Part 4: Common European Asylum System (CEAS)

Chapter Eleven

The Steps from Dublin III to Dublin IV

Amelia Martha Matera

Abstract

In 1992, the EU established the Common European Asylum System, which is based on five central directives one of which is the Dublin regulation. The debate about a possible Dublin IV regulation started a long time ago, but the discrepancies among the member states' interests are huge and it is hard to find a compromise. In fact, since the third and last update in 2013, there have not been any further changes. However, all parties agree that there is a need of reform and that the current system is unfair and inefficient. This paper wants to highlight future possible scenarios. The Commission presented a proposal in 2016 to reform the whole CEAS, which included a proposal for Dublin IV. The European Parliament had already adopted a position on the proposal of 2016, while the Council did not. The first part of the paper is dedicated to the current situation and to the reasons why the Regulation needs reform. The second section analyses the Proposal submitted by the Commission in 2016, and the related problems and reasons why this Proposal has not been agreed upon. Before reaching the conclusion, the third section explores possible alternatives of the Regulation's future. It is difficult to say what will happen; theseare all hypothetical scenarios. However, it is fundamental to deeply analyse the suggestions proposed so far with regard to an eventual reform of the current regulation.

Introduction

In 1992, the European Union (EU) established the Common European Asylum System (CEAS), which is based on five central EU rules; one of these is the Dublin Regulation (the Regulation). Nowadays, the Regulation is often cited by the media and it is general knowledge that this Regulation clarifies which Member State (MS) is responsible for the asylum procedure of third-country nationals who entered the EU and applied for international protection. As the first country of entry with responsibility for assessing the asylum applications, the MS at the borders of the EU have been strongly opposed to the Regulation. Technically the criteria establishing the responsible MS, in hierarchical order, are the following: family consideration for minors, family members who are beneficiaries of international protection, family members who are applicants for international protection, visa and residence permit.

However, the consequence of the "first entry" criteria is that countries like Greece or Italy find they are under more pressure because they are the usual port of entry for Europe and therefore face a high number of migrants. There are numerous critics of the operation of the regulation and their objections reach to the core principles enshrined in the rules.

The first critics go back to 1997; the year in which the first Dublin Convention entered into force. It was criticised for its lack of substantive and procedural harmonisation, and because it excluded the jurisdiction of the Court of Justice to ensure uniform interpretation (Marinho and Heinonen, 1998). The criticisms continued with Dublin II, with MS arguing that it was inefficient and unfair towards the southern and eastern MS (Nicol, 2007). The debate about what would become known as the Dublin IV Regulation started a long time ago; however, the discrepancies among the MS interests are broad, and finding a compromise has been fraught with difficulty. In fact, since the third and last update in 2013 (Dublin III), no further changes have been made.

Nevertheless, EU institutions, NGOs and various actors agree that there is a need for further reform and that the current system is unfair and inefficient. The aim of this paper is to highlight future possible scenarios. The European Commission (the Commission) (2016) presented a proposal (the Proposal) that year to reform the whole CEAS, which includes a proposal for Dublin IV as well. The European Parliament (EP) adopted a position on the Proposal, while the European Council (from now on Council) has not yet done so.

The recent refugee crisis 2015–16 and the continued criticisms and perceived failures of the system demonstrate the importance of analysing in depth any suggestions proposed so far for a Dublin IV Regulation. The first part of the paper is dedicated to the current situation and to the reasons why the Regulation needs reform. The second section analyses the Proposal submitted by the Commission in 2016, and the related problems and reasons why this Proposal has not been agreed upon. Before reaching the conclusion, the third section explores possible alternatives of the Regulation's future.

Why does Europe need Dublin IV?

The Dublin Convention entered into force in 1997 together with the Schengen Agreement. Once the borders were shared, the MS realized that there was the need to establish Regulations, which would clarify which MS has the responsibility to assess asylum applications. The current Dublin III Regulation was adopted in 2013.

The CEAS's aim is to reach a certain level of standardization with regards to asylum procedure and policy. To this day, there is no complete harmonisation in the system and there is no mutual recognition of asylum decisions, which may lead an MS to process applications more than once. According to the Italian jurist and migration

expert Schiavone, the key for a successful and harmonised CEAS is a reform of the Regulation. (Bruni, 2018).

The current approach is to apply individual national responsibility; Art. 3. of Regulation (EU) No 604/2013 determines which MS is responsible for assessing asylum claims. However, there are "discretionary clauses" in Art. 17, which set out criteria for exemptions, to allow movement of asylum seekers between MS to address humanitarian issues such as family reunification. (Mouzourakis, 2014). Art. 2. Of the Regulation outlines the aim of the Regulation "A common policy on asylum, including a Common European Asylum System (CEAS), is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union." (EU, 2013). The political aim of the Dublin system is to prevent and reduce secondary movement and 'asylum shopping'. However, these aims have not been achieved successfully.

