

The implementation of the Dublin III Regulation in 2022

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Please note that for countries covered by the AIDA database, unless otherwise specified this study uses the information provided in the AIDA reports. For countries not covered by the AIDA database, this study uses the statistical information available on [Eurostat](#). All calculations are that of the authors. Percentages are generally rounded to the nearest whole number.

Key Findings

The use of the Dublin system in 2022

- 2022 saw the highest number of Dublin transfer decisions and requests since at least 2014, with 172,850 decisions taken on 191,291 requests.
- The main users of the Dublin system are Germany and France, making 68,709 and 46,488 Dublin requests respectively, accounting for 28% and 30% of the asylum applications lodged in each country, and jointly accounting for 60% of all outgoing requests.
- Belgium issued the highest number of Dublin requests as a percentage of asylum applications, with 40% of the asylum applications it received channelled into a Dublin procedure.

Application of the hierarchy for determining responsibility

- Most outgoing requests are take back requests, concerning applicants who have already applied for asylum in another Member State. In 2022, 70% of Dublin transfer requests were take back requests and 30% were take charge requests.
- The vast majority of take charge requests are based on the issuing of a visa or residence document (Article 12) or irregular entry criteria (Article 13(1)), thus 89% of take charge requests were requests for a country to take charge of an applicant on the basis that they had issued a document to that person or because the applicant had irregularly entered that country.
- Very limited numbers of transfer requests are based on the family unity and best interests of the child criteria – around 2% of all Dublin transfer requests – even though these provisions are at the top of the hierarchy of responsibility and should thus be prioritised.
- The sovereignty clause (Article 17(1)) which allows a Member State to use their discretion to take responsibility for an application is rarely used, with around 4,800 examples in 2022. However, good practice is emerging in Belgium concerning the expanded application of the clause.
- The humanitarian clause whereby a request to take charge is based on humanitarian grounds is barely used, accounting for 0.72% of requests. However, certain countries are expanding the use of these grounds in requests, including Cyprus and Greece. Overall, 45% of requests based on humanitarian grounds are accepted, with six countries accepting a majority of such requests they receive.

Transfer rates in 2022 (transfers implemented compared to requests)

- The vast majority of Dublin requests do not result in a transfer: in 2022, only 8% of Dublin transfer requests issued culminated in the transfer of the applicant.
- For the main users of the Dublin system, the percentage of transfers achieved is even lower: in Germany 6% of transfer requests culminated in the transfer of the applicant; in France, 7%; in Belgium 6%; and in Austria 7%.
- The main recipients of incoming Dublin requests to either take back or take charge of an applicant are Italy, Austria, Bulgaria, Croatia and Germany. Most of these requests did not result in a return of the applicant.
- Only five states received more than 1,000 Dublin returnees (Germany (3,700), Italy (2,331), Austria (1,575), France (1,453) and Spain (1,061)).
- Some Member States suspended acceptance of incoming Dublin transfers in 2022. Poland and Romania suspended acceptance of Dublin transfers due to management of arrivals of displaced people from Ukraine in early 2022, partially reinstating transfers later in the year; Italy suspended transfers due to “saturation” of its reception system in October 2022.

Legal challenges related to Dublin in 2022

- The Dublin Regulation remains a major source of asylum litigation in Europe, with numerous legal challenges before domestic courts, and major cases going before both European Courts.
- Courts regularly block transfers back to certain countries for reasons including the risk of (chain) *refoulement*; poor reception conditions; lack of access to reception conditions for Dublin returnees; deficiencies in asylum procedures; lack of access to the asylum procedure; poor treatment of beneficiaries of international protection; and excessive, automatic or otherwise unlawful use of detention.
- Nonetheless, jurisprudence is inconsistent between as well as within the countries applying the Dublin Regulation.
- Courts continue to differ on whether systemic deficiencies exist in certain countries. Asylum systems in Bulgaria, Greece, Hungary, and Italy have been found by some national courts to demonstrate systemic deficiencies; in other cases, courts did not find that deficiencies in these countries were systemic.
- Where systemic deficiencies have not been found, courts often continue to require individual guarantees concerning the treatment of an applicant before a transfer can go ahead. The requirement of individual guarantees may also be a formal policy in certain countries.
- Even where systemic deficiencies are found or where there are regular and consistent court decisions blocking transfers in individual cases, states are reluctant to introduce policies that formally suspend transfers. Thus, individual cases continue to be litigated.
- The principle of mutual trust whereby by one Member State accepts on trust that another Member State respects EU law has been increasingly challenged in national courts. The proper interpretation of the principle has been the subject of Preliminary References to the CJEU.
- For one or more of the reasons above, no Dublin transfers were made to Greece in 2022, with a *de facto* or *de jure* suspension of transfers in place; for one or more of the reasons listed, very few transfers were made to Bulgaria, Croatia, Denmark, Hungary, or Malta.

Introduction*

In September 2020, the European Commission launched the New Pact on Migration and Asylum, which includes legislative and non-legislative measures. Among the legislative proposals is the Regulation on Asylum and Migration Management (RAMM), which repeals the Dublin Regulation (Regulation (EU) No. 604/2013), replacing it with new rules on responsibility sharing, along with solidarity mechanisms. Analysis of the proposal suggests that not much will change, however, as the new rules on allocation of responsibility – a significant source of dysfunction and of conflict between Member States – remain very close to the current Dublin system, thus not fully addressing the causes of current shortcomings.¹

The negotiations are in the final stage, with some differences remaining between the positions of the two co-legislators, for example, the Council seeks to reinforce the responsibility of the countries of first entry, while the European Parliament prioritises solidarity through relocation.² In the meantime, the Dublin III Regulation remains 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 2022. It is based on information gathered by the European Council on Refugees and Exiles (ECRE) for its databases, namely the Asylum Information Database (AIDA) and the European Database of Asylum Law (EDAL), as well as other sources where relevant. The data used is derived primarily from information made available by national authorities, civil society organisations, and Eurostat. The briefing also draws on a series of implementation assessments carried out by ECRE in recent years, primarily for the European Parliament (EP).

The year 2022 saw a record number of Dublin procedures, even though applications for asylum did not reach their highest levels – despite a significant increase, application numbers were below 2015-2016, for example. At the same time, the number and rate of transfers actually carried out remained low, despite the lifting of pandemic travel restrictions. This follows the trend set in previous years: only a small number of transfers are actually implemented of the requests submitted. This continuing trend can in and of itself be considered as proof of the inefficiencies and shortcomings of the Dublin system. The practice of requesting transfers 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 functionality not only of the current system but also that of any alternative which is not based on a deeper reform of the rules. Nonetheless, while overall information availability has increased, a full understanding of the use of Dublin is hampered by the lack of available information on the nationalities of the applicants subject to the system.

The full-scale invasion of Ukraine and subsequent mass displacement did not directly affect Dublin procedures in that Member States decided not to apply Dublin to temporary protection procedures, however it did indirectly affect states' Dublin units in terms of availability of staff and resources, which had to be redeployed.

* This report was written by Charlotte Labrosse and Pierre Fournier 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.

¹ ECRE, *The Regulation on Asylum and Migration Management: Giving with one hand, taking back with the other*, 2021, available at: <https://bit.ly/3FsOIOM> and EPRS, *The European Commission's New Pact on Migration and Asylum: Horizontal substitute impact assessment*, August 2021, available at: <https://bit.ly/3FsP9so>, 23-26.

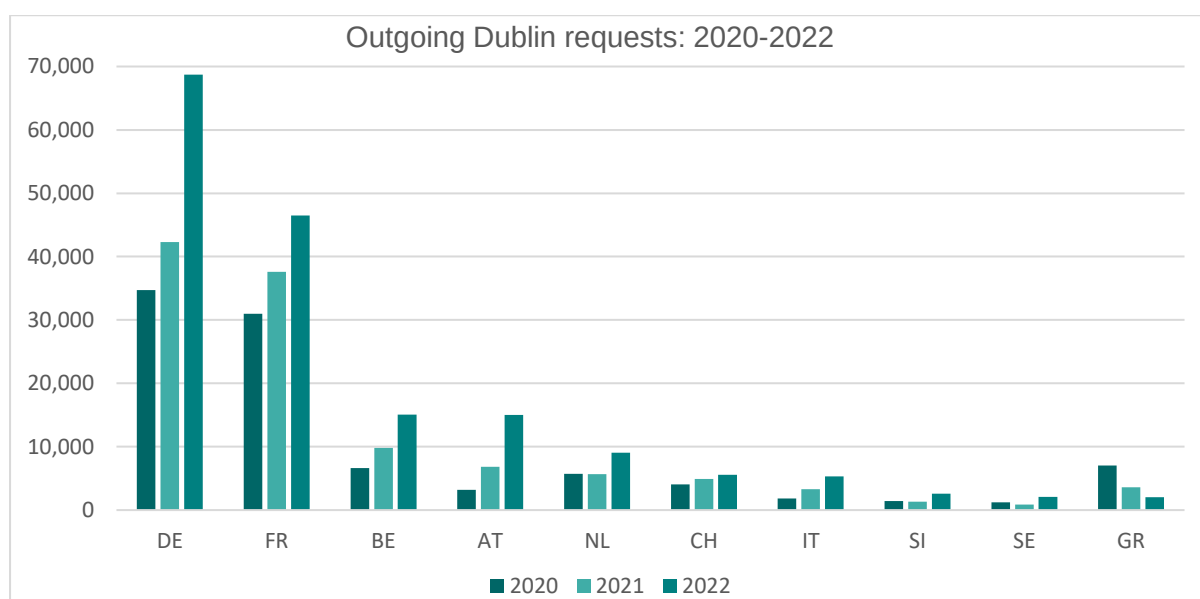
² ECRE, *Reforming EU asylum law: the final stage*, August 2023, available at: <https://bit.ly/3McgYcn>.

Key Dublin statistics for 2022

As in 2021, the number of asylum applications in Europe increased sharply compared to the previous year, including in the 31 countries applying the Dublin Regulation. The reasons for the increase include both the lifting of pandemic travel restrictions in 2022 and global developments which generated additional displacement, notably the worsening security and human rights situation in Afghanistan following the Taliban takeover in August 2021 and the continuing crisis in Syria (the top two countries of origin of people seeking asylum in the EU+ were Syria and Afghanistan, as has been the case for 10 years).³ The full-scale invasion of Ukraine launched by Russia in February 2022 did not significantly affect asylum applications given the EU's rapid activation of the Temporary Protection Directive (TPD) which created a temporary protection regime for most of those fleeing Ukraine.⁴ According to Eurostat, almost 966,000 people applied for international protection in 2022, up from 650,000 in 2021.

Changes in the use of Dublin procedures in 2022

As of September 2023, in contrast with previous years, data on Dublin procedures in 2022 was available for all 31 states applying the Dublin Regulation.⁵ According to Eurostat, 172,850 decisions were issued in response to 191,291 outgoing Dublin requests, up from 125,935 decisions on 132,062 requests in 2021. This represents the highest number of outgoing Dublin procedures since at least 2014,⁶ surpassing inter alia the levels of 2016-2017. "Outgoing requests" refers here to both take back and take charge requests, with the former making up around 70% of outgoing requests and the latter 30%.



Source: AIDA. Figures on DE (2020), CH (2022), GR (2021 and 2022), FR and NL were extracted from Eurostat.

³ EUAA, 'Almost 1 million asylum applications in the EU+ in 2022' (Press release), 22 February 2023, available at: <https://bit.ly/3Fkigm5>; EMN, *Annual Report on Migration and Asylum 2022*, June 2023, available at: <https://bit.ly/3ZZhBf7>, 5.

⁴ UNHCR, *Global Trends: Forced Displacement in 2022*, June 2023, available at: <https://bit.ly/3FIYn9Q>, 33; EMN, *Annual Report on Migration and Asylum 2022*, June 2023, available at: <https://bit.ly/3ZZhBf7>, 8.

⁵ Regarding issues with Eurostat data on Dublin, see: EPRS/ECRE, *Dublin Regulation on international protection applications: European Implementation Assessment*, February 2020, available at: <https://bit.ly/3FuHZnv>, 28-29. For example, Eurostat displays that Greece carried out approx. 1,500 transfers in 2021, whereas EUAA data indicates that Greece carried out approx. 2,000 transfers (EUAA, *Asylum Report 2023*, July 2023, available at: <https://bit.ly/3PAIFOb>, 112): depending on which number is used, the drop in implemented transfers by Greece in 2022 compared to 2021 is of either 30% (using the Eurostat data) or 50% (using data from the EUAA).

