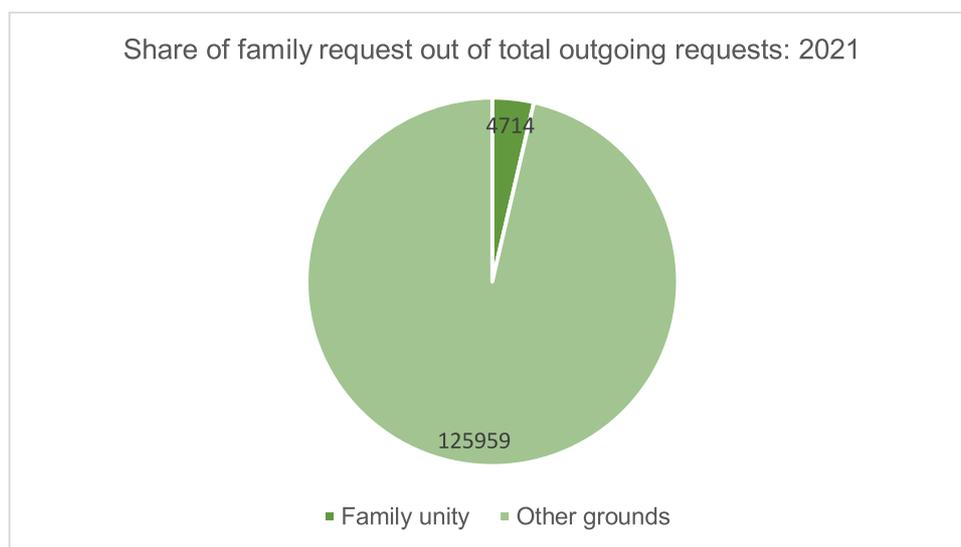
In contrast, certain countries primarily sent “take charge” requests, i.e. cases where the first application is lodged and the Member State initiates the procedure to determine which Member State is responsible. For example, more than 95% of requests sent by **Greece** were “take charge” requests, while for **Cyprus** the rate was more than 80%. Among other countries where a majority of requests were “take charge” requests were **Bulgaria, Latvia, and Malta**. A Member State can request that another Member State takes charge of an applicant for reasons that include the presence of family members, which explains why several countries at the external borders issue a higher than average number of “take charge” requests. However, as was the case in previous years, **Italy and Spain**, despite being countries of first arrival for many applicants, send more take back than take charge requests.

The high number of take back requests indicates that the majority of people placed in a Dublin procedure in the above countries had already lodged an asylum application in another Member State. ECRE has examined in previous research the reasons for onward movement, which may occur due to personal needs and to the situation in the country of first arrival. The person’s individual and socio-economic situation, their family status or the shortcomings affecting national asylum systems, including poor reception conditions are all reasons why they may decide or be forced to depart from a country, especially taking into account the differences in living standards, labour-market conditions, and access to government support among Member States.<sup>19</sup>

### Family unity

The Dublin III Regulation lists family unity as the first in the hierarchy of responsibility criteria,<sup>20</sup> although the definition of family is narrow, confined to the spouse/partner and underage children. For unaccompanied minors, it can be extended to other family members as listed in the Regulation, and when in the best interests of the child.

The following chart illustrates the share of “take charge” requests for family reunification out of the total number of outgoing requests, based on available figures in 26 countries for 2021:<sup>21</sup>



Source: Calculations based on Eurostat.

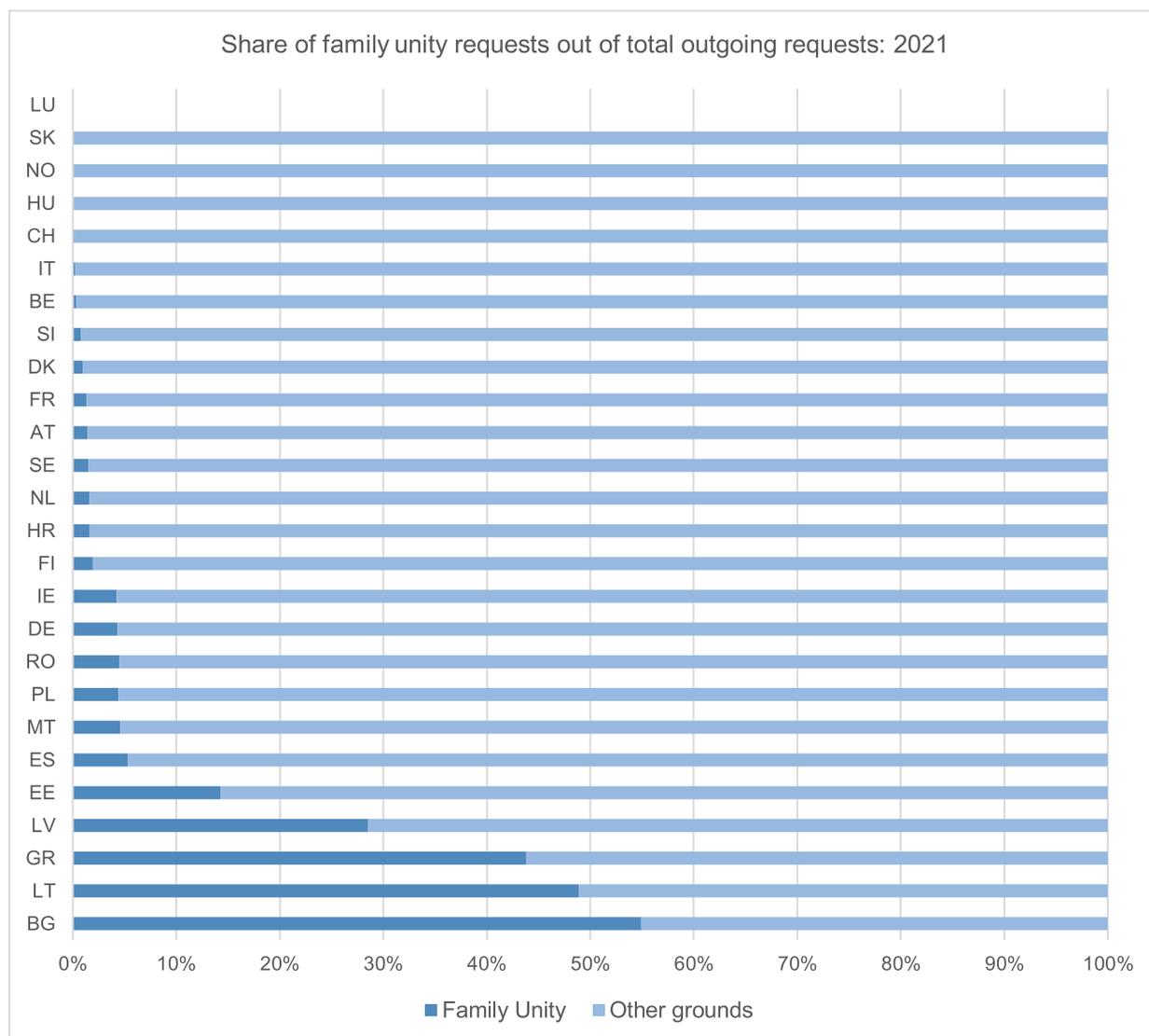
<sup>19</sup> See further, EPRS/ECRE, *Dublin Regulation on international protection applications*, February 2020, available at: <https://bit.ly/2NJvdqp>; ECRE, *Asylum in Europe: the situation of applicants for international protection in 2021*, July 2022, available at: <https://bit.ly/3ekWLTu>.