The EP (2019, p. 2) declared the following:

> "The current migration and refugee crisis has revealed significant structural weaknesses in the design and implementation of the CEAS and of the Dublin regime. This has been confirmed by recent external studies on the Dublin system and acknowledged by the Commission [...]."

Schiavone argues that due to the lack of harmonisation, MS have completely different procedures and take also different decisions (Bruni, 2018). In Italy, for example, there is a higher number of Iraqi and Afghani applicants because the Italian authorities usually decide positively in these cases. Therefore, those country nationals will choose to seek asylum in Italy – a clear case of asylum shopping (Bruni, 2018). This demonstrates the impact when directives are implemented differently among the European countries.

Theoretically, all countries of first arrival should push for uniformity in reforms, but Schiavone (2018) explains that internal political elements could easily change this logic. For example, Italy holds an ambivalent position towards the Regulation. Although Italy is one of the countries mostly affected by the 2015–16 refugee crisis, it has not proposed or advocated seriously for further reform of the Regulation (Schiavone, 2018). However, the role of Italy needs further analysis.

It is possible to summarize the major criticisms of the current Regulation as follows:

1. There is no sharing of responsibilities and solidarity mechanisms among the MS;
2. Countries at the border are under more pressure compared to internal MS;
3. The bureaucratic processes are slow and very often inefficient. This causes extreme delays or even the failure of transfer of the asylum seekers who in turn fall into a bureaucratic limbo (UNHCR, 2019);

4. The mechanisms result in burden shifting rather than responsibility sharing;
5. The system operates contrary to the principle of solidarity;
6. The fact that MS are obligated to take asylum seekers creates an incentive for keeping the asylum standards low in countries of first arrival which are under pressure (Greens, 2016);
7. The system results in differing implementation scenarios.

Mouzourakis (2014) explains that there is a strong link between irregular entry and asylum application, and the Regulation practically pushes MS to protect their borders even more in order to avoid burden of any possible and eventual asylum application.

Another argument which openly shows the inefficiency of the Regulation is the fact that the courts have often enough decided to suspend the transfer to a MS of an asylum seeker according to the Regulation due to reasons such as "the risk of inhuman or degrading treatment" (Edal, 2018). However, judicial reforms can only intervene in a reactive manner to remedy some practical deficiencies; courts cannot change the principles of the Regulation and also, they are not willing to challenge the Dublin's state centric logic (Mouzourakis, 2014).

A clear example of the Regulation's inefficiency is as follows. Mouzourakis (2014, p. 25) reports that Germany sent 306 transfer requests to Switzerland, but also received 350 people from Switzerland. This means that at the end of the day, the administrative efforts and the expenses are not equal; the country has to deal with the same amount of applications.

Mouzourakis (2014) also mentions some perverse and highly criticised effects of the Regulations. Ireland, for example, requests DNA tests for family reunification under the Regulation. Moreover, it is very common that requests to take back an applicant for international protection find no government response for three months or more. This situation leaves asylum seekers languishing in a bureaucratic limbo.

Many scholars hold the view that the burden sharing should include several criteria in order to establish the responsible country, such as language affinities, reception capacity, etc. Yet, all these criteria are currently omitted (Schneider et al., 2013) (ECRE (a), 2008). In order to reform the Regulation, MS agree that they need a clear and new mechanism to share responsibilities (European Council, 2018). In order to achieve this, Mouzourakis (2014) suggests shifting all decision-making power to Brussels, so it would decide about the sharing mechanisms to ease the current deadlock.

Commission Proposal of 2016

As mentioned in the previous paragraph, there is no doubt; all parties agree on the said problems. The major challenge for the EU is to find a common solution to these perceived problems.

The EP (2019, p. 11) states that, despite repeated meetings and talks about the issues, there has been no agreement on a solution:

> "The main elements for the balance between responsibility and solidarity were presented in May 2018 as a compromise proposal. (...)At the European Council of June 2018, and at each subsequent meeting, in October 2018 and December 2018, however, EU leaders failed to achieve a breakthrough on internal aspects of migration and the EU's asylum policy, showing remaining differences among Member States as regards, in particular, the reform of the Dublin Regulation."

The Commission proposed a reform of the CEAS in 2016, which includes a revamped Regulation. So far, the negotiations are blocked at the trilogues[34] stage. In 2017, the EP adopted its position about the Proposal. However, the Council has not expressed its opinion on it.

There have, however, been two possible compromises identified by AIDA (2017). The first focuses on the general principles upon which all MS should agree: the scope of relocation, the procedures in the country of first entry, and the principle of stable responsibility, which states that a MS is responsible for an asylum application for a period of 10 years (AIDA, 2017). The second possible compromise is about the three phases for the Regulation. The Proposal (Commission, 2016) presented during the Estonian presidency distinguishes between the following three phases: normal, challenging, and severe crisis. The normal circumstance is when the status quo remains intact and the responsibility criteria do not change. The challenging circumstance is the scenario in which a country reaches 90 percent of its share so that the MS would mobilise and support the MS in need. The third circumstance is the scenario in which a MS faces an extreme pressure despite the efforts of all other MS. In this case, as soon as the relocation cap is reached, the Council would intervene and try to determine whether it should include additional relocation or take other measures (AIDA, 2017).