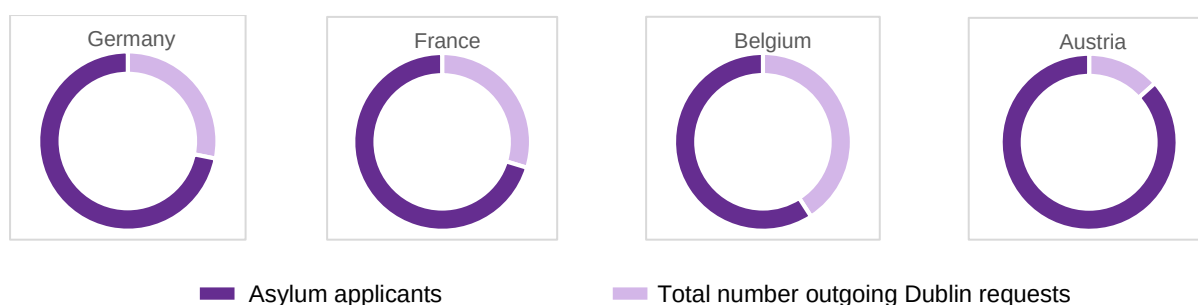
⁶ Data for years prior is not available on Eurostat but unlikely to be higher than for 2022, given the (significantly) lower number of applications.

As illustrated above, the number of requests once again rose compared to the previous year in most of the countries that have been the main users of the Dublin system in the last three years. For example, requests rose by approximately 62% in **Germany**, 54% in **Belgium** and 59% in the **Netherlands**. The sharpest relative increase was registered by **Croatia**, which issued just three requests in 2021 and 1,959 in 2022. However, requests more than doubled in ten of the 31 countries, most notably **Austria** (a 120% increase with 14,994 requests in 2022), **Sweden** (143% increase, 2,072 requests), **Norway** (232% increase), **Spain** (707% increase, from 95 to 767), **Cyprus** (303% increase, from 181 to 730).

Conversely, eleven countries submitted fewer outgoing Dublin requests compared to 2021: **Greece, Ireland, Romania, Slovakia, Poland, Malta, Bulgaria, Czech Republic, Lithuania, Liechtenstein, and Hungary**. Shortage of staff working on Dublin due to the need to address displacement from Ukraine was one of the obstacles to comprehensive implementation of Dublin cited by some Member States (in particular, those sharing a border with Ukraine: **Romania, Hungary, Slovakia, and Poland**).⁷ Moreover, most of these countries are not key users of the Dublin system: only Greece and Ireland sent more than 1,000 requests in 2021. However, in both of these states, the decrease in outgoing requests was significant: -47% in Greece and -48% in Ireland.

Asylum applications and Dublin procedures

Share of Dublin procedures in the top 4 operators of the Dublin system: 2022⁸



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

The charts above show the four countries (ordered left to right) which sent the most outgoing Dublin requests in 2022. **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 2022, these two Member States received 244,132 and 156,455 asylum applicants respectively, and issued 68,709 and 46,488 outgoing Dublin requests. **Belgium** remained the third main user of the Dublin system, issuing a total of 15,078 outgoing requests against 36,871 asylum applicants throughout the year. The substantial increase in Dublin procedures continued in **Austria**, which remained the fourth country per number of issued requests.

Furthermore, the charts illustrate how the proportion of applicants for international protection channelled into Dublin procedures remained significant in 2022: 28.1% of all applicants in **Germany** and 29.7% in **France** were subject to a Dublin procedure in 2022. In **Belgium**, this figure was even higher, as more than 40% of all asylum seekers were channelled into a Dublin procedure. Other countries – in particular **Hungary, Liechtenstein, Slovakia** – despite issuing a comparatively low number of requests, had an even higher share of applicants channelled into the Dublin procedure compared to the total number of applicants (respectively 89%, 60%, 72%).

⁷ EUAA, *Asylum Report 2023*, July 2023, available at: <https://bit.ly/3PAIFOb>, 92ff.

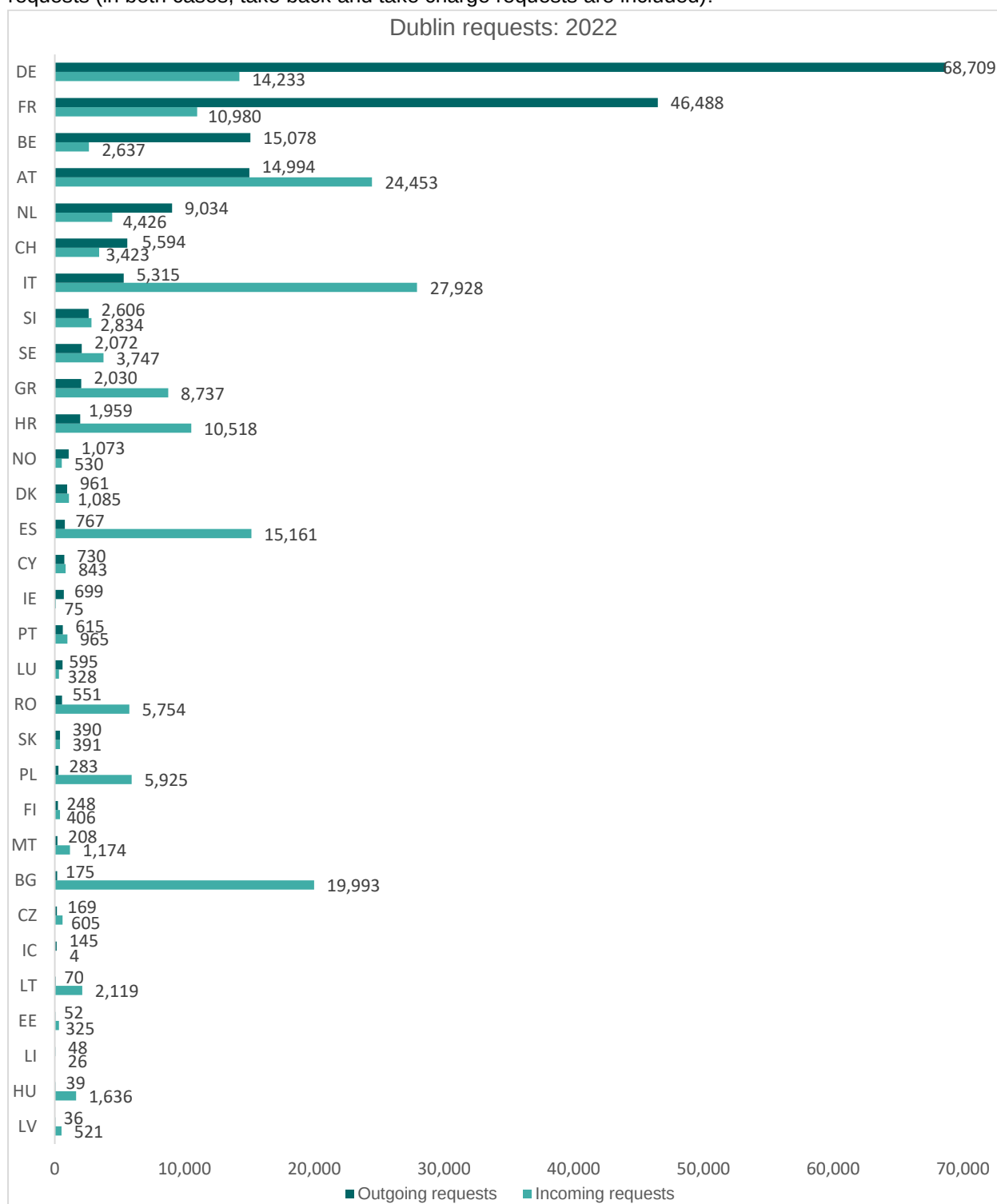
⁸ The following pie charts represent the share of asylum applicants channelled in a Dublin procedure as compared to the total number of asylum applicants in 2022.

Changes in outgoing requests do not automatically mirror the changes in asylum applications:⁹ for example, applications rose by 28% in Germany, but outgoing Dublin requests increased by 62%; the contrast is even starker in Spain, with an 81% increase in applications but a 707% increase in outgoing Dublin requests. This is a significant difference from previous practice: except for 2020 (with 788 outgoing requests), since 2016 Spain has never sent more than 85 outgoing requests in a year. In France and Belgium, rises in outgoing Dublin requests and applications were similar: a 29% increase in applications and 24% increase in outgoing Dublin requests in France, versus a 42% increase in applications and 54% increase in outgoing Dublin requests in Belgium. To the contrary, in some countries, despite (high) increases in asylum applications, no similar trend was observed regarding outgoing Dublin requests. In Austria, applications increased by over 200% but outgoing Dublin requests by only 120%; in Greece, applications increased by 32% yet outgoing Dublin requests decreased by 47%; finally in Ireland applications increased more than fivefold yet outgoing Dublin requests decreased by almost half compared to 2021.

⁹ In the following paragraphs, for consistency purposes both information about Dublin outgoing requests and number of applications come either from AIDA (DE, BE, AT, IE) or Eurostat (FR, NL, GR, ES).

Outgoing and incoming procedures

In 2022, Member states issued the following outgoing requests and received the following incoming requests (in both cases, take back and take charge requests are included):



Source: AIDA. Figures on FR, NL, CH, GR, ES, and MT are based on Eurostat.¹⁰

¹⁰ In some countries, there are disparities between the numbers provided to AIDA and Eurostat, particularly for IT (discrepancy of 5,316 incoming requests more reported to Eurostat out of 33,244; and 2,860 more outgoing requests reported to Eurostat out of 8,175) and ES (discrepancy of 3,288 incoming requests more reported to Eurostat out of 15,161).

As in previous years, the majority of countries received more incoming requests than they sent outgoing requests, i.e. they received more requests from others asking them to take on responsibility for an application than the number of requests they made to other states. Nonetheless, it remains the case that the main users of the Dublin system issue more requests than they receive. Thus, ten of 31 countries issued more outgoing requests than they received incoming requested but they include the major users of the system, specifically **Germany, France, Belgium, the Netherlands, Switzerland, Norway, Ireland, Luxembourg, Iceland, and Lichtenstein issued** more outgoing requests than they received incoming requests.

Italy continued to be the country which receives the most incoming requests. In 2022, Italy submitted 5,315 outgoing requests and received 27,928 requests from other countries, mainly from Germany and France. This represents an increase on 2021 but does not rise to the level of requests received prior to the pandemic in 2018-2019.¹¹

Incoming requests received by **Austria** more than tripled in 2022 with 24,453 requests, up from 8,051 in 2021. Most requests were sent by Germany and France, who accounted for over 70% of the requests received by Austria. Similarly, **Bulgaria and Croatia** received substantially more requests in 2022 than in the years prior, including pre-pandemic, with respectively 19,993 and 10,518 incoming requests. For Bulgaria, almost half of the requests originated from Austria alone, followed by Germany and France; Germany, France and Slovenia were the main countries sending requests to Croatia.

Despite a steady decrease since 2018 (25,008 requests received), with 14,233 incoming requests in 2022, **Germany** remained the country with the fifth most incoming requests. Over 40% of the requests to Germany were sent by France.

After a 55% increase between 2020 and 2021, incoming requests to Greece decreased once more in 2022 with 8,737 incoming requests, down from 13,796 in 2021. Close to 70% of these requests (6,079) were sent by Germany, although this still represents a 42% decrease compared to 2021.

Lastly, despite extensive evidence of the deficiencies in **Hungary's** asylum system and in particular the Grand Chamber Judgment from the Court of Justice of the EU in late 2021¹² condemning Hungary for failure to fulfil its obligations under both the Asylum Procedures Directive and the Reception Conditions Directive, the country still received 1,636 requests in 2022,¹³ including 926 from Germany and 454 from France, together accounting for 84% of requests received by Hungary.