<sup>20</sup> Articles 8-11 Dublin III Regulation.

<sup>21</sup> Data for CY, CZ, LI and PT were not available.

Out of the total outgoing Dublin requests, only 4% were based on the family unity criteria, and 96% on other grounds. This indicates that Member States continue not prioritising these criteria and are therefore not respecting the hierarchy, as the family provisions are rarely used in most countries, despite the likely presence of family members elsewhere in the EU for at least some applicants.<sup>22</sup>

At national level, the share of family unity requests out of the total outgoing requests in 2021 was as follows:



Source: Eurostat. Figures on CZ and PT were not available.

Of the 26 countries represented above, only one country – **Bulgaria** – applied the family unity criteria in at least half of its outgoing Dublin requests. With the exception of **Lithuania** and **Greece**, the share of family unity requests out of the total of outgoing Dublin requests remained below 30% in all other countries – representing less than 10% of requests in 20 countries.

<sup>22</sup> See further, EPRS/ECRE, *Dublin Regulation on international protection applications*, February 2020, available at: <https://bit.ly/2NJvdqp>; ECRE, *The Dublin system in 2018*, March 2019, available at: <https://bit.ly/3dM61KL>; UNHCR, *Left in Limbo: Study on the implementation of the Dublin III Regulation*, August 2017, available at: <http://bit.ly/2kPx9SX>, 86 et seq.

The very low level of family unity requests in the four main operators of the Dublin system in 2021 - **Germany** (1,992 out of 46,489 requests), **France** (515 out of 37,096 requests), **Belgium** (28 out of 9,808 requests) and Austria (108 out of 7,476 requests) – is worrying as it may indicate that these criteria are not prioritised in practice. Similar observations can be made about the **Netherlands** and **Switzerland**. **Greece** – 7<sup>th</sup> in terms of outgoing requests issued – remains one of the only countries frequently applying the family unity criteria, with around 44% of its outgoing requests in 2021 relating to family reunification. This marks a slight increase compared to 40% in 2020, but does not reach the same levels as in 2019 and 2018, when 60% and 70% outgoing requests respectively were issued in application of the family unit criteria.

One reason for the decrease in transfers from Greece to Germany is the fact that the BAMF started handling applications for family reunification under the Dublin regulation more restrictively in comparison to previous years, often rejecting requests for formal reasons (such as supposed expiry of deadlines for the request, alleged lack of evidence for family relationships etc.). This led to many families being forced to submit an appeal for the BAMF to accept a transfer request from Greece.<sup>23</sup> As worrying as the low numbers of requests based on the family unity criteria, was the persistence of obstacles to the implementation of transfers based on these criteria due to practices adopted by receiving Member States, such as delays in the implementation of the guardianship system in Greece.<sup>24</sup>

### *The discretionary clauses*

No clear record of the use of the discretionary clauses included in Article 17 of the Dublin III Regulation is kept in most countries.

According to the EUAA, the sovereignty clause under Article 17(1) of the Regulation (which allows a Member State to examine an application for asylum lodged with it even if it is not the Member State responsible under the criteria in the Regulation) “was invoked around 3,900 times in 2021, declining for the third consecutive year to the lowest levels since 2015. It was applied most frequently by the Netherlands, followed at a distance by France, Germany, Switzerland and Belgium”.<sup>25</sup>

In **Germany**, the sovereignty clause was applied in 665 cases in 2021, resulting in an asylum procedure being carried out in the country. This marked a decrease compared to the previous year, when the clause was applied in 1,083 cases.<sup>26</sup> In **Switzerland**, it was applied in 672 cases; 538 concerned applications for which Greece would have been competent according to the Regulation, in 50 cases it would have been in Italy and in 39, Croatia.<sup>27</sup>

Regarding the “humanitarian clause”, the criteria for its use are not publicly available in **Switzerland**, and the Federal Administrative Court’s competence to examine the authorities’ decision to apply the clause is limited.<sup>28</sup> Similarly, in the **Netherlands**<sup>29</sup> and **Belgium**,<sup>30</sup> authorities register neither the

<sup>23</sup> AIDA, *Country report Germany – Update on the year 2021*, April 2022, available at: <https://bit.ly/3Rb5jev>, p.40.