The principle behind relocation affirms that the process of relocation of asylum seekers, whose application is considered likely to be unfounded or inadmissible, shall not be applied (AIDA, 2017). However, it is not clear which criteria have to be used to identify whether an application is likely to be considered unfounded or inadmissible before the end of the assessment in the proper asylum procedure.

The last innovative general principle is the stable responsibility, which affirms that a MS would be responsible for an asylum seeker for a period of 10 years (AIDA, 2017).

The main changes introduced by the Proposal are: the introduction of quotas and a three-phase Dublin system. The Proposal also introduces the mandatory procedure

34 Tripartite meetings between Parliament, the Council and the Commission.

of making a pre-Dublin check. However, ECRE ((c), 2018) holds the view that making these procedures mandatory brings several new concerns and does not improve the mechanisms of the Regulation. The concerns ECRE ((c), 2018) are referring to are as follows:

1. The risk of serious human rights violations;
2. The disregard of protection obligations relating to asylum seekers' right to family life;
3. The risk of creating complex procedural layers before applying responsibility-allocation criteria, the pre-Dublin procedure would seriously undermine the Regulation's objective of efficient procedures ensuring rapid access to asylum procedures; and it will also make the system more unequal because MS of first entry are more likely to be affected by "challenging circumstances" and are therefore obliged to carry out the mandatory checks.
4. The risk that more applicants in MS of first entry will encourage the use of coercive measures to contain the high number of people (although this is already a reality, these measures could be further increased: detention and risks of substandard reception conditions).

The Parliament's Civil Liberties, Justice and Home Affairs (LIBE) Committee adopted the position in autumn 2017 on the Proposal of 04 May 2016 (EP, 2019). The European Committee of the Regions considers the approach presented by the Commission inadequate; it suggests that the number of arrivals has to be taken into consideration in the reference key, and the threshold for triggering the mechanism for the allocation of applicants for international protection is too high (EP, 2019). The EP (2019) highlights that six national parliaments submitted their opinion as well: the Visegrád Group[35], Romania, and Italy, stating that "The Commission Proposal does not comply with the principle of subsidiarity".

In the first round of discussion within the Council, MS agreed that they need: "faster and more efficient determination of the Member State responsible for examination of asylum claims, and prevention of secondary movements" (EP, 2019). However, after this they could not reach any further relevant agreements.

The MS started the discussions within the Council, without success. Since the beginning there have been MS blocking the unanimity required to give a mandate to the Presidency to enter into interinstitutional negotiations with the EP, while other MS have submitted a position paper in favour of a reduced fair share, and alleviation of procedural burdens for the frontline MS (EP, 2019).

Despite discussions with MS the Council continues to have no formal position on the Proposal.

---

35 The Visegrád Group, Visegrád Four, or V4 is a cultural and political alliance of four Central European states: the Czech Republic, Hungary, Poland and Slovakia, which are members of the European Union (EU) and NATO. (Visegrad Group, 2019)

Main challenges

There have been several critics towards the Proposal. ECRE ((e), 2018, p. 14) summarizes the main challenges as follows:

> "Key points of disagreement among the Member States are: the role and scope of (mandatory) relocation of asylum seekers as part of the responsibility allocation mechanism; the duration of responsibility; the scope and nature of pre-Dublin checks; and the inclusion of beneficiaries of international protection in the scope of the Regulation."

The Proposal seems, at first, to be a solution to many of the criticisms of Dublin III, because it finally introduces a system of quotas and sharing responsibility. However, as Schiavone (2018) explains, it is only in case of emergency that another MS would intervene to assist. Otherwise the Proposal does not reform the principle that allocates the first country of arrival as responsible for assessing claims. Furthermore, experts like ECRE, explain that the importance of a link between the asylum seeker and the country of eventual relocation is of foremost importance. Nonetheless, the interest of current national and European political parties in this topic is very low (Schaivone, 2018). ECRE's ((c), 2018) main concern is also that the Proposal represents a deterioration of the rights of refugees and asylum-seekers, and fails to address the fundamental dysfunctions of the Regulation.

In February 2016, the Greens published "The Green Alternative to the Dublin System", calling for a fair allocation of asylum seekers across the MS based on objective criteria: to empower EASO, that included mutual recognition of asylum decisions, and a system built around the existing ties and preferences of asylum seekers towards MS. The Greens (2016) also advocated for specific procedural guarantees for unaccompanied minors.