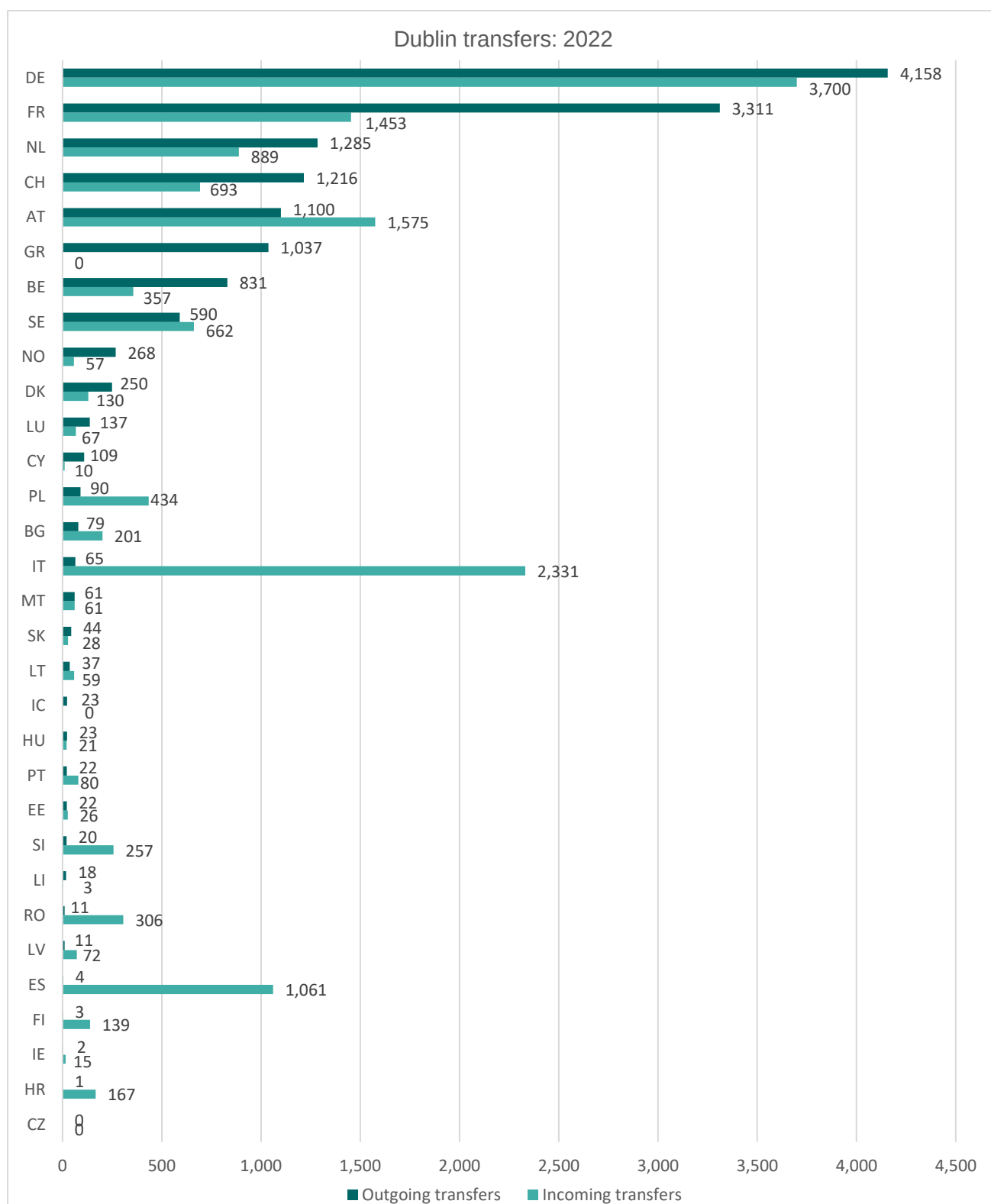
¹¹ ECRE, *The implementation of the Dublin III Regulation in 2021*, September 2022, available at: <https://bit.ly/3QIDOB1>; ECRE, *The implementation of the Dublin III Regulation in 2020*, September 2021, available at: <https://bit.ly/3RxtEel>.

¹² CJEU (Grand Chamber), 16 November 2021, *European Commission v. Hungary*, C-821/19, available at: <https://bit.ly/3QnCuh2>.

¹³ Please note that statistics provided to Eurostat are higher, with 1,965 incoming requests reported, i.e. at 20% variation from the number provided to AIDA.

Transfers

As regards actual transfers carried out under the Dublin Regulation (i.e. requests that actually culminate in a transfer of the applicant), the figures for 2022 show the following outgoing and incoming transfers:



Source: AIDA. Figures on FR, NL, CH, GR, SE, IT, MT and ES are based on Eurostat.¹⁴

¹⁴ Statistics vary substantially between AIDA and Eurostat for CY (109 outgoing transfers in AIDA, only 23 in Eurostat) and IT (65 outgoing transfers in AIDA, 140 in Eurostat). Furthermore, in PL, the number of

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

Outgoing transfers

Overall, the total number of outgoing transfers increased by almost 16%,¹⁵ likely due to the loosening and gradual disappearance of pandemic travel restrictive measures. **Germany** carried out the most Dublin transfers, and over 50% more than in 2021, followed by **France**, the **Netherlands**, **Switzerland**, **Austria** and **Greece**. The other 25 countries combined carried out less than 1,000 transfers. While Germany carried out 4,158 transfers, up from 2,656 in 2021, this is still far below the transfer numbers prior to the pandemic, with it carrying out 8,423 outgoing transfers in 2019.

For other countries, notably, outgoing transfers almost doubled in Belgium, from 429 in 2021 to 831 in 2022, while, conversely, transfers decreased in other countries, sometimes significantly. Such was the case in **Czechia**, where no transfers took place, as opposed to 127 in 2021; in **Malta**, where transfers decreased by 78%, from 283 in 2021 to 61 in 2022; and in **Greece** which carried out one third fewer transfers than in 2021.

As in previous years, the rate of transfers implemented in practice compared to requests – i.e. the percentage of requests which culminate in the transfer of the applicant – remained very low in 2022 at just 8%, down from 10% in 2021. Thus, on average, across the EU, of the Dublin requests made in only 8% of cases was the applicant actually transferred to the country receiving the request.

According to the EUAA, Member States highlight a number of obstacles impacting their ability to effectively carry out transfers, including a lack of staff and high turnover rates; limited availability and frequent last minute cancellations of flights; increased workload of asylum authorities in general; and the war in Ukraine, which impacted staff availability in particular in countries close to Ukraine which were unable to accept incoming transfers, leading to shifts in responsibility when time limits expired.¹⁶ Indeed, following the full-scale invasion, Poland, Slovakia, Romania and Czech Republic temporarily suspended all incoming transfers.¹⁷

Nonetheless, the low rate of transfers implemented compared to requests made is a consistent feature of the Dublin system and continues to call into question the efficiency and functionality of the rules. This is acknowledged by states: in June 2022, Member States once again committed to increase the implementation of Dublin transfers,¹⁸ including through a roadmap, the implementation of which started in 2023.¹⁹ In April 2023 the EUAA updated its recommendations on Dublin transfers addressed to national Dublin units and determining authorities.²⁰

It should also be noted that a strong focus of the EU asylum reforms is increasing the rate of transfers back to countries at the EU's external borders. Although the RAMM repeals the Dublin Regulation, the responsibility rules it puts in place replicate the Dublin system, with a reinforcement of the principle of

outgoing transfers differs within the country between the Office for Foreigners, responsible for Dublin procedures (90 transfers), and the Border Guards, who effectively carry out the transfers (116 transfers).

¹⁵ Based on Eurostat data: 12 781 in 2021, 14 789 in 2022.

¹⁶ EUAA, *Asylum Report 2023*, July 2023, available at: <https://bit.ly/3PAIFOb>, 92ff.

¹⁷ For further information on this and on how this was assessed by other Member States, see, ECRE, *The implementation of the Dublin III Regulation in 2021*, September 2022, available at: <https://bit.ly/3QIDOB1>, 23-24.

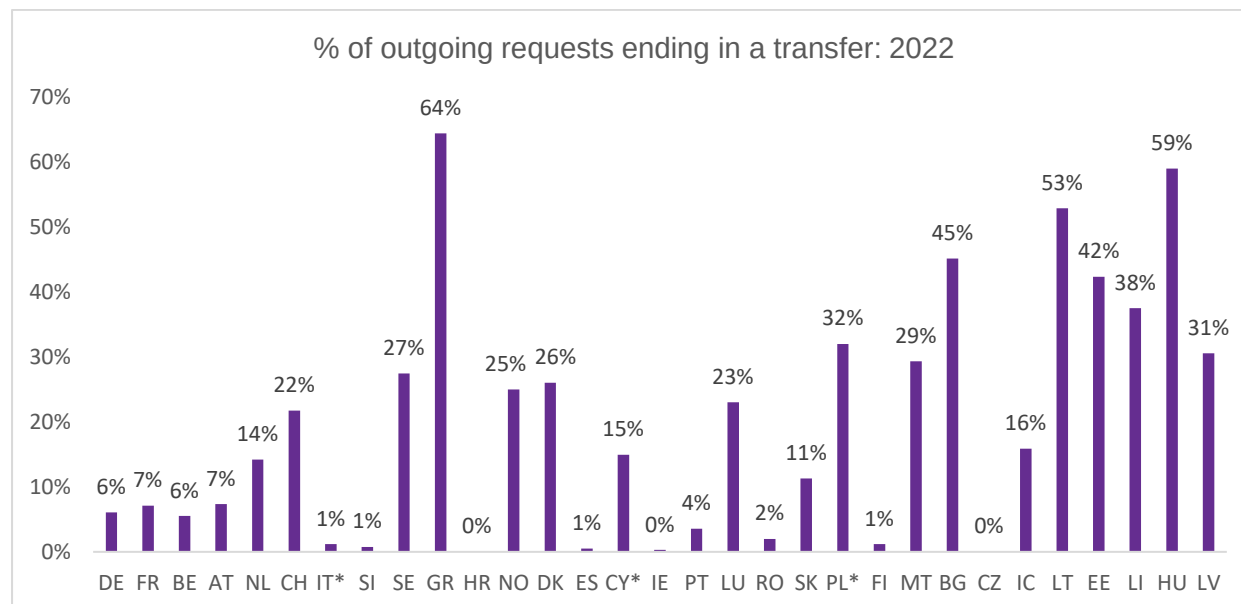
¹⁸ EUAA, *Asylum Report 2023*, July 2023, available at: <https://bit.ly/3PAIFOb>, 93.

¹⁹ European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Report on Migration and Asylum*, 12 January 2023, available at: <https://bit.ly/46PCtYo>, 12.

²⁰ EUAA, *Recommendations on Dublin transfers*, April 2023, available at: <https://bit.ly/46N0Wxm>.

first entry, and there are measures throughout the reform packages which support fulfilment of take-back requests. While the original proposal for the RAMM also included measures designed to support implementation of family-based take charge requests, these have largely been removed or weakened by the co-legislators.²¹

By country, the rate of Dublin transfers effected compared to outgoing requests was as follows:



Source: AIDA. Figures on FR, NL, CH, SE, GR, ES, MT are based on Eurostat. CZ did not carry out any transfers despite 169 outgoing requests. Figures on outgoing transfers concerning IT and CY differ significantly between AIDA and Eurostat. Above is reproduced the transfer rate considering AIDA information: if Eurostat information was used, the transfer rate for IT would increase slightly (1.20% to 2.63%), whereas the rate for CY would plummet from almost 15% to barely 3%. Lastly, the discrepancy in the number of outgoing transfers in Poland impacts the transfer rate, which stands at 32% when use the Office for Foreigners' information (information displayed above), or almost 41% using information from the Border Guard.²²

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 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 they sent in 2022. It demonstrates that the transfer rates are very low in the four 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). Of the 31 countries represented, only **Greece**, **Lithuania** and **Hungary** carried out Dublin transfers in more than 50% of the procedures initiated (respectively 64%, 53%, and 59%). Such figures should be read with caution, however, as in **Lithuania** and **Hungary** they refer to very few applicants, respectively 37 and 23 people transferred. The increase in percentages of Dublin transfers carried out by **Greece**, from 42% in 2021 to 64% in 2022, may be explained by the sharp drop in numbers of outgoing requests (44% decrease in number of requests, 33% decrease in number of transfers).

While transfer rates increased in a few countries (e.g. **Greece**, **Bulgaria**) as compared to the previous year, 23 out of 31 countries registered a transfer rate of under 30%, from 29% in **Malta** (down from 39% in 2021), 27% in **Sweden** (down from 42% in 2021), 14% in the **Netherlands** (down from 20% in 2021), to as low as under 1% in **Croatia** and **Ireland**, consistent with 2021.

²¹ ECRE, *Reforming EU Asylum Law: The Final Stage*, September 2023, available at: <https://bit.ly/46UNOa3>
²² AIDA, *Country Report: Poland – Update on the year 2022*, May 2023, available at: <https://bit.ly/3M6QDwo>, 33.

The very low transfer rates (between 6% and 7%) for the top four operators of the Dublin system in 2022 (**Germany, France, Belgium, and Austria**) deserves special consideration. In **Germany**, with 4,158 transfers implemented out of 68,709 requests, the transfer rate is the same as 2021 at 6%, but lower than in 2020 (10%) and 2018 and 2019 (17%). Similar observations apply to **France**, where the transfer rate has been below 12% since 2019, and 7% in 2022. The transfer rate increased slightly in **Belgium**, with 831 transfers completed, bringing the transfer rate to 6%, up from 4% in 2021. On the contrary, in **Austria**, the fourth largest operator, the transfer rate was 7% in 2022, down from 12% in 2021. These figures and the generally low transfer rate of recent years, suggest structural problems in the Dublin system rather than obstacles resulting from COVID-19 restrictions.