<sup>24</sup> AIDA, *Country report Greece – Update on the year 2021*, May 2022, available at: <https://bit.ly/3Rf5gOU>, p.77.

<sup>25</sup> EUAA, *EUAA Asylum Report 2022*, available at: <https://bit.ly/3KzlvUe>, p.102.

<sup>26</sup> AIDA, *Country report Germany – Update on the year 2021*, April 2022, available at: <https://bit.ly/3Rb5jev>, p.41

<sup>27</sup> AIDA, *Country report Switzerland – Update on the year 2021*, April 2022, available at: <https://bit.ly/3cBkZc0>, p.39.

<sup>28</sup> AIDA, *Country report Switzerland – Update on the year 2021*, April 2022, available at: <https://bit.ly/3cBkZc0>, p.39.

<sup>29</sup> AIDA, *Country report Belgium – Update on the year 2021*, April 2022, available at: <https://bit.ly/3Rwy6K9>, p.42.

<sup>30</sup> AIDA, *Country report the Netherlands – Update on the year 2021*, April 2022, available at: <https://bit.ly/3RsnBal>, p.47.

grounds most commonly accepted for using the “humanitarian clause” nor the number of cases in which it is used.

In **Italy**, Article 17(2) was used by the Dublin Unit in 2021 for cases in which the deadline for transfer was not met, as well as generally for reasons connected to health restrictions.<sup>31</sup> A similar practice was registered in **Greece**, where the humanitarian clause was used more broadly at the start of 2021, when extensions of Dublin procedures were either related to COVID-19 restrictive measures or to the delay in the signing of the memorandum of cooperation between the Greek Dublin Unit and the travel agency responsible.<sup>32</sup>

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<sup>31</sup> AIDA, *Country report Italy – Update on the year 2021*, May 2022, available at: <https://bit.ly/3RjirxX>, p.69.

<sup>32</sup> AIDA, *Country report Greece – Update on the year 2021*, May 2022, available at: <https://bit.ly/3Rf5gOU>, p.77.

## Suspension of transfers

Dublin procedures remain a key component of asylum-related litigation, both before domestic and European courts. As an illustration, between 2021 and the beginning of 2022, the CJEU ruled on four different queries, all pertaining to the Dublin Regulation;<sup>33</sup> concomitantly, the Netherlands lodged ten different requests regarding Dublin in 2021 alone;<sup>34</sup> The German Federal Constitutional Court submitted a request regarding the possibility to suspend the implementation of a transfer decision due to COVID-19; it has not yet been adjudicated, but the Advocate General's conclusions are cautious on the matter: although States can, under certain conditions, suspend the execution of a transfer and thus the transfer time limit, seeking to avoid a transfer of responsibility because of the time limit expiring is not a legitimate reason to do so.<sup>35</sup>

### *The duty to investigate and obtain guarantees*

The duty to investigate and obtain guarantees to ensure the legality of Dublin transfers in certain cases continues to be interpreted differently across Europe. Most countries do not have a formal policy in place which would require the provision of individual guarantees prior to a Dublin transfer. As was the case in previous years, the exceptions to this general statement remain **Cyprus** and **Greece**, which require guarantees as a matter of general practice. **Germany**, **Poland** and **Slovenia** request such guarantees only from specific destination countries, mainly **Greece**. Lastly, a few countries only request them for (certain) particularly vulnerable asylum seekers, mostly persons with serious health conditions to ensure continuity of medical treatment: such is the case in **Belgium**, **Germany** and **Hungary**.

Transfers to **Italy** deserve particular attention. Despite frequent discussion of and both political and legal decisions regarding the state of its asylum system and in particular of reception conditions in the last decade, the country still received the largest number of incoming requests in 2021, despite a slight decrease compared to 2020 (nearly 20,000 requests in 2021, nearly 22,000 in 2020). It also received the second highest number of effective transfers after Germany. Following the lead of **Belgium** in 2019 and **Austria** and the **Netherlands** in 2020,<sup>36</sup> **Switzerland's** Federal Administrative Court discontinued its policy on guarantees for transfers to **Italy**, both for families<sup>37</sup> and for persons with grave health issues, in two reference cases.<sup>38</sup> This is a departure from jurisprudence that had been in place since 2015 and 2019 respectively,<sup>39</sup> which required the authorities to obtain individualised guarantees that the persons would be taken care of and have access to appropriate accommodation. This change of position is based on the rolling back of the "Salvini Decree" – the adoption of which had justified the 2019 jurisprudential position – by Decree 130/2020 and Law 173/2020 adopted at the end of 2020. The Swiss court considered that the new legislation, coupled with a "nuclear family" form and general assurance that accommodation will be provided for families, is now enough of a guarantee for a Dublin transfer. There is no longer a need for guarantees on reception conditions in each individual case. This is however disputed by the Swiss Refugee Council which monitors the situation in Italy and publishes

<sup>33</sup> CJEU, Case C-92/21, 26 March 2021, *VW v Agence fédérale pour l'Accueil des demandeurs d'asile (Fedasil)*, available at: <https://bit.ly/3CMBs7V>; CJEU, Grand Chamber, Case C-194/19, 15 April 2021, *H. A. v Etat belge*, available at: <https://bit.ly/3plQCTL>; CJEU, Case C-8/20, 20 May 2021, *L.R. v Bundesrepublik Deutschland*, available at: <https://bit.ly/3RcD7aO>; CJEU, C-321/21, 31 March 2022, *IA v Bundesamt für Fremdenwesen und Asyl*, available at: <https://bit.ly/3Cw2EaB>.

<sup>34</sup> See all ten requests at: <https://bit.ly/3R4tR8m>.