The Greens (2016) warned the Proposal risked repeating the core failures of the current Regulation, such as the use of coercion, which has two deleterious costs: one for the MS and a second humanitarian cost for the asylum seekers. The Greens (2016) placed importance on acknowledging the preferences of asylum seekers; claiming this would enhance a positive prospect for integration, and arguing that the consent of a person to move voluntary to a MS would prevent him or her from secondary movement (or migration).

Tubakovic, argued that the Proposal adopts a timid approach when tackling the issues of secondary movement and the lack of solidarity among MS:

> "Firstly, the added provision allowing member states to sanction asylum seekers reveals a more coercive trend in EU asylum policy and does not necessarily address the reasons why asylum seekers choose to move. Secondly, this rule is only effective if the asylum seeker has been registered. It does not

> resolve the main contributing factor of secondary movement, the avoidance of registration in first entry countries." (Tubakovic, 2017, p. 4)

According to Hruschka (2016), the Proposal does not offer a solution, lacks innovation, and keeps intact a system of national asylum systems, without common standards. Italy and Bulgaria hold a position against the Proposal (Magnani, 2018); nevertheless, there is no clear plan of another option proposed by the Italian government.

The main challenge is to find agreement on the Regulation reform. The Bulgarian presidency (January – June 2018) aimed to achieve progress in finding political consensus on the CEAS reform and the Regulation specifically. However, during the same six-month duration of his presidency, the Hungarian government announced that it would propose alternative amendments to the Regulation, based on security, a strict expulsion policy, and rejection of any kind of mandatory admittance quota (Atanassov, 2019). Despite all the presidencies, which have been alternating since the Proposal in 2016, have promised to work on finding political consensus, their work has been unsuccessful (Atanassov, 2019).

The current Romanian presidency states that the issue of migration and reforms of the Regulation remains in focus. But, given the difficulties in making any major progress on the Regulation reform in the short term, the current Romanian presidency has decided to concentrate on pushing for the other asylum reform files before the EP elections of 2019 (Atanassov, 2019).

ECRE ((b), 2018) reminds us that although the Council agreed to continue the work on the Proposal, there is no agreed-upon deadline. These comments highlight the need to factor in which MS is leading the presidency.

Future options

The current situation does not seem favourable to a fast solution and an easy approval of the Proposal. This section of the article aims is to present realistic future possibilities. These can be summarized in two options for the short-term scenario: maintaining the status quo or accepting, eventually with changes, the Proposal of 2016.

Maintain status quo

It seems realistic that the Regulation in its current form, will continue to be overlooked. Currently a number of MS, often in Eastern Europe, refuse to apply it (AIDA, 2019). Other MS like Germany decided to put the Regulation on hold and to allow asylum seekers to enter Germany and be processed there, without considering the country of first arrival. Some administrative arrangements have been also developed, which will be addressed in full later.

It is also necessary to mention that in the absence of reforms the MS, a system of ad hoc burden (or responsibility) sharing among (some) EU countries has emerged. 14 member states, at this stage, have expressed their agreement with the Franco-German document, which establishes the "solidarity mechanism" for allocating asylum-seekers across the EU (Zalan, 2019).

Currently, countries such as Italy or Malta will (usually) only carry out rescue operations, or let boats carrying migrants enter their ports, after an agreement on their redistribution has been reached (which now regularly seems to be the case).

Furthermore, several MS have chosen not to relocate asylum seekers who had their fingerprints taken in Greece; as a measure of support for the Hellenic country, which has experienced an influx of asylum seekers and has not been able to cope administratively with the situation.

However, these interpretations and implementations of the Regulations and adaptions towards dealing with large numbers of asylum seekers by individual MS remain the exception. It seems realistic to maintain the status quo even though the Regulation is not always implemented.

Brexit and Dublin Regulation

When considering the option of maintaining the status quo, it is important to examine the UK's situation. Brexit has overlooked the debate about the CEAS and more in particular about the Dublin System. With Brexit, the UK has lost its position in the rule-making process. The UK had already opted out from several common directives in this field. However, the British have always supported the Dublin system. If the UK leaves without a deal, it will lose its right to transfer asylum seekers who have been fingerprinted in other MS and will also lose access to Eurodac.[36] According to Bilgic (2019), this could lead to an increase in irregular arrivals and only a deal could maintain the status quo or a less drastic transition. The UK has limited options on this issue. In case of a no deal, the UK could negotiate bilateral agreements with separate MS, and non-EU MS (Bilgic, 2019). However, negotiations will take time and will not necessarily prevent irregular arrivals. The UK could either increase its naval presence in the Channel or consider an arrangement similar to the one between EU and Norway, Switzerland, Iceland and Lichtenstein, which implies the States are members of the Dublin system and automatically also of the Schengen area.