Overall, the comparison between outgoing requests and actual transfers demonstrates that once again only a small fraction of Dublin procedures led to a transfer in 2022. European countries channelled many thousands of applicants into Dublin procedures that were never going to end in a transfer. 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 most of these procedures will not result 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.²³

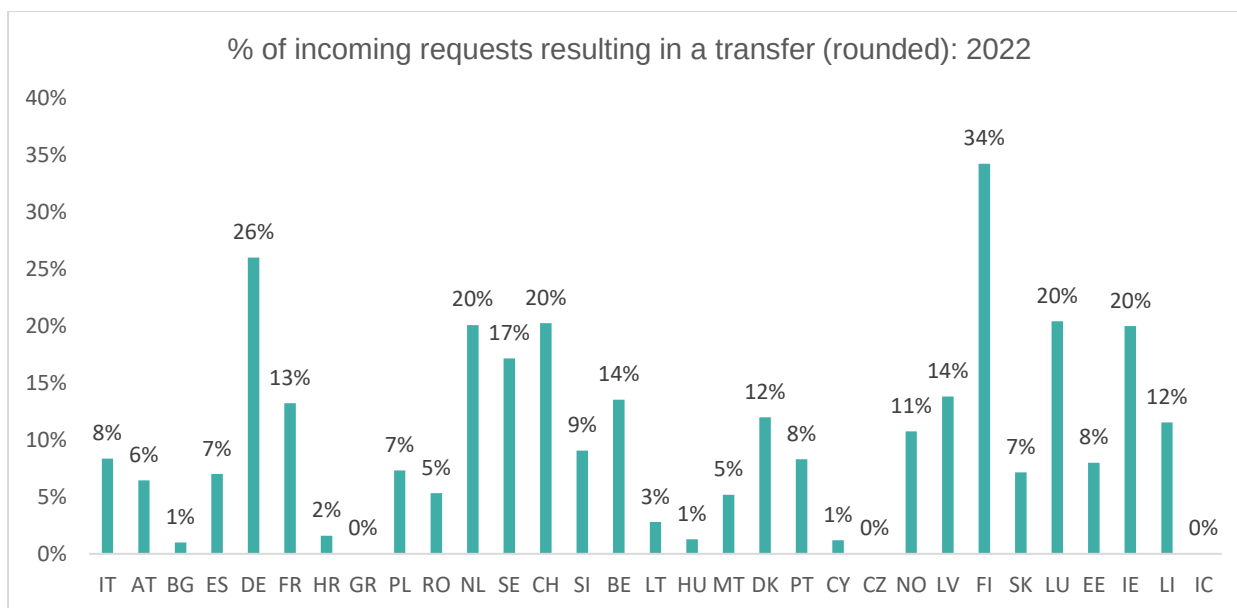
In this context, ECRE continues to emphasise that pursuing Dublin transfers is not mandatory: the Dublin Regulation provides choices and discretion to Member States, which can decide to examine asylum claims themselves and thus avoid unnecessary human, administrative and financial costs, and situations of prolonged limbo for applicants, combined with futile burdening of their own services.²⁴

Incoming transfers

For successful incoming transfers – i.e. applicants actually transferred following a request to a country to take back or take charge of them – as in 2021, **Germany** was the top recipient of transfers with 3,700 applicants transferred to the country. Other countries which received a significant number of transferred applicants in 2022 include **Italy** (2,331), **Austria** (1,575), **France** (1,453) and **Spain** (1,061). However, these figures represent a low percentage of the incoming requests received by each of these countries:

²³ See further, EPRS/ECRE, *Dublin Regulation on international protection applications*, February 2020, p.62, available at: <https://bit.ly/2NJvdqp>, 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>, 20-23.

²⁴ See for example: ECRE, *The implementation of the Dublin III Regulation in 2021*, September 2022, available at: <https://bit.ly/3QIDOB1>; ECRE, *To Dublin or not to Dublin?*, November 2018, available at: <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.



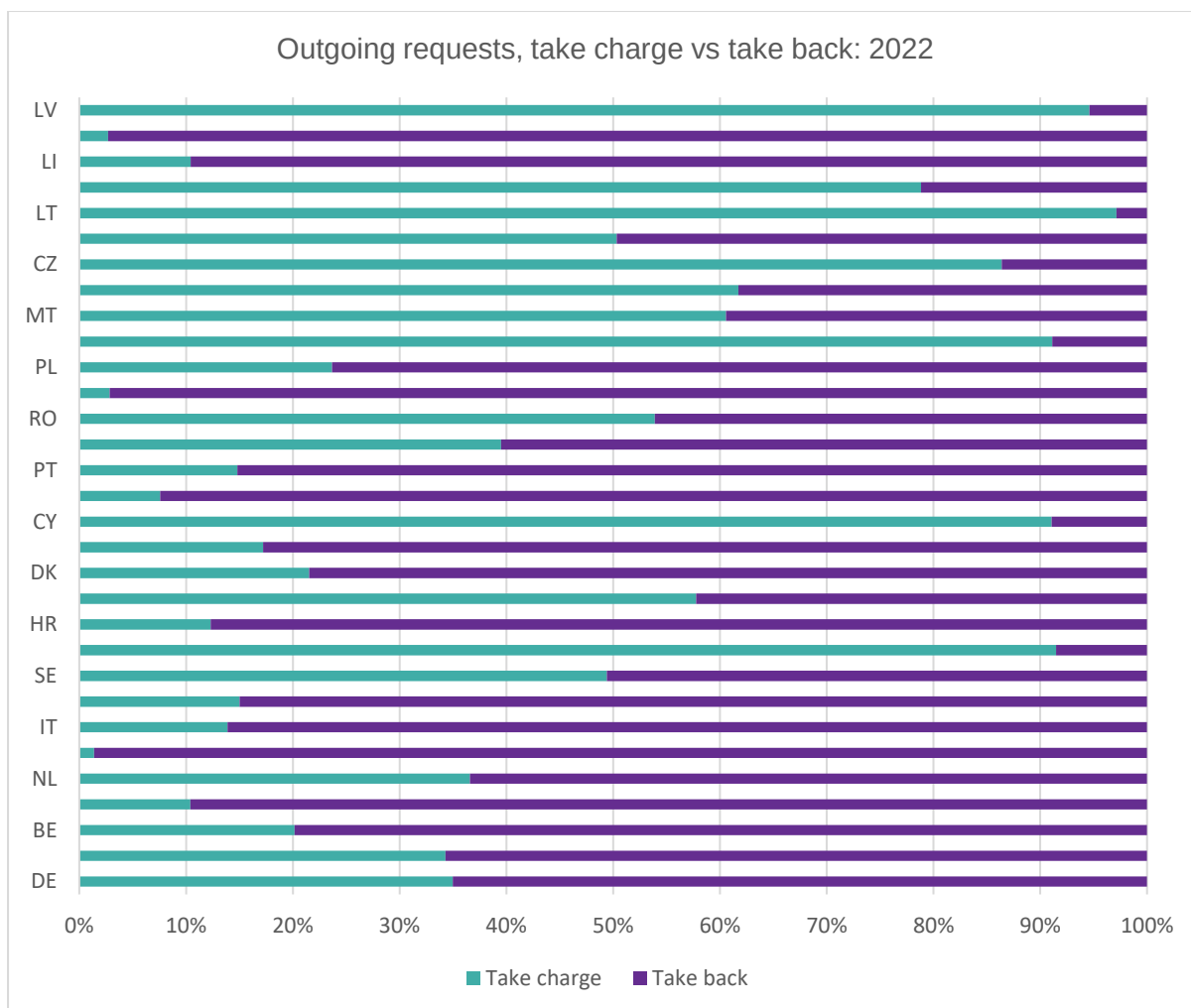
Source: AIDA. Figures on MT, SE, CH, NL, GR, FR and ES are based on Eurostat. All countries received at minimum 4 (IC) incoming requests. As there is a certain time that runs between a request being received and the person being transferred in the country, i.e. requests sent in a calendar year and transfers 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 2022), despite having amongst the most transfers in absolute numbers, **Italy, Austria, France and Spain** registered low rates of transfers compared to the number of requests received (respectively 8%, 6%, 13% and 7%), i.e. Italy received more transfer requests than any other state but only 8% culminated in the transfer of the applicant.

The four countries receiving the most incoming transfer requests, **Italy, Austria, Bulgaria and Spain**, have transfer rates of under 9%. No country implemented more than one third of incoming requests, the highest being **Finland where 34% of incoming requests culminated in a transfer of the person**. Even then, that corresponds to just 139 applicants received. The second highest transfer rate is that of **Germany** with 3,700 persons received out of 14,233 requests, i.e. just over 25%. **Iceland, Czech Republic** but most crucially **Greece** did not receive any applicants as a result of incoming requests according to Eurostat. In Greece, of the 8,737 incoming transfer requests recorded, none resulted in an actual transfer to **Greece**.

The responsibility criteria: breakdown of take charge and take back requests

Chapter III of the Dublin Regulation lays down a hierarchy of criteria for determining which country is responsible for examining the asylum application; application of the rules in the hierarchy then leads to outgoing requests to other Member States to either take charge of or to take back the applicant based on the responsibility criteria. Disaggregated statistics on outgoing requests divided into take charge and take back requests are available for 31 countries as follows:



Source: AIDA. Figures on MT, ES, GR, IT, CH²⁵, NL, FR and DE are based on Eurostat.²⁶

The graph above demonstrates the prevalence of take back requests in most countries, including the main users of the Dublin system. Take back requests are based on Articles 18 and 20(5) of the Regulation 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 determine 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 14 of the 31 countries (in purple).

In contrast, certain countries primarily sent “take charge” requests, i.e. cases where a first application is lodged and the Member State then initiates the procedure to determine which Member State is responsible on the basis of criteria in Articles 8 to 15, which begin with criteria on the rights of the child (Article 8), family unity (Articles 9-11), and dependents (Article 16) and include the most frequently used bases for take charge requests, the issuing of a visa or residence document by another state (Article

²⁵ Note that for CH, in past years there has been a significant difference between figures on take charge outgoing requests provided by the State Secretariat for Migration (SEM) and those available on Eurostat, possibly 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. Data was not provided by the SEM in time for the publication of the AIDA report and thus figures above refer to Eurostat.

²⁶ Note that for CY, information between AIDA and Eurostat diverges (663 take charge requests in AIDA v. 817 in Eurostat; 65 take back requests in AIDA v. 198 in Eurostat). Based on the available numbers, this may be because information provided by the authorities for the AIDA reports focuses on first time requests and does not include re-examination requests. The data provided above is from AIDA.

12) and irregular entry to another state (Article 13(1)). Indeed, 89% of take charge requests sent were based on the latter two articles, compared to 7% based on the family criteria.

Of the seven users of the system which sent more than 1,000 take charge requests, six (**Austria, Belgium, France, Germany, Italy, and Netherlands**) based almost all their requests (at least 90%) on Articles 12 and 13(1). The only exception is **Greece**, for which only 0.11% of take charge requests were based on Articles 12 and 13(1), while the rest were based on family criteria (65%) or humanitarian grounds (35%). As mentioned above, the absence of a breakdown by nationality of applicant for Dublin transfers renders it difficult to have a comprehensive understanding of the patterns of movement underlying the use of take charge requests.

More than 91% of requests sent by **Greece, Cyprus and Finland** were take charge requests. The other countries where a majority of requests were take charge requests were **Romania, Norway, Malta, Bulgaria, Czechia, Lithuania, Estonia and Latvia**. Unsurprisingly, these are mainly countries at the external borders, where applicants often lodge a first application while also indicating the presence of family members in other Member States. That said, as was the case in previous years, **Italy and Spain**, despite being countries of first arrival for many applicants, sent more take back than take charge requests, which may indicate a lack of grounds or reluctance to issue take charge requests. **Hungary**, although at the external border, sends very few outgoing Dublin requests of either type, given the very limited number of people able to formally access the asylum procedure and thus be examined against the Dublin criteria.²⁷

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.²⁸ Shortcomings in asylum and reception systems have been recognised by national courts and asylum authorities in countries of destination as a reason for onward movement.²⁹ In addition, the limited use of and limited success of take charge requests may itself be a factor contributing to onward movement, along with other failures to implement EU and international law on family reunification (see below).