<sup>35</sup> CJEU, Joint Cases C-245/21 and C-248/21, 2 June 2022, *Conclusions of the Advocate General Piriit Pikamäe in the case Bundesrepublik Deutschland vertreten durch Bundesministerium des Innern, für Bau und Heimat v MA, PB and LE*, available at: <https://bit.ly/3AGuFdh>.

<sup>36</sup> AIDA, *The implementation of the Dublin III Regulation in 2020, September 2021*, p. 13, available at: <https://bit.ly/3RxtEel>; AIDA, *The implementation of the Dublin III Regulation in 2019 and during COVID-19*, p. 24, available at: <https://bit.ly/3B1TB02>.

<sup>37</sup> (Switzerland) Federal Administrative Court, Decision F-6330/2020, 18 October 2021.

<sup>38</sup> (Switzerland) Federal Administrative Court, Decision D-4235/2021, 19 April 2022.

<sup>39</sup> (Switzerland) Federal Administrative Court, Decision E-6629/2014, 12 March 2015; Federal Administrative Court, Decision E-962/2019, 17 December 2019.

regular reports on the issue, which conclude that these rollbacks have not occurred in practice,<sup>40</sup> and that the situation remains dire for asylum-seekers, especially those with mental health problems.<sup>41</sup>

**Germany's** asylum office officially stated in March 2019 that they no longer request individual guarantees for families with young children – under three years old – for transfers to **Italy**.<sup>42</sup> However, in 2021, courts continued to render diverging decisions on whether transfers should be upheld, whether problems in the Italian asylum system amount to “systemic deficiencies”, and whether the situation of Dublin returnees in Italy calls for individualised guarantees.<sup>43</sup>

As regards individual guarantees from **Greece**, no particular change was noted in 2021. **Germany**,<sup>44</sup> **Poland**<sup>45</sup> and **Slovenia**<sup>46</sup> all assert they request individual guarantees in case of transfers to Greece.

Lastly, on the matter of guarantees, it should be noted that on 4 October 2021 the District Court of the Hague lodged a request with the CJEU<sup>47</sup> concerning the potential scope of an obligation to seek individualised guarantees. However, the Court withdrew the query on 2 March 2022,<sup>48</sup> and it will not be adjudicated.

### *The human rights threshold*

In accordance with well-established European jurisprudence, a Dublin transfer is considered to be unlawful if it exposes the individual to a real risk of a serious violation of the prohibition of inhuman or degrading treatment under Article 3 ECHR and Article 4 of the Charter in the destination country.<sup>49</sup> This requires assessing the situation in the destination country, *inter alia* regarding access to the asylum procedure and reception, as well as the risk of chain *refoulement*.

- **Transfers to Bulgaria:** State positions vary regarding transfers to Bulgaria. In some States, such as Romania<sup>50</sup> and the Netherlands,<sup>51</sup> both the authorities and the judges ruling on appeals agree that transfers can take place. In contrast, the Belgian authorities neither take nor execute transfer

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<sup>40</sup> Swiss Refugee Council, Reception conditions in Italy: Latest developments, Update of the report on the situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees, In Italy from January 2020, 10 June 2021, available at: <https://bit.ly/3Cx7sMS>.

<sup>41</sup> Swiss Refugee Council, Situation of asylum seekers and beneficiaries of protection with mental health problems in Italy: Report and recommendations of the Swiss Refugee Council, February 2022, available at: <https://bit.ly/3Cym3HW>.

<sup>42</sup> AIDA, *Country report Germany – Update on the year 2021*, March 2022, available at: <https://bit.ly/3Arvma8>, 50.

<sup>43</sup> Informationsverbund Asyl & Migration, ‘Das »Dublin-Verfahren«. Die Zulässigkeitsprüfung im Asylverfahren bei »Dublin-Fällen« und »Anerkannten«’, available in German at <https://bit.ly/3K4StLy>.

<sup>44</sup> AIDA, *Country report Germany – Update on the year 2021*, March 2022, available at: <https://bit.ly/3Arvma8>, 50.

<sup>45</sup> AIDA, *Country report Poland – Update on the year 2021*, May 2022, available at: <https://bit.ly/3Klv3SP>, 36.

<sup>46</sup> AIDA, *Country report Slovenia – Update on the year 2021*, May 2022, available at: <https://bit.ly/3wxlwm1>, 34.

<sup>47</sup> CJEU, Case C-614/21, *Request for a preliminary ruling from the Rechtbank Den Haag, zittingsplaats's-Hertogenbosch (Netherlands) lodged on 4 October 2021*, available at: <https://bit.ly/3QXutgr>.

<sup>48</sup> CJEU, Case C-614/21, *Order of the President of the Court of 15 March 2022*, available at: <https://bit.ly/3RbleJd>.

<sup>49</sup> ECtHR, *M.S.S. v. Belgium and Greece*, Application No 30696/09, 21 January 2011, EDAL, available at: <https://bit.ly/2ErG9VZ>; CJEU, Case C-578/16 PPU C.K., 16 February 2017, EDAL, available at: <https://bit.ly/2Wvgjqr>, CJEU, Case C-163/17 *Jawo*, 19 March 2019, EDAL, available at: <https://bit.ly/2WS5PUC>.

<sup>50</sup> AIDA, *Country report Romania – Update on the year 2021*, May 2021, p. 64, available at: <https://bit.ly/3CM77q1>.