Accept Commission Proposal

The second option is for the Council and the EP to vote in favour of the Proposal. So far, the negotiations have been very slow, and only the EP was able to make its

36 It is an informatics system, which collects compares and transmits the fingerprints of asylum seekers (EMN, 2014).

opinion public. The reform as proposed affects not only the Regulation, but also the whole CEAS, which consists of another three directives and one Regulation. However, this is not the only reason making an eventual approval of this proposal unlikely. The main challenge is to satisfy all MS whose interests are so diverse that reaching a compromise seems quite difficult. As Schiavone (2018) affirms, the Italian and the Hungarian political scenes do not incentivize the adoption of this proposal; his opinion is that several important points of the Proposal, such as the criterion of genuine link with a particular MS, will be excluded.

MS could accept the Proposal with the EP modifications, published in the report of the LIBE Commission in 2017, in the so-called Wikström report. The EP has made deep changes to the hierarchy of responsibility criteria establishing the responsible MS by: (1) introducing academic and professional qualifications as relevant criteria; (2) deleting irregular entry, visa waived entry and applications at airports and transit zones; and (3) introducing an allocation mechanism between MS as the fall-back criterion in the Regulation (Aida, 2017). The main amendments proposed by the EP (2017) are the following:

1. Abandonment of the criterion of first entry and the adoption of a quota system assigned to each State based on GDP and population (% of the total number of applications submitted). The main difference with the original Proposal is that this criterion will be adopted without any need of phases. The application must be presented in the country of first entry. This State verifies the existence of a wide range of "effective links" between the applicant and a MS, like family members and relatives, prior stays, possession of educational or professional qualifications, presence of a sponsor. Therefore, MS will receive applicants who have links with their community, and all this, within the limits of their quotas. If an applicant lacks connections, then he can choose between the four countries most distant from the fulfilment of his quota. If the declared bonds prove to be non-existent, the person will be allocated by the system to the State which is less "virtuous" with respect to its quota.
2. Legal access to EU from third countries – for example, through the UNHCR's intervention – should be facilitated.
3. The Dublin transfers, which are against human rights, have to be stopped.
4. Particular attention to minors, especially if unaccompanied. The EP proposes to strengthen the rules in the best interest of the child: the major guarantees for the appointment of a legal guardian, no forced transfers, the country where it is located must take charge of the child's vulnerable condition, and lastly for each transfer, there is the need for an evaluation by a multidisciplinary team and prior appointment of a guardian in the destination country.
5. The State of first entry will have to carry out a security check through national and European databases. The costs of reception in the identification phase of the competent State and the transfer will be covered by the EU budget Transfers and will be carried out by the European Asylum Agency. Moreover, it proposes

a three-year transition period for MS with less experience, and strong penalties for non-cooperative states: reduction of European funds.

Progin-Theuerkauf (2017) states that there is no real added value of the Dublin IV Proposal: "On the contrary: It would rather add to the existing problems, as it will not be able to encourage Member States to commit to more solidarity among each other and to a better treatment of asylum seekers. It is hard to imagine that such an instrument will find consensus in the Council and the Parliament. But: Some elements of the proposal might survive the ongoing negotiations. And these could still cause enough harm to the already weak position of migrants in Europe."

Although the EP presented these changes, the Council's position is still ambiguous. The latter is the most complicated to achieve due to the competing national interests.

Other alternatives

In case no agreement can be achieved, a third option to consider would be a new Dublin proposal. This would mean a restart of negotiations from zero. This option is realistic because there have been major critics of the Dublin system and the Proposal (as the Proposal does not really change the basic principles of the Regulation). There is a general agreement that the principle, which needs to be achieved, is: to share responsibilities among the EU because migration cannot be the problem only of the countries on the front line.

The negotiations of the Proposal of 2016 are ongoing. The Proposal has not yet been discussed within the Council, for this reason, the probability to restart negotiations from zero is quite low. However, the option of new negotiations does not have to be excluded.

What would a new proposal look like? There have been interesting ideas coming from different actors. The following sections introduce some of those ideas that could completely abolish the Regulation.

Free Choice

SVR suggests implementing the option of free choice. This is also advocated by several NGOs like the German ProAsyl (2015), which asks for the abolishment of Art. 13 of the (EU) Nr. 604/2013 (Dublin III-Regulation).

ProAsyl (2015) highlights several reasons why asylum seekers choose to apply in one particular MS. They increasingly seek protection where refugees have already been accepted based on their cultural and national origins. This results in a network structure and it facilitates integration. Moreover, immigration societies are perceived as welcoming and therefore attractive to those seeking protection.

The necessary social and political conditions cannot be assumed to be the same in all MS. Until 1989, the Eastern European MS had no organized tradition of migration

and refugee reception. Even a quarter-century later, these MS are still not capable of handling or answering the refugee question, particularly compared to the level of development with the Central European Member States. This is particularly evident in the treatment of refugees and violation of human rights in Bulgaria, Romania and Hungary. The southern European Member States such as Greece, Italy and Spain, initially understood themselves to be classic transit states and did not have to establish refugee reception structures until 1997 (years in which the Dublin system was introduced for the first time). ProAsyl (2015) argues that a distribution of refugees among the MS, without incorporating the necessary transformation processes in the southern and eastern European member states, is at the expense of the refugees and runs counter to the integration goal of the European Union.