Family unity

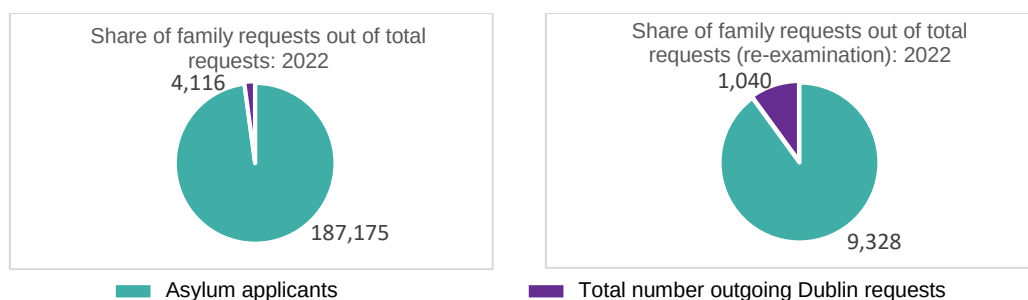
The Dublin III Regulation lists family unity at the top of the hierarchy of responsibility criteria,³⁰ although the definition of family is narrow, being confined to the spouse/partner and minority age children. For unaccompanied minor children, it can be extended to other family members as listed in the Regulation and when in the best interests of the child. The first chart illustrates the share of take charge requests for family reunification out of the total number of outgoing requests based on available figures for the 31 countries in 2022. The second chart shows the same percentage for re-examination requests only:

²⁷ AIDA, *Country Report: Hungary – Update on the year 2022*, April 2023, available at: <https://bit.ly/3ZyIPKE>.

²⁸ 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>.

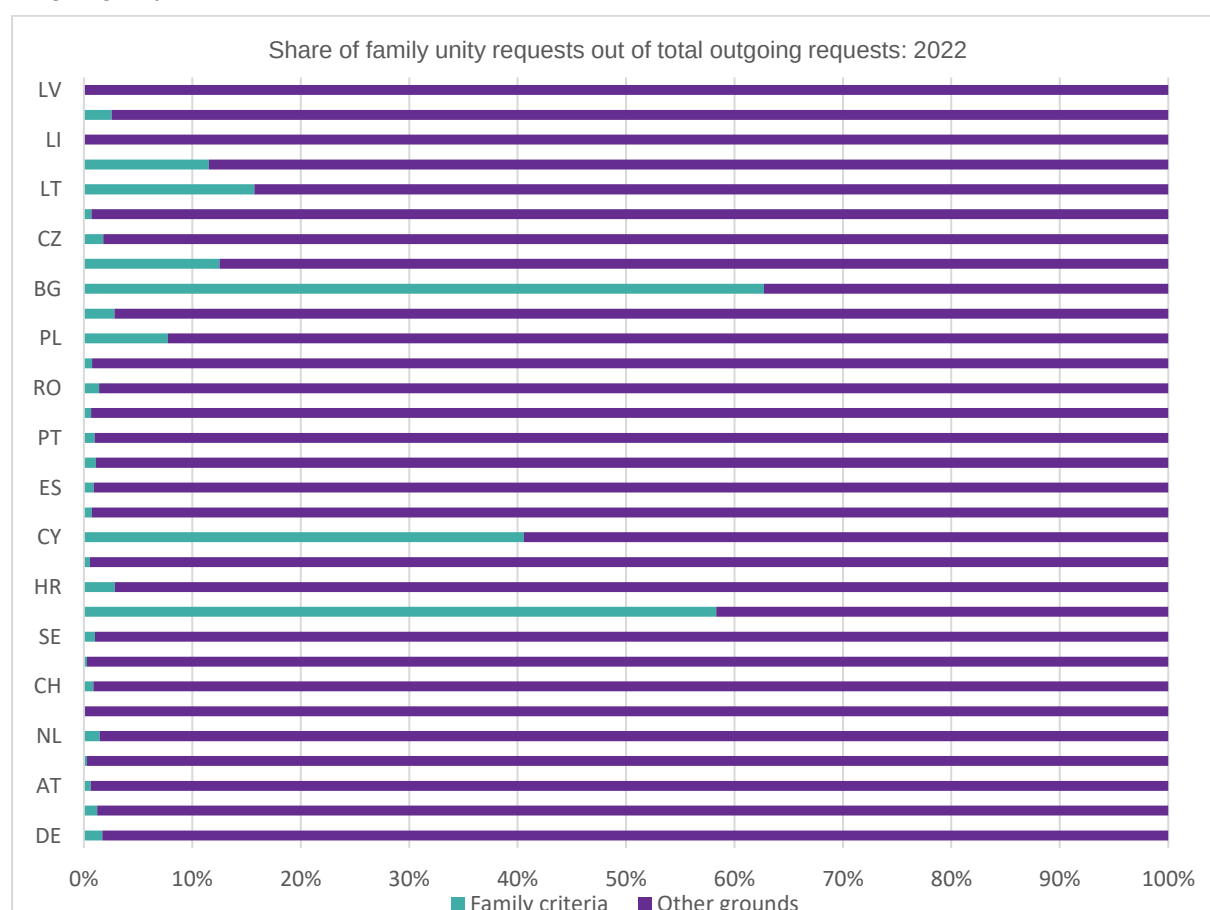
²⁹ For further information see Suspension of transfers.

³⁰ Articles 8-11 Dublin III Regulation.



Source: Eurostat.

Of all outgoing Dublin requests, only 2% were based on the family unity criteria and 98% on other grounds, a decrease compared to the already low figure of 4% in 2021. This may indicate a lack of grounds for invoking the family criteria however it may also indicate that Member States do not prioritise these criteria. The latter would in turn indicate a lack of respect for the Dublin hierarchy, given that the family provisions seem to be rarely used despite the likely presence of family members elsewhere in the EU for at least some applicants.³¹ However, the share of family criteria requests jumps to 10% when only taking into account re-examination requests. Highlighting the complexity of the procedure, in 2023 the EUAA published detailed practical recommendations addressed to Dublin authorities on family reunification in Dublin procedures.³² At national level, the share of family unity requests out of total outgoing requests in 2022 was as follows:



Source: Eurostat.

³¹ 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.

³² EUAA, *Recommendations on Family Reunification within the Dublin procedure*, September 2023, available at: <https://bit.ly/3M1R5Mc>.

Of the 31 countries represented above, only two, **Bulgaria** and **Greece**, invoked the family unity criteria in more than half their outgoing Dublin requests, respectively 63%³³ and 58%. With the exception of **Cyprus**, the share of family unity requests out of the total of outgoing Dublin requests remained below 20% in all other countries – representing under 3% of requests in 25 countries.

The very low level of family unity requests in the four main users of the Dublin system is worrying as it may indicate that these criteria are not prioritised in practice. Figures are as follows: **Germany** (1,255 of 73,580 requests, i.e. 1.71%), **France** (570 of 46,488 requests, i.e. 1.23%), **Austria** (98 out of 15,634 requests, i.e. 0.63%) and **Belgium** (41 out of 15,052 requests, i.e. 0.27%). The same can be said regarding the **Netherlands**, **Italy**, **Switzerland**, **Slovenia** and **Sweden**, the next users of the Dublin system by numbers. Despite its relatively limited use of the Dublin system, **Greece** is the country which most frequently applies the family unity criteria, with around 58% of its outgoing requests in 2022 relating to family reunification. This marks a definite increase compared to 44% in 2021 and 40% in 2020, nearing once again the levels of 2019 and 2018, when respectively 60% and 70% outgoing requests were issued on the basis of the family unit criteria.

Family unity is the main way for applicants to enter another Member State safely and legally. However, in **Greece** it has been reported that other Member States' restrictive practices may result in the rejection of take charge requests, including requirements for official translations of documents proving family links, unnecessary DNA tests, and age assessments of unaccompanied children. For example, **France** did not accept circumstantial evidence in 2022; **Germany** did not consider identification and other documents issued by Afghanistan as viable evidence to prove family links because of the risk of forgery; **Sweden** and **Germany** did not accept documents issued by Somalia for similar reasons.

The authorities in **Germany** also continued with their strict policy regarding deadlines and opportunities for re-examination requests based on CJEU judgments, despite the difficulties of complying with stringent documentation requirements in short time periods;³⁴ Greece regularly contests Germany's refusals, for example, in 2022, Greece contested in 119 cases and the BAMF subsequently accepted responsibility in 73 of these cases.³⁵ Nevertheless, for the last two years, the acceptance rate for requests based on family criteria sent by Greece to Germany has been higher than the acceptance rate of such requests sent by Greece to all other states as well as higher than the acceptance rate of family requests sent by all other states to Germany and the acceptance rate of such requests sent by all Dublin countries to each other.

In general, the acceptance rate of all requests based on family criteria issued by all Dublin countries has been under 50% for four years, standing at 37% for 2022, compared to a 57% acceptance rate for all transfers requests.

The discretionary clauses

No clear record of the use of the discretionary clauses included in Article 17 paragraphs 1 and 2 of the Dublin III Regulation is kept in most countries.

³³ Based on Eurostat statistics for comparison purposes with the other countries. When taking AIDA statistics, family unity requests represent 53% of all outgoing requests, without there being an obvious explanation for the discrepancy apart from amended statistics sent to Eurostat, which were published later than the AIDA Bulgaria report 2022.

³⁴ AIDA, *Country report: Greece – Update on the year 2022*, June 2023, available at: <https://bit.ly/3PUOVk9>, 73-74.

³⁵ AIDA, *Country Report: Germany – Update on the year 2022*, April 2023, available at: <https://bit.ly/3Fcm0lvm>, 49.

The use of the sovereignty clause under Article 17(1) of the Dublin 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) is not reported to Eurostat. According to the EUAA, it “was invoked 4,800 times in 2022, increasing for the first time in 4 years but still well below pre-pandemic levels. It was applied most frequently by Belgium, followed at some distance by France, Germany and the Netherlands.”³⁶

Comparing the statistics provided by the authorities to AIDA to the numbers of the EUAA, **Belgium** accounted for almost half of the uses of the sovereignty clause with 2,244 persons accepted,³⁷ while **Germany** accounted for 13% with 624 applications of Article 17(1).³⁸ **Switzerland** still applies the sovereignty clause in all cases of vulnerable persons to be transferred to Greece, i.e. 332 cases out of its 484 applications of the clause in 2022.³⁹ In several of the countries for which data is available, however, the clause is only seldom used: it was only used in 20 cases in **Italy**⁴⁰ and was not applied at all in **Portugal**,⁴¹ **Romania**,⁴² or **Slovenia**.⁴³

According to Eurostat data, the humanitarian clause of Article 17(2) of the Dublin regulation is also seldom used by most reporting countries.⁴⁴ Across Dublin states, humanitarian transfer requests accounted for 0.72% of total requests. The share of humanitarian requests out of total requests was under 1% for 23 out of 31 countries. For example, no transfer requests on humanitarian grounds were issued by **Slovenia** out of 3,300 requests, and only 1 by **Italy** out of 8,175 requests. Conversely, humanitarian requests represented almost 40% of **Cyprus’s** total requests; 32% of **Greece’s** requests; and approximately 20% of **Malta’s** and **Lithuania’s** requests.

The acceptance rate for transfer requests based on humanitarian grounds stood at 45% for all Dublin states, with six countries (**Luxembourg, Switzerland, France, Austria, Estonia** and **Spain**) accepting at least half of humanitarian requests received. The criteria for its use are not usually publicly available, making it difficult to assess the grounds on which decisions are based. In **Greece**, requests under the humanitarian clause are notably sent when the family criteria are not strictly applicable or when the three-month timeframe has expired.⁴⁵ Moreover, several countries used the humanitarian clause to carry out voluntary relocations in 2022 (**Germany** for 48 relocations from Cyprus⁴⁶ and for relocations from Italy,⁴⁷ and **Portugal** for relocations from Malta, Italy and Greece).⁴⁸

ECRE highlights as good practice the application of the discretionary criteria by Belgium, and has long underlined the importance of using these provisions of the Regulation – which will be transferred into the RAMM – in order to ensure rapid processing of asylum applications, and as a way to overcome the lengthy delays and situations of limbo which characterise the Dublin regime (and which may also be transferred into the RAMM).

³⁶ EUAA, *Asylum Report 2023*, available at: <https://bit.ly/3PAIFOb>, 104.

³⁷ AIDA, *Country Report: Belgium – Update on the year 2022*, April 2023, available at: <https://bit.ly/3EQD4gm>, 54.

³⁸ AIDA, *Country Report: Germany – Update on the year 2022*, April 2023, available at: <https://bit.ly/3Fcm0Ivm>, 49.

³⁹ AIDA, *Country Report: Switzerland – Update on the year 2022*, June 2023, available at: <https://bit.ly/3PSkACJ>, 44 and 51.

⁴⁰ AIDA, *Country Report: Italy – Update on the year 2022*, May 2023, available at: <https://bit.ly/3PvO1cg>, 72.

⁴¹ AIDA, *Country Report: Portugal – Update on the year 2022*, May 2023, available at: <https://bit.ly/3PvO1cg>, 72.