<sup>51</sup> (Netherlands) Council of State, Decision No 201810397/1, 28 August 2019, confirmed several times in 2021: Regional Court of the Hague, NL21.6350 and NL21.6351, 20 July 2021; Regional Court of the Hague, NL21.13892, 18 October 2021; Regional Court Haarlem, ECLI:NL:RBDHA:2021:10688, 21 September 2021; Regional Court Roermond, NL21.1188, 27 October 2021.

decisions to Bulgaria.<sup>52</sup> The French authorities have greatly increased transfer requests to Bulgaria, even executing a transfer of four Afghan nationals in the midst of judicial appeals.<sup>53</sup> Although some Administrative Courts argue that there are systemic deficiencies in Bulgaria, notably for Afghans given the very low asylum recognition rate,<sup>54</sup> such decisions are often overturned by the Administrative Courts of Appeal.<sup>55</sup> In Italy, judges in both Turin<sup>56</sup> and Rome<sup>57</sup> have ruled on the existence of a real risk of inhuman and degrading treatment in Bulgaria, due to shortcomings in the national asylum system, such as denial of entry by force, low asylum recognition rates, and serious shortcomings in reception and support services. Austria's case law is more varied: although a transfer was cancelled for particularly vulnerable applicants,<sup>58</sup> notably because of the living conditions in Bulgaria and the real risk of extreme material hardship, less than two months later, the same court upheld a transfer for a single adult male, considering that, although the Bulgarian asylum system could be improved, it complied with EU law.<sup>59</sup>

- **Transfers to Croatia:** While courts in Austria<sup>60</sup> and Belgium<sup>61</sup> did not detect any reason to suspend transfers to Croatia, other national positions are more nuanced. In 2021, the Dutch Council of State ruled to uphold the principle of mutual trust. It argued that pushback practices would not occur in cases of “take back” requests, i.e. concerning persons having submitted an asylum application in Croatia, as they would not be considered irregular migrants and thus not subject to pushbacks.<sup>62</sup> However, in two rulings of 13 April 2022, the Court overturned its previous position, finding that pushbacks seemed to be widescale both in space and time and are reported to also affect persons returned to Croatia. Following these decisions, the Minister for Migration on 30 May 2022 announced that no transfers would be carried out until research had concluded.<sup>63</sup> Diverging opinions are also reported in Switzerland, where the Federal Administrative Court seems to distinguish between “take charge” (persons that have not yet applied for asylum in Croatia) and “take back” requests.<sup>64</sup> Thus, the Court has annulled several transfer decisions concerning take charge requests based mainly on the risk of pushbacks,<sup>65</sup> as these persons still need to access and enter the asylum procedure, whilst it generally upheld transfers for take back requests, where it is assumed they will not be subject to pushbacks as Dublin returnees with ongoing applications.<sup>66</sup> Lastly, it can be noted that in November 2021 the European Court of Human Rights rendered a

<sup>52</sup> (Belgium) Myria, Contact meeting, 19 January 2022, para 15, available at <https://bit.ly/3HQ18z7>.

<sup>53</sup> Infomigrants, ‘France departs four Afghans to Bulgaria, lawyers fear return to Afghanistan’, 29 September 2021, available at: <https://bit.ly/3Rixo2V>.

<sup>54</sup> (France) Administrative Court of Paris, Decision No 2111283/8, 18 June 2021; Administrative Court of Rouen, Decision No 2104707, 21 December 2021.

<sup>55</sup> (France) Overturning both decisions respectively: Administrative Court of Appeal of Paris, Decision No 21PA03973, 26 November 2021; Administrative Court of Appeal of Douai, Decision No 22DA00096, 25 May 2022.

<sup>56</sup> (Italy) Tribunal of Turin, Decision No RG 23165/2020, 14 July 2021.

<sup>57</sup> (Italy) Court of Rome, Decision No RG 80834/2018, 2 April 2021.

<sup>58</sup> (Austria) Federal Administrative Court, Decisions No W165 2240560-1, W165 2240561-1, W165 2240564-1, W165 2240565-1, 30 March 2021.

<sup>59</sup> (Austria) Federal Administrative Court, Decision No W165 2241632-1, 10 May 2021.

<sup>60</sup> (Austria) Federal Administrative Court, Decision No W144 2240567-1, 23 March 2021; Decision W144 2241441-1, 19 April 2021; Decision No W175 2242349-1, 25 May 2021; Decision No W185 2239402-1, 17 September 2021

<sup>61</sup> (Belgium) Council of Alien Law Litigation, Decision No 255 221, 28 May 2021.

<sup>62</sup> (Netherlands) Dutch Council of State, ECLI:NL:RVS:2021:1563, 19 July 2021.

<sup>63</sup> Letter from the State Secretary for Justice and Security, 30 May 2022, available in Dutch at: <https://bit.ly/3Qb74H2>.

<sup>64</sup> For further analysis of this case law, see: Swiss Refugee Council, *Jurisprudence concernant la Croatie, pays Dublin: Analyse juridique et recommandations de l'Organisation suisse d'aide aux réfugiés*, 18 December 2021, available in French at: <https://bit.ly/3Rpmclr>.

<sup>65</sup> (Switzerland) Federal Administrative Court, Decision No F-48/2021, 8 January 2021; Decision No D-6591/2020, 13 January 2021; Decision No D-43/2021, 12 February 2021; Decision No F-5675/2021, 6 January 2022.

<sup>66</sup> (Switzerland) Federal Administrative Court, Decision No D-5691/2020, 9 January 2021; Decisions No E-4550/2021 and E-4570/2021, 22 October 2021; Decision No D-4957/2021, 22 November 2021.

judgment against Croatia, condemning the pushback practice at the border which led to the death of a child.<sup>67</sup>