Finally, ProAsyl (2015) has concluded that free choice is a valid alternative to the current system, and proposes a system of quotas similar to what the Commission has proposed. It has also been proposed that refugees and beneficiaries of subsidiary protection should be granted free movement immediately after granting status, and mutual recognition of MS status decisions in the area of refugee law and subsidiary protection should be granted.

Administrative arrangements between MS

The inefficiency of Dublin III and the unsuccessfully negotiations of Dublin IV have led some MS to sign bilateral agreements in the attempt of solving the problem of responsibility. As of 2019, Germany is the leader of these "administrative arrangements". The establishment of these agreements with other MS was caused by the conflict with the interior minister and the German Chancellor. (ECRE (d), 2018) The Commission has not given any official statement about these arrangements. Germany signed such agreements with Spain, Greece and Portugal. Some of these agreements bypass the Dublin system, in order to implement fast transfers.

The agreement signed with Portugal foresees shorter time limits for replying to incoming Dublin requests: one month instead of three to "take charge" of requests, and "as soon as possible" to "take back" requests. ECRE ((d), 2018) considers the agreement signed with Greece more problematic, allegedly due to legal and political concerns. The reasons are the following: Germany is undermining the rule of law in general; the more MS try to find bilateral solutions, the less the EU will be likely to achieve a European reform. The first legal concern is that people who entered Greece and have been fingerprinted there and have expressed the will to apply for international protection in Germany, will be denied entry. ECRE ((d), 2018) reminds that the refusal of entry to people who applied for asylum in other MS goes against the Regulation and the Schengen Borders Code. The second concern is that there are procedural safeguards prior to the transfer, which have to be guaranteed, but these are nullified with the German-Greek arrangement.

Third, the German-Greek arrangement sees asylum seekers who have been transferred as subsequent applicants in the country they were transferred to. This can be a problem since the Regulation Art. 18(2) clearly allows such applicants to re-access the asylum procedure without considering their claim as a subsequent application. The problem is that subsequent applications often imply less rights (ECRE, ((d), 2018). Moreover, ECRE ((d), 2018) is concerned about the constraints of human rights, which have to be safeguarded, and it reminds that the case law of the ECtHR and CJEU prohibits the transfer of asylum seekers in MS where the person would face a risk of inhuman or degrading treatment.

The introduction of such arrangements can be interpreted as a threat to a common solution, but also as an attempt from the MS to find efficient instruments to overcome the inadequacies of the Dublin system.

These arrangements are implemented in the scenario of maintaining the status quo. However, should these types of arrangements increase, this could eventually lead to a complete replacement of the Regulation.

Enlarge the Dublin system to countries outside the EU

The International Organisation of Migration (IOM) and United Nations High Commissioner for Refugees (UNHCR) suggest there is the need for the establishment of an arrangement like the Dublin Regulation between coastal States on both sides of the Mediterranean. This option would involve actors of the EU and of third countries. The IOM-UNHCR Proposal to the European Union for a Regional Cooperative Arrangement Ensuring Predictable Disembarkation and Subsequent Processing of Persons Rescued at Sea (IOM, 2018) presents a broad framework covering all steps in the procedure from disembarkation to the return of failed asylum seekers (ECRE (e), 2018).

The key problem with this proposal is the instability and the precarious state of human rights in the neighbouring countries to the EU. ECRE ((e), 2018) realistically states that this is not really an option, considering the lack of an asylum system in North Africa. However, this should not be completely excluded in a future long-term scenario. As the EU has already shown, it has big interests in trying to solve the problems related to migration in third countries.

The Expert Council of German Foundations on Integration and Migration[37] (SVR, 2018) is in favour of changes and more solidarity among the MS. The only options SVR sees for Europe, in order to avoid renationalisation and a legislative stalemate are:

1. Dublin Plus, which corresponds to the Commission proposal. It maintains the Dublin principle and it adds corrective solidarity mechanisms;

37 Der Sachverständigenrat deutscher Stiftungen für Integration und Migration (SVR)

2. fair quotas; when an applicant lacks links to none of the MS, the person will be allocated to a MS according to fairs quotas. This option corresponds to the EP proposal;
3. free choice: as the name suggests the asylum seeker has the free choice to select the MS in which he or she is willing to apply for asylum. This responsibility would be shared through financial compensation; this option is strongly promoted by NGOs.

Conclusion

This paper extends our knowledge of Dublin and its future possible development. It has differentiated between short-and long-term scenarios. The first option is the maintenance of the status quo, with a special eye on the UK; the second option is the acceptance of the Proposal. It is likely that the Proposal will be modified according to the position paper of the EP and the position of the Council.