⁴² AIDA, *Country Report: Romania – Update on the year 2022*, May 2023, available at: <https://bit.ly/3tb7XtC>, 54.

⁴³ AIDA, *Country Report: Slovenia – Update on the year 2022*, May 2023, available at: <https://bit.ly/3tfFvqf>, 44.

⁴⁴ The following numbers are all based on Eurostat.

⁴⁵ AIDA, *Country report: Greece – Update on the year 2022*, June 2023, available at: <https://bit.ly/3PUOVk9>, 76.

⁴⁶ AIDA, *Country report: Cyprus – Update on the year 2022*, June 2023, available at: <https://bit.ly/3PpcY96>, 51.

⁴⁷ AIDA, *Country Report: Italy – Update on the year 2022*, May 2023, available at: <https://bit.ly/3PvO1cg>, 72.

⁴⁸ AIDA, *Country Report: Portugal – Update on the year 2022*, May 2023, available at: <https://bit.ly/455ile7>, 51.

Suspension of transfers: extensive use of litigation

In 2022 and in the first half of 2023, the implementation of the Dublin III Regulation has remained the subject of extensive litigation across the EU. In accordance with well-established European jurisprudence, a Dublin transfer is considered 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.⁴⁹ This requires of asylum authorities to assess *proprio motu* the situation in the destination country in terms of, inter alia, access to the asylum procedure and reception system, as well as the risk of chain *refoulement* for Dublin returnees. This briefing does not examine these lines of jurisprudence in depth but rather seeks to present case law developments in 2022 and the impact on policy.

Member States continue to be reluctant to adopt formal and uniform policies on Dublin transfers, despite well-documented systemic deficiencies in asylum systems in certain countries, which may lead to courts delaying or suspending transfers. Without policy or guidance from authorities, domestic courts have to assess case-by-case whether and to what extent the destination country's asylum and reception systems reaches the threshold of Article 3 ECHR and Article 4 of the Charter, which in turn precludes the asylum authority from carrying out the Dublin transfer. The case law in this area is also inconsistent, undermining both legal certainty for asylum seekers and a uniform implementation of the Dublin Regulation across the EU. Illustrative of these legal uncertainties are the numerous preliminary references submitted to the CJEU, including three queries from the Netherlands since 2021 regarding the principle of inter-state trust in the context of Dublin returns.⁵⁰

The duty to investigate and obtain guarantees

The duty to investigate and obtain guarantees to ensure the legality of Dublin transfers⁵¹ continues to be interpreted and applied differently across Europe. As was the case in previous years, in 2022, **Greece** and **Cyprus** continued to request individual guarantees concerning reception conditions and access to the asylum procedure for Dublin returnees as a matter of general practice. Conversely, some Member States request guarantees only from specific countries, such as **Poland** and **Slovenia** do for Greece and, since 2022, **Sweden** does for Hungary,⁵² whereas the asylum authorities in **Belgium**, **Hungary** and **Germany** only seek guarantees or make arrangements with destination countries for vulnerable applicants, notably to ensure continuity of medical treatment.

Notwithstanding *ad hoc* exceptions, most Member States do not require national asylum authorities to obtain and investigate individual guarantees concerning the situation in destination countries prior to the transfer, even in cases of vulnerable persons. At the same time, the substantial Dublin-related case law at the national level shows that domestic courts have required that individual guarantees are obtained and investigated prior to Dublin transfers. In most instances, such court decisions have not led to a change in the asylum authorities' official practice nor to the creation of a consistent strand of jurisprudence, due to contradictory judgments and judgments being overturned by higher courts.

⁴⁹ ECtHR, *M.S.S. v. Belgium and Greece*, App. No 30696/09, 21 January 2011; CJEU, Case C-578/16 PPU *C.K.*, 16 February 2017; CJEU, Case C-163/17 *Jawo*, 19 March 2019.

⁵⁰ CJEU, Case C-392/22, 15 June 2022. See, for more details, EUAA, Case Law Database, available at: <https://bit.ly/3QbFTiM>. To be noted that the previous two preliminary references submitted by Dutch courts were later withdrawn before the CJEU issued a ruling. See the initial preliminary references: CJEU, Case C208/22, 18 March 2022 and CJEU, C-614/21, 4 October 2022.

⁵¹ See, *inter alia*, ECtHR, *Tarakhel v. Switzerland*, App. No 29217/12, 4 November 2014.

⁵² For further information, see [Suspension of transfers towards selected countries](#).

Guarantees regarding access to asylum and risk of refoulement upon return

Numerous domestic courts have annulled Dublin transfers on account of the asylum authorities' failure to seek and investigate individual guarantees from destination countries despite well-documented pushback allegations and deficient assessments of asylum applications. Of note are destination countries such as **Bulgaria**, **Hungary**, **Croatia** and – to a lesser extent – **Denmark**. Nonetheless, national asylum authorities and higher courts are still reluctant to suspend transfers on such grounds as a matter of general policy or formalised practice.

Illustratively, in March 2023, the Constitutional Court of **Austria** ruled against the Dublin transfer of an applicant to **Bulgaria** because of the asylum authorities' failure to investigate the risk of chain *refoulement* to Türkiye,⁵³ and the Regional Administrative Court of Arnsberg in **Germany** annulled a transfer to **Hungary** because of the country's refusal to provide written guarantees in relation to its well-documented violations of the principle of non-*refoulement*.⁵⁴

With regards to **Croatia**, courts in **Germany**⁵⁵ and **Belgium**⁵⁶ have suspended Dublin transfers on account of, respectively, deficiencies in the Croatian asylum procedure plus frequent indications of violent pushbacks, and chain *refoulement* of Dublin returnees combined with the failure of the asylum authorities to seek individual guarantees in relation to this situation. Similarly, in 2022, the **Dutch** Council of State issued two decisions cancelling Dublin transfers to Croatia considering that there are concrete indications that should prevent the State Secretary from relying on the principle of interstate trust and from assuming that Croatia respects its obligations under Article 3 ECHR and Article 4 of the Charter.⁵⁷ The Council of State relied *inter alia* on the 2021 AIDA Country Report on Croatia to overturn its previous jurisprudence,⁵⁸ and reach the conclusion that the country's well-documented pushback practices also affect applicants readmitted under Dublin III and that, therefore, the State Secretary should conduct further investigation before transfers can resume. Following these decisions, the State Secretary announced that Dublin transfers would be suspended until it can be ascertained that Dublin returnees enjoy full access to the asylum procedure in Croatia and are not at risk of chain *refoulement*.⁵⁹ On 20 January 2023, however, the State Secretary announced that Croatia had committed to respect its obligation under Dublin III and offered to provide individual guarantees upon requests and, therefore, Dublin transfers could resume.⁶⁰

⁵³ (Austria) Constitutional Court, Decision E 2944/2022, 15 March 2023, available in German at: <https://bit.ly/3ZUk2Qd>.

⁵⁴ (Germany) Regional Administrative Court of Arnsberg, 1 L 827/22.A, 13 September 2022, available in German at: <https://bit.ly/3PSRZvF>.

⁵⁵ (Germany) Administrative Court of Stuttgart, A 16 K 3603/22, 2 September 2022, available in German at: <https://bit.ly/3rvG2E0>. For an exhaustive overview of Germany's extensive Dublin-related case law, see, AIDA, Country Report Germany, 2023, pp.60-61. It should be noted that, in other instances, German administrative courts have upheld transfers to Croatia, considering that there are no systemic deficiencies in the Croatian asylum system. See, e.g., (Germany) Regional Administrative Court of Leipzig, 6 L 678/22.A, 2022, available in German at: <https://bit.ly/3thcB9i> and Regional Administrative Court of Hannover, 4 B 4791/22, 2022, available in German at: <https://bit.ly/3LUrXHs>.

⁵⁶ (Belgium) Council for Alien Law Litigation, Decision 281 237, 5 December 2022, available in French at: <https://bit.ly/459rise>.

⁵⁷ (Netherlands) Council of State, ECLI:NL:RVS:2022:1042 and ECLI:NL:RVS:2022:1043, 13 April 2022, available in Dutch at: <https://bit.ly/3tn4doL> and <https://bit.ly/46MW1wv>.

⁵⁸ (Netherlands) Council of State, ECLI:NL:RVS:2021:1563, 19 July 2021, available in Dutch at: <https://bit.ly/3ZRAqRt>.

⁵⁹ (Netherlands) Letter from the State Secretary for Justice and Security to the Chairman of the House of Representative, 30 May 2022, available in Dutch at: <https://bit.ly/48ryAdl>.

⁶⁰ (Netherlands) Letter from the State Secretary for Justice and Security to the Chairman of the House of Representative, 20 January 2023, available in Dutch at: <https://bit.ly/3ERRygb>. It is worth mentioning that, on 2 and 6 June 2023, the District Court of the Hague nevertheless suspended transfers to Croatia, considering that the well documented pushback practices, to which Dublin returnees are also at risk, and the ECtHR findings in this regard, prevent the State Secretary from relying on the principle of Inter-State trust. One case was sent back to the asylum authorities for further assessment of Croatia's compliance with

It should be noted that the **Belgium** Council of Alien Law Litigation considered that the Croatian authorities' statement did not provide individualised guarantees and, therefore, continued to suspend transfers to Croatia.⁶¹ On the other hand, the Federal Administrative Court of **Switzerland** ruled that general assumptions as to the situation in a destination country have to be substantiated in each individual case. While acknowledging the high probability that Croatia does engage in regular and violent pushbacks, the Court relied *inter alia* on an investigation conducted by the Swiss embassy in Croatia to conclude that the asylum authorities had sufficiently established that such general practice does not impact Dublin returnees and, therefore, transfers can be carried out.⁶² On 7 July 2023, the Supreme Court of **Slovenia** confirmed its earlier position⁶³ and upheld a transfer to Croatia, considering that, while shortcomings in the asylum and reception system of the destination country constitute a barrier to transferring an applicant, those must be systemic, which the Court did not believe to be the case in Croatia.⁶⁴

Similarly, the **Dutch** Council of State⁶⁵ recently overturned the relevant jurisprudence⁶⁶ and confirmed a Dublin transfer to **Denmark** finding that the State Secretary had obtained sufficient guarantees from the Danish authorities about the country's protection policy for Syrians and the risk of chain *refoulement*. Likewise, whereas numerous **French** administrative courts prevented transfers because of the risk of indirect *refoulement* in several countries (most notably, **Austria, Belgium, Germany, Norway, Sweden** and **Finland**),⁶⁷ the Council of State overturned this position, clarifying that the principle of mutual trust applies and that the burden of proving the risk of fundamental rights violations upon transfer to another Member State is on the applicant.⁶⁸ Lastly, the **Dutch** Council of State confirmed a transfer to **Bulgaria**, finding that, contrary to its judgments on Croatia,⁶⁹ it does not appear from available reports that the established Bulgarian pushback practices also affect Dublin returnees.⁷⁰

Guarantees regarding reception conditions upon transfer

With regard to the duty to investigate and obtain guarantees regarding reception conditions for Dublin returnees, the judicial review of transfers to **Italy** deserves particular attention. According to the EUAA, there is a clear trend of courts in Europe concluding that there is no evidence of systemic flaws in the

its international obligations and the other was stayed pending the CJEU ruling in a similar case concerning Poland (see *fn.* 2). See Council of State, NL23.7025 and NL23.7026, 6 June 2023, available in Dutch at: <https://bit.ly/45vMN6E> and NL23.12018, 2 June 2023, available in Dutch at: <https://bit.ly/46NsS4j>.

⁶¹ (Belgium) Council on Alien Litigation Law (CALL), Decision No 281.327, 5 December 2022, available in French at: <https://bit.ly/41mCZdH>.

⁶² (Switzerland) Federal Administrative Court, Decision E-1488/2020, 22 March 2023, available in German at: <https://bit.ly/46PEmEo>; See, press release of the Federal Administrative Court in English, available at: <https://bit.ly/3M15atA>; press release of the Swiss Refugee Council available in French (and German) at: <https://bit.ly/40UVB3S>. Note that the Court later confirmed its position in case F-3303/2023, 16 June 2023, available in French at: <https://bit.ly/401hHTC>.

⁶³ (Slovenia) Supreme Court, VS00063929, 11 January 2023, available in Slovenian at: <https://bit.ly/45ANCv0>.

⁶⁴ (Slovenia) Supreme Court, VS00067263, 7 July 2023. For more details, see EUAA, Case Law Database, available at: <https://bit.ly/3ZV80pJ>.

⁶⁵ (Netherlands) Council of State, ECLI:NL:RVS:2023:3286 6 September 2023, available in Dutch at: <https://bit.ly/3ZGUtSy>.