- **Transfers to Greece:** Despite the European Commission having encouraged resumption of transfers to Greece in 2016,<sup>68</sup> various states still do not in practice carry out transfers (i.e. Belgium,<sup>69</sup> Malta,<sup>70</sup> Portugal<sup>71</sup>). Some countries such as Bulgaria,<sup>72</sup> Hungary,<sup>73</sup> Romania,<sup>74</sup> Slovenia,<sup>75</sup> seek to resume transfers and thus issue requests, but have so far not executed them. Lastly, Germany has resumed transfers to Greece and sent, throughout 2021, a high number of take-charge requests,<sup>76</sup> but only for non-vulnerable asylum seekers. Guarantees are requested in each case regarding reception conditions, accommodation and the asylum procedure.<sup>77</sup> In practice, only one transfer out of 10,427 requests was effectively carried out in 2021 by Germany towards Greece.<sup>78</sup>
- **Transfers to Hungary:** On 16 November 2021, the Grand Chamber of the European Court of Justice condemned Hungary for failure to fulfil its obligations under both the Procedures Directive and the Reception Directive, mainly regarding access to legal representation and assistance, and access to NGOs and UNHCR.<sup>79</sup> Several countries, including Austria,<sup>80</sup> Sweden,<sup>81</sup> Switzerland,<sup>82</sup> France<sup>83</sup> and Portugal,<sup>84</sup> despite issuing Dublin requests, do not in practice carry out transfers to Hungary, either due to human rights considerations or without explicit motive: Germany carried out one transfer in 2021, based on having obtained individual guarantees.<sup>85</sup>
- **Transfers to Italy:** The case law on transfers to Italy remained varied in 2021, although transfers are still being carried out regularly: Italy received almost exactly as many transfers as in 2020, even though it had received fewer incoming requests than the previous year. Following the 2020 decree reforming the Italian reception system, the ECtHR dismissed as inadmissible two requests by families with underaged children,<sup>86</sup> noting that the amendments included an extension of the range of services to be provided in reception facilities and as, according to UNHCR, effective access to

<sup>67</sup> ECtHR, Cases No 15670/18 and 43115/18, 18 November 2021, available at: <https://bit.ly/3ea7ccR>.

<sup>68</sup> European Commission, Commission Recommendation (EU) 2016/2256 of 8 December 2016 addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No 604/2013 of the European Parliament and the Council, available at: <https://bit.ly/3PYnBhx>.

<sup>69</sup> Myria, Contact meeting, 19 January 2022, para 15, available at <https://bit.ly/3HQ18z7>.

<sup>70</sup> AIDA, *Country report Malta – Update on the year 2021*, May 2022, p. 50, available at: <https://bit.ly/3Av05Tz>.

<sup>71</sup> AIDA, *Country report Portugal – Update on the year 2021*, May 2022, p. 61, available at: <https://bit.ly/3AXFHMo>.

<sup>72</sup> AIDA, *Country report Bulgaria – Update on the year 2021*, February 2022, p. 38, available at: <https://bit.ly/3AYZzim>.

<sup>73</sup> AIDA, *Country report Hungary – Update on the year 2021*, April 2022, p. 47, available at: <https://bit.ly/3wFoHYE>.

<sup>74</sup> AIDA, *Country report Romania – Update on the year 2021*, May 2022, p. 65, available at: <https://bit.ly/3wFoHYE>.

<sup>75</sup> Official statistics provided by the Migration Directorate, March 2022.

<sup>76</sup> Federal Government, *Response to parliamentary question by The Left*, 20/861, 24 February 2022, 22, and 19/30849, 21 June 2021, 3.

<sup>77</sup> Federal Government, *Response to parliamentary question by The Left*, 19/30849, 21 June 2021, 27

<sup>78</sup> Federal Government, *Response to parliamentary question by The Left*, 19/30849, 21 June 2021, 11.

<sup>79</sup> CJEU, Grand Chamber, C-821/19, 16 November 2021, available at: <https://bit.ly/3TrauZe>.

<sup>80</sup> Ministry of Interior, Answer to parliamentary request 9529/AB XXVII. GP, 11 April 2022.

<sup>81</sup> AIDA, *Country report Sweden – Update on the year 2021*, April 2022, p. 44, available at: <https://bit.ly/3AuYehH>.

<sup>82</sup> AIDA, *Country report Switzerland – Update on the year 2021*, April 2022, p. 47-48, available at: <https://bit.ly/3wEJI5E>.

<sup>83</sup> AIDA, *Country report France – Update on the year 2021*, April 2022, p. 59, available at: <https://bit.ly/3TppjCJ>.

<sup>84</sup> AIDA, *Country report Portugal – Update on the year 2021*, May 2022, p. 61, available at: <https://bit.ly/3AXFHMo>, p.61.

<sup>85</sup> Federal Government, Response to parliamentary question by The Left, 19/30849, 21 June 2021, 47.

<sup>86</sup> ECtHR, Case No 46595/19, 23 March 2021, available at: <https://bit.ly/3PYPtIO>; ECtHR, Case No 41100/19, 20 April 2021, available at: <https://bit.ly/3R6vhj9>.

essential services was guaranteed because the right of applicants for international protection to register their residence had been restored.

Following this judgment, several highest instance national courts found no obstacle to transfers to Italy. For example, the Portugal Supreme Court found no evidence of systemic flaws in the asylum and reception systems in Italy following the legislative changes.<sup>87</sup> In the Netherlands, the courts followed the ECtHR, concluding that the applicants would not be at risk of violation of Article 3 ECHR and Article 4 of the Charter if they were transferred back to Italy under the Dublin III Regulation, even in case of individual vulnerabilities.<sup>88</sup> This was confirmed by the Supreme Court at the end of 2021.<sup>89</sup> The Swiss Federal Administrative Tribunal also issued a similar decision: citing the ECtHR judgement *M.T v the Netherlands*, the court concluded that transfers of vulnerable persons could resume without seeking guarantees, considering the legislative and factual changes to the Italian reception system. However, it argued in favour of individual examination in cases of take back requests, in order to ensure access to the procedure and to reception.<sup>90</sup>