The long-term projections mean there could be a completely new proposal, which according to experts, would revamp the principle of Dublin. These options are summarised in three scenarios, however other developments are not excluded. The first option is the implementation of free choice; the second is the increase of bilateral agreements between MS; and the third, proposed by IOM (2018) and UNHCR, is to enlarge the Dublin system to non-EU countries.

Finally, a myriad of other important factors needs to be considered. MS continue to see asylum seekers only as "objects of state acts", and not as persons holding rights (Mouzourakis, 2014). National interests lead the negotiations and do not allow to achieve an efficient solution to manage CEAS and to make it function.

The future of the Regulation remains unknown and full of questions. It is likely that the future scenario is the adoption of the Proposal after an extended period of negotiation. The main concern is whether the changes proposed by the EP will be accepted. However, as highlighted in this paper, the Proposal still maintains several weaknesses, and does not revamp the Regulation as is required in reality.

Therefore, a key policy priority should be to plan a long-term agreement on the Dublin mechanism and more in general on CEAS.

References

Asylum Information Database (2017) CEAS reform: State of Play of Negotiations on the Dublin IV Regulation. Available at: https://www.asylumineurope.org/news/30–11-2017/ceas-reform-state-play-negotiations-dublin-iv-Regulation (Accessed: 04 April 2019)

Asylum Information Database (2019) The implementation of the Dublin III Regulation in 2018. Available at: http://www.asylumineurope.org/sites/default/files/aida_2018update_dublin.pdf (Accessed: 04 April 2019)

Atanassov, Nikolai (2019) Legislative Train Schedule Towards a new Policy on Migration. Available at: http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on migration/file-jd-revision-of-the-dublin-Regulation (Accessed: 01 April 2019)

Bruni, Lucia (2018) The Future of Europe passes through the Dublin system, Osservatorio Balcani e Caucaso Transeuropa. Available at: https://www.balcanicaucaso.org/eng/Areas/Europe/The-future-of-Europe-passes-through-the-Dublin-system-186969 (Accessed: 27 February 2018)

Di Filippo, Marcello (2015) Considerazioni Critiche in Tema di Sistema di Asilo dell'UE e Condivisione degli Oneri in I diritti dell'uomo, Editoriale Scientifica srl pp. 47–60

ECRE (a) (2008) Sharing Responsibility for Refugee Protection in Europe: Dublin ReconsideredAvailable at: https://www.ecre.org/wp-content/uploads/2016/07/ECRE-Sharing-Responsibility-for-Refugee-Protection-in-Europe-Dublin-Reconsidered_March-2008.pdf (Accessed: 30 May 2019).

ECRE (b) (2018) Asylum at the European Council 2018: Outsourcing or Reform? Available at: https://www.ECRE.org/wp-content/uploads/2018/08/Policy-Papers-04.pdf (Accessed: 05 March 2019)

ECRE (c) (2018) Beyond Solidarity: Rights and Reform of Dublin. ECRE's Call on States to Ensure Fundamental Rights Protection in the Reform of The Dublin System. Available at: https://www.ECRE.org/wp-content/uploads/2018/02/Legal-Note-3.pdf (Accessed: 15 March 2019)

ECRE (d) (2018) Bilateral Agreements: Implementing or Bypassing the Dublin Regulation? ECRE's Assessment of Recent Administrative Arrangements on Transfer of Asylum-Seekers and their Impact on the CEAS. Available at: https://www.ECRE.org/wp-content/uploads/2018/12/Policy-Papers-05.pdf (Accessed: 02 April 2019)

ECRE (e) (2018) Asylum at the European Council 2018: Outsourcing or Reform? ECRE's Analysis of the Proposals Launched at the June 2018 European Council And Its Updated Assessment the CEAS Legislative Reforms, With Recommendations on the Compromise Texts. Available at: https://www.ECRE.org/wp-content/uploads/2018/08/Policy-Papers-04.pdf (Accessed: 15 March 2019)

European Council (2018) Reform of EU asylum rules. Why do we need it? Available at: https://www.consilium.europa.eu/en/policies/ceas-reform/ (Accessed: 08 August 2019)

European Commission (2016) Proposal for a Regulation of the European Parliament and of the Council establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in one of the Member States by a Third-country National or a Stateless Person (recast). Available at: https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1–2016–270-EN-F1–1.PDF (Accessed 02 January 2019)

European Database of Asylum Law (2018) Luxembourg – Administrative Tribunal stops Dublin Transfer of Asylum Seeker to Italy, due to Country's Systemic Deficiencies. Available at: https://www.asylumlawdatabase.eu/en/content/luxembourg-%E2%80%93-administrative-tribunal-stops-dublin-transfer-asylum-seeker-italy-due-country%E2%80%99s (Accessed: 10 March 2019)

European Migration Network and European Commission (2014) Asylum and Migration, Glossary 3.0 a tool for better comparability produced by the European Migration Network, Home Affairs, European Commission.