⁶⁶ (Netherlands) Council of State, ECLI:NL:RVS:2022:1864, 6 July 2022, available in Dutch at: <https://bit.ly/3Fb46iF>.

⁶⁷ AIDA, *Country report: France – Update on the year 2022*, May 2023, available at , 60 and case law cited therein.

⁶⁸ (France) Council of State, Order NO. 447956, 28 May 2021, in French at: <https://bit.ly/3rWle67>.

⁶⁹ (Netherlands) Council of State, ECLI:NL:RVS:2021:1563, 19 July 2021, available in Dutch at: <https://bit.ly/3ZRAqRt>.

⁷⁰ (Netherlands) Council of State, ECLI:NL:RVS:2023:3133, 16 August 2023, available in Dutch at: <https://bit.ly/3S2AYCc>.

Italian asylum and reception systems.⁷¹ As pointed out in the [2021 AIDA Update on Italy](#), several countries have discontinued their policy on requiring guarantees from Italy for vulnerable people. Conversely, in 2022, **Belgium's** Council on Alien Law Litigation, which has been upholding transfers to Italy in most cases since 2016, continued to halt those for which the authorities had not sought individualised guarantees despite the vulnerability of the applicant and given recent information showing that there are severe deficiencies in Italian reception system.⁷²

On 5 December 2022, the Italian Dublin Unit issued a letter informing its European counterparts about the suspension of incoming transfers on account of Italy's saturated reception system.⁷³ Following this announcement, the **German** authorities stated that they would nevertheless continue to apply the Dublin procedure to Italy as "directly applicable EU law" while still taking into account "temporary challenges in individual cases".⁷⁴ Notwithstanding, in January 2023, the Administrative Court of Arnsberg ruled that the Italian authorities' refusal to accept Dublin returnees, together with the saturation of the country's reception capacity, amounted to systemic deficiencies which effectively prevents the legal transfer of applicants.⁷⁵ While this position was confirmed in subsequent decisions by some German courts,⁷⁶ the High Administrative Court of Kassel ruled that Italy's suspension of transfers does not necessarily testify to systemic deficiencies in its receptions system, as the December 2022 letters only mention the difficulties in ensuring proper accommodation for asylum seekers.⁷⁷

On 26 April 2023, the **Dutch** Council of State annulled two transfers to Italy, finding that the asylum authorities could no longer rely on the principle of inter-state trust following Italy's statement about its reception system.⁷⁸

It should be noted that, in an August 2023 reply to a request from the **Danish** Refugee Appeals Board,⁷⁹ the Italian authorities informed the Danish Immigration Service that the country was experiencing a significant increase in the number of asylum seekers in the country, which put the national reception system under pressure. Against this backdrop, the Italian authorities declared a state of emergency in the area of migration, but indicated they would gradually resume receiving Dublin transfers. The Italian authorities further stated that the state of emergency was expected to last six months, but it might be extended in case of continued arrivals. In October 2023, the Refugee Appeals Board upheld transfers to Italy in six cases, confirming the Immigration Service's investigation and conclusion that the state of Italy's reception system does not amount to systemic deficiencies entailing a violation of Article 3 ECHR and Article 4 of the Charter and emphasizing the temporary nature of the country's suspension of

⁷¹ EUAA, *Asylum Report 2023– Assessing transfers to specific countries*, 2023, available at: <https://bit.ly/3Q4BTAn>. See [Suspension of transfers towards selected countries](#).

⁷² See, e.g., (Belgium) Council on Alien Litigation Law (CALL), Decision No 272 323, 5 May 2022, available in French at: <https://bit.ly/3Qh5GWA>.

⁷³ AIDA, *Country Report: Italy – Update on the year 2022*, May 2023, available at: <https://bit.ly/3PvO1cg>, 17-18.

⁷⁴ Federal Government, Responses to parliamentary question by The Left, 20/5868, 28 February 2023, pp.40-41, available in German at: <https://bit.ly/3TFefdY>.

⁷⁵ (Germany) Administrative Court of Arnsberg, Decision 2 k 2991/22.A, 24 January 2023, available in German at: <https://bit.ly/3Lk9pAH>.

⁷⁶ See, e.g., (Germany) High Administrative Court of North Rhine-Westphalia, 11 A 1132/22.A, 16 June 2023, available in German at: <https://bit.ly/3Fi7qsG> and Regional Administrative Court of Bremen 6 V 1704/23, 10 August 2023, available in German at: <https://bit.ly/3RU5KMi>.

⁷⁷ (Germany) High Administrative Court of Kassel, 2 A 377/23.ZA, 27 July 2023. For more details, see EUAA, Case Law Database, available at: <https://bit.ly/48XeZCo>.

⁷⁸ (Netherlands) Council of State, ECLI:NL:RVS:2023:1655 and ECLI:NL:RVS:2023:1654, 26 April 2023, available in Dutch at: <https://bit.ly/3S0004U> and <https://bit.ly/46PDYFQ>.

⁷⁹ Prior to its request to the Italian authorities, the Danish Refugee Appeals Board had referred two cases back to the Immigration Service for further assessment of Italy's reception system since the 5 December announcement of temporary suspension of incoming transfers. See (Denmark) Refugee Appeals Board, Dub-Ital/2023/3/DH and Dub-Ital/2022/4/DH, 4 April 2023. For more details, see EUAA, Case Law Databases, available at: <https://bit.ly/3rP5XH8> and <https://bit.ly/3RXHbyY>.

transfers,⁸⁰ despite Italy having extended the state of emergency for another six months on 5 October 2023.⁸¹ On 8 September 2023, the Board submitted preliminary questions to the CJEU, requesting clarifications about the impact of a Member State's temporary suspension of transfers on the six-month time limit under Article 29 of the Dublin Regulation.⁸²

On 1 March 2023, the **Danish** Refugee Appeals Board confirmed two Dublin transfers to **Croatia**, finding that there were no grounds for concluding that there are systemic deficiencies in Croatia's reception system and that the authorities had provided sufficient guarantees with regards to the prospective returnees' reception conditions.⁸³ Similarly, while confirming a transfer to **Belgium**, the board emphasized that the current deficiencies in the Belgian reception system warranted the provision of guarantees that returnees, especially single men, will be provided with adequate reception and accommodation.⁸⁴

Suspension of transfers towards selected countries

In countries where there are longstanding, more severe and systemic deficiencies, transfers may be suspended de jure or de facto. By the same logic, and although not falling within the scope of the Dublin III Regulation, domestic courts have also assessed the specific situation of beneficiaries of international protection and may also limit transfers.⁸⁵

- **Transfer to Greece:**

Transfers to Greece of asylum seekers were suspended after the 2011 ECtHR and CJUE rulings in the cases of, respectively, *M.S.S. v. Belgium and Greece* and *N.S. v. Secretary of State for the Home Department*. Since then, most EU countries do not carry out transfers to Greece in practice, despite a fourth recommendation to that end from the European Commission in 2016.⁸⁶ From 1 January to 31

⁸⁰ (Denmark) Refugee Appeals Board, *The Refugee Board has made a decision in a number of cases regarding transfer to Italy under the Dublin Regulation*, 10 October 2023, available in Danish at: <https://bit.ly/3rVE9B0>.

⁸¹ Dipartimento della Protezione Civile, *Delibera del Consiglio dei Ministri del 5 ottobre 2023 - Proroga dello stato di emergenza in conseguenza dell'eccezionale incremento dei flussi di persone migranti in ingresso sul territorio nazionale attraverso le rotte migratorie del Mediterraneo*, available in Italian at: <https://bit.ly/3sc6ldg>.

⁸² (Denmark) Refugee Appeals Board, *The Refugee Board submits a preliminary question to the EU Court of Justice*, 25 September 2023, available in Danish at: <https://bit.ly/3Q6iEW3>.

⁸³ (Denmark) Refugee Appeals Board, *Dub-Kroa/2023/1*, 1 March 2023, available in Danish at: <https://bit.ly/46RhmVz>.

⁸⁴ (Denmark) Refugee Appeals Board, *Dub-belg/2022/7*, 26 January 2023, available in Danish at: <https://bit.ly/46vifTY>.

⁸⁵ In many cases, transfers were suspended by courts on the grounds that a risk of inhuman or degrading treatment could not be excluded for beneficiaries of international protection in these countries, although, similarly to the existing case law on 'systemic deficiencies', the case law on this issue was not consistent. However, illustratively, several courts in **Germany** have considered that beneficiaries of international protection could not be returned to Bulgaria (see *Guarantees regarding access to asylum and risk of refoulement upon return*). As regards Greece, courts have taken diverging stances. In 2021, High Administrative Courts in **Germany**, the **Dutch** Council of State and the **Belgium** Council on Alien Litigation Law all ruled that returning beneficiaries of international protection to Greece runs the risk of reaching the threshold of Article 3 ECHR (see Germany: <https://bit.ly/3WCfeNM>, <https://bit.ly/3ZSjyd4>, <https://bit.ly/3BWabH6>; Netherlands: <https://bit.ly/4517aiH>; Belgium: <https://bit.ly/3rOuMD4> and <https://bit.ly/45t5CZD>). While still not formally suspending transfers, the **Austrian** Constitutional Court and High Administrative Court nevertheless both ruled that such transfers have to be assessed thoroughly, especially vis-à-vis access to social services upon return (see <https://bit.ly/45snK4I> and <https://bit.ly/3ZQDnRp>). On the other hand, courts in both **Switzerland** and **Norway** have held that returning beneficiaries of international protection to Greece does not infringe the prohibition of inhuman and degrading treatment (see e.g., <https://bit.ly/3IEcLfM>).

⁸⁶ 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 of the Council, 8 December 2016, available at: <https://bit.ly/46uOWka>.

December 2022, out of a total of 8,737 incoming requests from other Member States, no Dublin transfer to Greece was carried out.⁸⁷

- **Transfer to Italy:**

Dublin transfers to **Italy** continued to be the subject of extensive jurisprudence at the domestic level in EU Member States. In 2022, despite the well-documented shortcomings of Italy's reception system, the country received 2,673 applicants transferred under Dublin, a substantial increase on the 1,525 transfers conducted in 2021, making it the second highest Dublin destination country after Germany.⁸⁸ However, on 5 December 2022, the Italian Dublin Unit announced the suspension of incoming transfers because of the saturation of its reception system (see above, [Guarantees regarding reception conditions upon transfer](#)). Since this development, and as of the time of publication of the AIDA Country Reports on 2022, no transfers to Italy had been carried out from countries including **Austria**,⁸⁹ **Switzerland**⁹⁰ and the **Netherlands**.⁹¹ **Belgium** also appears to have halted transfers to Italy.⁹² On the other hand, the **German** authorities continue to issue Dublin transfer decisions, although in practice Italy was not accepting transfers.⁹³ Prior to this development, European domestic courts had diverging positions on Italy's reception system.⁹⁴ Whereas the **German** Federal Administrative Court had considered that the lack of accommodation prevented Dublin transfers,⁹⁵ the **Swiss** Federal Administrative Court considered it only problematic in the context of take back requests.⁹⁶

With regards to Dublin returnees' access to health care and living conditions in Italy, the **Dutch** Regional Court of the Hague upheld a transfer, finding that the deficiencies in Italy's reception and asylum system did not prevent the applicant from accessing the necessary healthcare.⁹⁷ Likewise, the **Portuguese** Supreme Administrative Court ruled that the deficiencies in Italy's reception system and provision of health care do not amount to systemic flaws and, therefore, transfers could be carried out.⁹⁸

- **Transfer to Malta:**

Several domestic courts have taken similar approaches towards Malta's detention policy and have, accordingly, suspended transfers. Illustratively, on 15 December 2021, the **Dutch** Council of State suspended a Dublin transfer to Malta, finding that the structural detention of Dublin returnees breaches Article 3 ECHR and requires that the asylum authorities conduct further investigation to prove they can rely on the principle of mutual trust.⁹⁹ On 7 April 2022, the **Italian** Civil Court of Rome also suspended

⁸⁷ AIDA, *Country report: Greece – Update on the year 2022*, June 2023, available at: <https://bit.ly/3PUOVk9>, 72.

⁸⁸ Eurostat, Data Browser, available at: <https://bit.ly/3RUN7hd>.

⁸⁹ AIDA, *Country report: Austria – Update on the year 2022*, May 2023, available at: <https://bit.ly/3M7hjNy>, 60.

⁹⁰ AIDA, *Country report: Switzerland – Update on the year 2022*, June 2023, available at: <https://bit.ly/3FmlAc8>, 52.

⁹¹ AIDA, *Country report: Netherlands – Update on the year 2022*, May 2023, available at: <https://bit.ly/45Bz2n9>, 49.