Nevertheless, in some countries, case law is less uniform. In Belgium, on 16 July 2021 the CALL rejected an appeal, arguing that the pressure on the reception system had decreased, and thus upholding the principle of mutual trust.<sup>91</sup> However, on 9 September it then annulled a transfer decision concerning a particularly vulnerable asylum seeker and requested a new appraisal of the situation by the authorities given the applicant's serious psychological and psychiatric issues.<sup>92</sup> In Germany, courts remain divided. While some are upholding transfers,<sup>93</sup> many are not, due to accommodation problems, a lack of work opportunities, and insufficient mental health treatment options, putting the applicants at risk of homelessness and impoverishment.<sup>94</sup>

- **Transfers to Malta:** The Swiss asylum authorities do not proceed with Dublin transfers to Malta for vulnerable persons and for any persons who risk being detained after their transfer to Malta.<sup>95</sup> One Dublin transfer to Malta took place in 2021, whereas there were none in 2020.<sup>96</sup> The Dutch courts' position on transfers to Malta evolved throughout the year. At the beginning of the year, overturning a decision of the Hague court, the Council of State found that there was insufficient evidence to say that Dublin returnees faced systematic detention, that there was access to effective remedy in case of detention, and that the applicant did not prove sufficiently their allegations regarding reception conditions.<sup>97</sup> However, a few months later the Court of the Hague, having itself conducted investigations into the asylum system in Malta, prohibited a transfer as it considered mutual trust could not be upheld given the large-scale systematic pushbacks, the structural shortcomings in the capacity and quality of reception, the detention conditions, and the lack of adequate judicial

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<sup>87</sup> (Portugal) Supreme Court, Case No 02317/19.1BELSB, 14 January 2021.

<sup>88</sup> (Netherlands) Court of The Hague, ECLI:NL:RBDHA:2021:4688, 4 May 2021; Court of The Hague, ECLI:NL:RBDHA:2021:6992, 7 July 2021; Court of the Hague, ECLI:NL:RBDHA:2021:8767, 10 August 2021; Court of the Hague, ECLI:NL:RBDHA:2021:12396, 12 October 2021; Court of the Hague, ECLI:NL:RBDHA:2021:11835, 29 October 2021; Court of the Hague, ECLI:NL:RBDHA:2021:12397, 12 November 2021.

<sup>89</sup> (Netherlands) Council of State, Case No 202107185/1, 29 November 2021.

<sup>90</sup> (Switzerland) Federal Administrative Tribunal, Decision No D-2926/2021, 19 July 2021; Decision No F-3769/2021, 2 September 2021; Decision F-6330/2020, 18 October 2021.

<sup>91</sup> (Belgium) CALL, Case No 258 355, 16 July 2021.

<sup>92</sup> (Belgium) CALL, Case No 260 417, 9 September 2021.

<sup>93</sup> (Germany) Administrative Court of Saarland, 5 L 1624/21, 29 December 2021.

<sup>94</sup> (Germany) Administrative Court of Berlin, 28 K 281.17 A, 19 May 2021; Higher Administrative Court of North Rhine Westphalia, Case No 11 A 1689/20.A, 20 July 2021; Administrative Court of Freiburg, A 9 K 2793/21, 10 November 2021.

<sup>95</sup> Manuel Asile et retour, Article C3 La procedure Dublin, available in French at: <https://bit.ly/3dgVyN2>.

<sup>96</sup> AIDA, *Country report Switzerland – Update on the year 2021*, April 2022, p. 49, available at: <https://bit.ly/3wEJl5E>.

<sup>97</sup> (Netherlands) Council of State, ECLI:NL:RVS:2021:199, 2 February 2021.

remedies.<sup>98</sup> Additionally, in June 2021 the ECtHR issued an interim decision against the Netherlands concerning a transfer to Malta.<sup>99</sup> At the end of the year, the Council of State overturned its February decision and considered that, based on the new information and reports, mutual trust could no longer be upheld.<sup>100</sup> The Secretary of State must conduct further investigations to assess the legality of transfers to Malta as there may be structural and organisational issues in detention and reception.

### *Suspension of transfers following the outbreak of the war in Ukraine*

Following the outbreak of the war in Ukraine and the ensuing displacement, **Poland**,<sup>101</sup> **Slovakia**, **Romania** and the **Czech Republic** suspended all incoming transfers.<sup>102</sup> This request was accepted by some countries, such as **Belgium**,<sup>103</sup> but not by all countries, as **Germany** continued to issue Dublin transfer decisions. German courts faced emergency appeals regarding the legality of these transfer decisions and the wide-range of diverging decisions on the matter rendered their overall stance unclear.<sup>104</sup>

Some courts granted the emergency suspension requests, with or without a temporal limitation, mainly based on the argument that deportation can only be ordered when it is established that the transfer can be carried out. This not only entails that the legal criteria are met, but also that the transfer is materially possible, in a timely manner, i.e. within 6 months as provided for by the Dublin Regulation. As these countries have clearly stated they will not be taking incoming transfers in the foreseeable future, despite replying to the request for admissions before 24 February 2022 in some cases, it cannot be said they are prepared to readmit Dublin returnees. As such, the criterion is not met and hence the decision is illegal.<sup>105</sup> One court considered that it was to be expected that there would be systemic deficiencies in the procedure or the reception conditions given the influx of persons fleeing Ukraine.<sup>106</sup>

Other courts, however, upheld transfer decisions, arguing that the asylum seekers had not submitted reports that would indicate that care and accommodation is no longer sufficient due to the arrival of persons fleeing Ukraine. The courts felt it could not be presumed that the procedure and reception conditions would deteriorate to a level that would be considered inhuman or degrading treatment. They also argued that a factual obstacle to transfer did not make the threat of deportation itself unlawful.<sup>107</sup>

Regardless, both Romania and Poland have lifted the suspension on incoming transfers. At the end of May, **Romania's** Dublin unit said it intended to gradually accept Dublin transfers again, with limited

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<sup>98</sup> (Netherlands) Court of the Hague, ECLI:NL:RBDHA:2021:6931, 6 July 2021; Confirmed in ECLI:NL:RBDHA:2021:8798, 28 July 2021; ECLI:NL:RBDHA:2021:9533, 16 August 2021.

<sup>99</sup> ECtHR, 22615/21, 30 June 2021.

<sup>100</sup> (Netherlands) Council of State, ECLI:NL:RVS:2021:2791, 15 December 2021.

<sup>101</sup> Polish authorities formally informed the other Member States through a circular dated 25 February 2022 which stated that Poland was immediately suspending all incoming transfers until further notice starting 28.02.2022. See Informationsverbund Asyl & Migration, Overview: Effects of the Ukraine War on Dublin Renditions, last updated 01.06.2022, available at: <https://bit.ly/3pXFfqY>.

<sup>102</sup> Myria, *Contact meeting*, 23 March 2022, available at: <https://bit.ly/3AUNI4H>.

<sup>103</sup> *Ibid.*

<sup>104</sup> For further information, see Informationsverbund Asyl & Migration, Overview: Effects of the Ukraine War on Dublin Renditions, 1 June 2022, available at: <https://bit.ly/3pXFfqY>; and Update: Effects of the Ukraine War on Dublin Renditions, 14 July 2022, available at: <https://bit.ly/3PXtRGg>.

<sup>105</sup> Regarding transfers to Poland: Administrative Court of Aachen, 6 L 156/22.A, 18 March 2022; Administrative Court of Düsseldorf, 15 L 236/22.A, 7 April 2022; 12 L 627/22.A, Administrative Court of Düsseldorf, L 627/22.A, 12 April 2022; Administrative Court of Düsseldorf, 22 L 750/22.A, 26 April 2022; Regarding transfers to Romania: Administrative Court of Düsseldorf, 22 L 526/22.A, 4 May 2022.

Regarding transfers to Slovakia: Administrative Court of Würzburg, 5 April 2022, W 1 K 22.50078.

<sup>106</sup> Administrative Court of Düsseldorf, 15 L 236/22.A, 7 April 2022.

<sup>107</sup> For example, Administrative Court of Wiesbaden, 3 K 1656/18.WI.A, 6 May 2022.

capacity.<sup>108</sup> On 23 June 2022, **Poland** informed other Member States that it would again accept incoming transfers starting 01 August 2022.<sup>109</sup>

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<sup>108</sup> Overview: Effects of the Ukraine War on Dublin Renditions, 1 June 2022, available at: <https://bit.ly/3pXFqY>.  
<sup>109</sup> Informationsverbund Asyl & Migration, Update: Effects of the Ukraine War on Dublin Renditions, 14 July 2022, available at: <https://bit.ly/3PXtRGg>.

## THE ASYLUM INFORMATION DATABASE (AIDA)

The [Asylum Information Database \(AIDA\)](#) is a database managed by the European Council on Refugees and Exiles (ECRE), containing information on asylum procedures, reception conditions, detention and content of international protection across 23 countries. This includes 19 European Union (EU) Member States (Austria, Belgium, Bulgaria, Cyprus, Germany, Spain, France, Greece, Croatia, Hungary, Ireland, Italy, Malta, Netherlands, Poland, Portugal, Romania, Sweden, Slovenia) and 4 non-EU countries (Switzerland, Serbia, Turkey, United Kingdom).

The overall goal of the database is to contribute to the improvement of asylum policies and practices in Europe and the situation of asylum seekers by providing all relevant actors with appropriate tools and information to support their advocacy and litigation efforts, both at the national and European level. These objectives are carried out by AIDA through the following activities:

- ❖ **Country reports:** AIDA contains [national reports](#) documenting asylum procedures, reception conditions, detention and content of international protection in 23 countries.
- ❖ **Comparative report:** AIDA comparative reports provide a thorough comparative analysis of practice relating to the implementation of asylum standards across the countries covered by the database, in addition to an overview of statistical asylum trends and a discussion of key developments in asylum and migration policies in Europe. Annual reports were published in [2013](#), [2014](#) and [2015](#). From 2016 onwards, AIDA comparative reports are published in the form of thematic updates, focusing on the individual themes covered by the database. Thematic reports have been published on [reception](#) (March 2016), [asylum procedures](#) (September 2016), [content of protection](#) (March 2017), [vulnerability](#) (September 2017), [detention](#) (March 2018), access to the [territory](#) and [registration](#) (October 2018), [reception](#) (May 2019) and [asylum authorities](#) (October 2019).
- ❖ **Fact-finding visits:** AIDA includes the development of fact-finding visits to further investigate important protection gaps established through the country reports, and a methodological framework for such missions. Fact-finding visits have been conducted in [Greece](#), [Hungary](#), [Austria](#), [Croatia](#), [France](#), Belgium and Germany.
- ❖ **Legal briefings:** Legal briefings aim to bridge AIDA research with evidence-based legal reasoning and advocacy. With the assistance of information gathered from country reports, these short papers identify and analyse key issues in EU asylum law and policy and identify potential protection gaps in the asylum *acquis*. Legal briefings so far cover: (1) [Dublin detention](#); (2) [asylum statistics](#); (3) [safe countries of origin](#); (4) [procedural rights in detention](#); (5) [age assessment](#) of unaccompanied children; (6) [residence permits](#) for beneficiaries of international protection; (7) the [length of asylum procedures](#); (8) [travel documents](#) for beneficiaries of international protection; (9) [accelerated procedures](#); (10) the [expansion of detention](#); (11) [relocation](#); and (12) [withdrawal of reception conditions](#).
- ❖ **Statistical updates** AIDA releases short publications with key figures and analysis on the operation of the Dublin system across selected European countries. Updates have been published for [2016](#), the [first half of 2017](#), [2017](#), the [first half of 2018](#), [2018](#) and the [first half of 2019](#), [2019](#) and the [first half of 2020](#).

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