⁹² See, Myria, *Contact Meeting*, 26 April 2023, available in French and Dutch at: <https://bit.ly/48Unm1C>, 11.

⁹³ AIDA, *Country report: Germany – Update on the year 2022*, April 2023, available at: <https://bit.ly/3FpX8qe>, 59.

⁹⁴ See, EUAA, *Asylum Report 2023 – Assessing transfers to specific countries*, 2023, available at: <https://bit.ly/3Q4BTAn>.

⁹⁵ (Germany) Federal Administrative Court, 1 B 66.21, 17 January 2022, available in German at: <https://bit.ly/3M4fRvh>.

⁹⁶ (Switzerland) Federal Administrative Court, Decision D-4235/2021, 19 April 2022, available in German at: <https://bit.ly/3PTaWhS>.

⁹⁷ (Netherlands) Regional Court of the Hague, ECLI:NL:RBDHA:2022:8050, 5 August 2022, available in Dutch at: <https://bit.ly/3rOcvpi>.

⁹⁸ (Portugal) Supreme Administrative Court, 01988/20.0BELSB, available in Portuguese at: <https://bit.ly/3rYB7f1>.

⁹⁹ (Netherlands) Dutch Council of State, ECLI:NL:RVS:2021:2791, 15 December 2021, available in Dutch at: <https://bit.ly/3JPAFUz>.

a Dublin transfer to Malta, finding the applicant's fear of inhuman and degrading detention conditions to be well-founded.¹⁰⁰ Likewise, on 14 November 2022, the **Austrian** Constitutional Court relied on the jurisprudence on the ECHR¹⁰¹ and other relevant reports to suspend a Dublin transfer on account of, inter alia, the length and conditions of detention of asylum seekers in Malta.¹⁰² In addition, the **Swiss** State Secretariat for Migration's own manual states that vulnerable asylum seekers are not to be transferred to Malta if they face detention.¹⁰³ Nevertheless, according to Eurostat, Malta received 61 Dublin transfers in 2022.¹⁰⁴

- **Transfer to Bulgaria:**

Notwithstanding European domestic courts' reluctance to recognise the existence of systemic deficiencies in Bulgaria's reception and wider asylum system, numerous transfers were suspended in 2022 based on concerns as to returnees' access to the asylum procedure, reception conditions, risk of *refoulement*, and access to rights for beneficiaries of international protection.

In **Germany**, the Administrative Courts of Ansbach, Köln and Freiburg, while differing on whether the situation in Bulgaria amounts to fundamental and systemic deficiencies, have all ruled against the Dublin transfer of both asylum seekers and beneficiaries of international protection. Notably, the Courts referred, respectively, to the "extreme material distress" asylum seekers face upon recognition of their refugee status,¹⁰⁵ the risk of inhuman and degrading treatment faced by both beneficiaries of international protection and asylum seekers,¹⁰⁶ and the fundamental deficiencies in the asylum procedure specifically faced by Afghan nationals in Bulgaria.¹⁰⁷

In this context, the **Swiss** Federal Administrative Court upheld its jurisprudence according to which shortcomings in the Bulgarian asylum system do not amount to systemic deficiencies warranting the suspension of transfers but still found that, in the specific case of Afghan nationals, it cannot be ascertained that their asylum applications will be examined with sufficient guarantees against *refoulement*.¹⁰⁸ The Court also sent back several cases to the State Secretariat for Migration for further assessment of returnees' situation in terms of accommodation, risk of detention and *refoulement*, as well as access to medical assistance, especially in view of the overburdened Bulgarian healthcare system since the large number of arrivals of Ukrainians to the country.¹⁰⁹

In contrast, the **Slovenian** Administrative Court acknowledged that the Bulgarian reception and detention conditions, the low protection rates for Afghans and Iraqis as well as the discriminatory

¹⁰⁰ (Italy) Civil Court of Rome, R.G. 4597/2022, 07 April 2022, available in Italian at: <https://bit.ly/3RXLev9>.

¹⁰¹ ECtHR, *Feilazoo v. Malta*, App. No 6865/19, 11 June 2021.

¹⁰² (Austria) Constitutional Court, Decision Number E622/2022, 20 September 2022, available in German at: <https://bit.ly/3MDkU73>.

¹⁰³ (Switzerland) SEM, *Manuel Asile et Retour*, 1 March 2019, available in French at: <https://bit.ly/3kHsXUp>.

¹⁰⁴ According to Eurostat, in 2022, Malta received the following 61 transfers: 20 from Germany, 13 from France, 8 from Belgium, 7 from Greece, 4 from Switzerland, 3 from Bulgaria, 2 from Finland and 1 from Luxembourg, Sweden and Norway. See Eurostat, Data Browser (migr_dubti), available at: <https://bit.ly/3RUn7hd>.

¹⁰⁵ (Germany) Administrative Court of Ansbach, Decision 14 S 22.50126, 31 October 2022, in German at: <http://bit.ly/40rjAlf>.

¹⁰⁶ (Germany) Administrative Court of Köln, 20 K 3733/22.A, 15 November 2022, in German at: <https://bit.ly/3zdPDQp>.

¹⁰⁷ (Germany) Administrative Court of Freiburg, A 14 K 900/22, 19 September 2022, in German at: <https://bit.ly/3JW8yVR>.

¹⁰⁸ (Switzerland) Federal Administrative Court, Decisions D-1569/2022, 26 July 2022, and D-3180/2022, 19 September 2022, available at: <https://bit.ly/3tBNbmU>.

¹⁰⁹ AIDA, *Country report: Bulgaria – Update on the year 2022*, March 2023, available at: <https://bit.ly/3rWRAR8>, 47-48.

conduct of the asylum authorities and the police, all amount to systemic deficiencies.¹¹⁰ Similarly, in March 2023, the **Austrian** Constitutional Court, cancelled a transfer to Bulgaria, on account of the applicant's state of health and the critical situation of the Bulgarian reception system.¹¹¹ Lastly, in January 2022, the **Belgian** immigration office stated that they no longer take Dublin transfer decisions for Bulgaria.¹¹²

Despite these judgments, numerous other European courts did uphold transfers in 2022, including in **Denmark, Austria, Luxemburg** and the **Netherlands**.¹¹³ Illustratively, in 2022, Bulgaria received 20,014 transfer requests, a substantially higher number compared to the 7,811 it received in 2021, although only 202 transfers were actually carried out.

- **Transfer to Croatia:**

Dublin transfers to Croatia have been the focus of numerous legal challenges before European domestic courts, notably in relation to the country's well documented pushback practices and deficient asylum system. See above, [Guarantees regarding access to asylum and risk of refoulement upon return](#).

- **Transfer to Hungary:**

In March 2019, the **Swedish** Migration Agency announced that systemic deficiencies in the Hungarian asylum and reception system were of such dimensions as to trigger Article 3(2) of the Dublin Regulation and entailed a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter.¹¹⁴ In November 2021, the Grand Chamber of the CJEU condemned Hungary for failure to comply with its obligations under both the Return and Procedure Directives.¹¹⁵ In November 2022, however, the Swedish Migration Agency published new legal guidance which states that the Hungarian asylum and reception systems do not suffer from systemic deficiencies. The Agency nevertheless held that reception conditions are likely not accessible to Dublin returnees and therefore transfers are still suspended.¹¹⁶ In practice, the asylum authority continues to issue transfer requests and decisions but transfers will not be carried out for as long as the current situation in Hungary persists.¹¹⁷ Similarly, although courts in **France** continued to consider that the asylum and reception systems in Hungary do not present systemic deficiencies, publicly available information show that no transfer were carried out between 2018 and 2022.¹¹⁸

Conversely, the **German** Regional Administrative Court of Arnsberg ruled that the systemic flaws it identified in the Hungarian asylum procedure and its violations of the principle of non-*refoulement* prevents the authorities from carrying out transfers, *a fortiori* considering Hungary's refusal to provide

¹¹⁰ (Slovenia) Administrative Court, Decision UP00059585, 11 March 2022, available in Slovenian at: <http://bit.ly/40GPMHN>; Decision UP00060224, 25 July 2022, available in Slovenian at: <http://bit.ly/3FFoERi>.

¹¹¹ (Austria) Constitutional Court, E1044/2022 et al., 9 March 2023, available in German at: <https://bit.ly/45zoHZ0>.

¹¹² Myria, Contact meeting, 25 January 2023, p.9, in French and Dutch at <https://bit.ly/3JKpIWk>.

¹¹³ AIDA, *Country report: Bulgaria – Update on the year 2022*, March 2023, available at: <https://bit.ly/3rWRAR8>, 48 and sources cited thereat.

¹¹⁴ AIDA, *Country report: Sweden – Update on the year 2022*, April 2023, available at <https://bit.ly/3tKiMTu>, 44.

¹¹⁵ CJEU, Grand Chamber, C-821/19, 16 November 2021.

¹¹⁶ (Sweden) SMA, 'Överföringar till Ungern i enlighet med Dublinförordningen, RS/010/2022, 11 November 2022', available in Swedish at: <https://bit.ly/3LSGAuQ>. In particular, as noted by the EUAA, the new legal guidance referred to the fact that claims lodged by Dublin transferees are treated as subsequent applications and that access to an effective remedy is limited. See EUAA, *Asylum Report 2023– Assessing transfers to specific countries*, 2023, at: <https://bit.ly/3Q4BTAn>.

¹¹⁷ AIDA, *Country report: Sweden – Update on the year 2022*, April 2023, available at <https://bit.ly/3tKiMTu>, 44.

¹¹⁸ AIDA, *Country report: France – Update on the year 2022*, May 2023, available at <https://bit.ly/3FoNWTa>, 59.

written guarantees in this regard.¹¹⁹ In 2023, the Regional Administrative Court of Aachen also considered that the systemic shortcomings in the Hungarian asylum system posed a risk under Article 4 of the Charter.¹²⁰

Nevertheless, out of 1636 requests to Hungary in 2022, Hungary received 21 returnees, 12 of whom were transferred by Germany.¹²¹

- **Transfers to Poland and Romania following Russia's invasion of Ukraine:**

Following Russia's invasion of Ukraine in 2022 and the ensuing mass displacement, neighbouring countries, most notably **Poland** and **Romania**, suspended all incoming Dublin transfers.¹²² Both countries later announced the gradual resumption of transfers, with Poland stating on 23 June 2022 that it would accept transfers from 1 August 2022,¹²³ while Romania emphasized the impossibility of foreseeing whether the situation would change, and hence only accepted transfers in urgent cases.¹²⁴ Since then, although transfers have resumed, courts in countries including **Germany**¹²⁵ and **Italy**¹²⁶ have halted transfers to both countries. The **Dutch** Council of State upheld a transfer, considering that the Romanian suspension was of temporary nature and still allowed for exceptions, including the imminent closing of a transfer time limit.¹²⁷

¹¹⁹ (Germany) Regional Administrative Court of Arnsberg, 1 L 827/22.A, 13 September 2022, available in German at: <https://bit.ly/3RUfreD>.

¹²⁰ (Germany) Regional Administrative Court of Aachen, 5 K 2643/22.A, available in German at: <https://bit.ly/45uIJ6N>.

¹²¹ AIDA, *Country Report: Hungary – Update on the year 2022*, April 2023, available at: <https://bit.ly/3ZyIPKE>, 43.

¹²² See, Myria, Contact Meeting, 23 March 2022, p.20, in French and Dutch at: <https://bit.ly/3AUNI4H>.

¹²³ Informationsverbund Asyl & Migration, Update: Effects of the Ukraine War on Dublin Renditions, 14 July 2022, available in German at: <https://bit.ly/3PXtRGg>.

¹²⁴ EUAA, *Asylum Report – Assessing transfers to specific countries*, 2023, available at: <https://bit.ly/3Q4BTAn>

¹²⁵ (Germany) Regional Administrative Court of Aachen, 6 L 156/22.A, 18 March 2022, available in German at: <https://bit.ly/45u0ao7> and Regional Administrative Court of Arnsberg, 8 L 359/22.A, 28 July 2022, available in German at: <https://bit.ly/46uvTqo>.

¹²⁶ (Italy) Civil Court of Rome, R.G. 50879/2022, 12 January 2023. For more details, see EUAA, Case Law Database, available at: <https://bit.ly/46JWQ9w>.

¹²⁷ (Netherlands) Council of State, ECLI:NL:RVS:2022:1520, 31 May 2022, available in Dutch at: <https://bit.ly/3rOwqV5>.

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, Türkiye, 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), [asylum authorities](#) (October 2019) [digitalisation of asylum procedures](#) (January 2022) and [family reunification](#) (February 2023).
- ❖ **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, [Germany](#) and [Poland](#).
- ❖ **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](#), the [first half of 2019](#), [2019 and the first half of 2020](#), [2020](#) and [2021](#).

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