European Parliament (2019) Briefing EU Legislation in Progress, Reform of the Dublin system. Available at: http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586639/EPRS_BRI%282016%29586639_EN.pdf (Accessed: 16 March 2019)

European Parliament (2017) Report on the Proposal for a Regulation of the European Parliament and of the Council establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection lodged in one of the Member States by a Third-country National or a Stateless Person (recast). Available at: http://www.europarl.europa.eu/doceo/document/A-8–2017–0345_EN.html#title1 (Accessed: 02 March 2019)

European Union (2013) Council of the European Union, Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), 29 June 2013, OJ L. 180/31–180/59; 29.6.2013, (EU)No 604/2013. Available at: https://www.refworld.org/docid/51d298f04.html (Accessed 7 August 2019)

Hruschka, Constantin (2016) Dublin is Dead! Long live Dublin! The 4 May 2016 Proposal of the European Commission. Available at: http://eumigrationlawblog.eu/dublin-is-dead-long-live-dublin-the-4-may-2016-proposal-of-the-european-Commission/ (Accessed: 27 February 2019)

International Organisation for Migration (2018) IOM-UNHCR Proposal to the European Union for a Regional Cooperative Arrangement Ensuring Predictable Disembarkation and Subsequent Processing of Persons Rescued at Sea. Available at: https://www.iom.int/news/iom-unhcr-proposal-european-union-regional-cooperative-arrangement-ensuring-predictable (Accessed: 07 August 2019)

Magnani, Alberto (2018) Il Regolamento di Dublino, cos'è e perché la Riforma non piace a Salvini, in Il sole 24 ore. Available at: https://www.ilsole24ore.com/art/mondo/2018–06-04/il-regolamento-dublino-cos-e-e-perche-riforma-non-piace-salvini-114327.shtml?uuid=AE5RzwzE&refresh_ce=1 (Accessed: 27 March 2019)

Marinho, Clotilde and Heinonen, Matti (1998) 'Dublin after Schengen: Allocating Responsibility for Examining Asylum Applications in Practice', EIPASCOPE, 1998

(3). pp. 1–12. Available at: http://aei.pitt.edu/800/1/scop98_3_1.pdf (Accessed: 29 July 2019)

Mouzourakis, Minos (2014) 'We Need to Talk about Dublin's Responsibility under the Dublin System as a Blockage to Asylum Burden-Sharing in the European Union', Refugee Studies Centre, Working Paper Series No. 105.

Available at: https://www.refworld.org/docid/55c9ee694.html (accessed 7 August 2019)

Nicol, Andrew (2007) 'From Dublin Convention to Dublin Regulation: A Progressive Move?', in Anneliese Baldaccini, Elspeth Guild and Helen Toner (eds) Whose Freedom, Security and Justice? EU Immigration and Asylum Law Policy. Hart Publishing 2007.

ProAsyl (2015) Für die freie Wahl des Zufluchtslandes in der EU Die Interessen der Flüchtlinge achten. Available at: https://www.proasyl.de/wp-content/uploads/2015/12/2015_06_19_Positionspapier_Freie_Wahl_des_Zufluchtlandes.pdf (Accessed: 21 March 2019)

Progin-Theuerkauf, Sarah (2017) The «Dublin IV» Proposal: towards more solidarity and protection of individual rights? Available at: https://sui-generis.ch/article/view/sg.34/524 (Accessed: 27 March 2019)

Sachverständigenrat deutscher Stiftungen für Integration und Migration (SVR) GmbH (2018) Deutschland als Motor der GEAS-Reform? Migrationspolitische Ansprüche an eine global denkende Bundesregierung, Berlin. Available at: https://www.stiftung-mercator.de/media/downloads/3_Publikationen/2018/Maerz/SVR_Positionspapier_GEAS.pdf (Accessed: 04 February 2019)

Schneider, J., Engler, M. and Angenendt, S. (2013) 'European Refugee Policy: Pathways to Fairer Burden-Sharing', Sachverständigenrat deutscher Stiftungen für Integration und Migration (SVR) GmbH. Available at: https://www.svr-migration.de/wp-content/uploads/2013/11/European-Refugee-Policy_SVR-FB.pdf (Accessed: 02 March 2019)

The Greens EFA in the European Parliament (2016) A Preference Based Allocation System for Asylum Seekers within the EU. Available at: https://www.greens-efa.eu/legacy/fileadmin/dam/Documents/Policy_papers/Migration_asylum/2016–02-24_Dublin_paper_EN.pdf (Accessed: 15 February 2019)

Tubakovic, Tamara (2017) A Dublin IV recast: a new and improved system? European Policy Brief. Available at:

http://www.egmontinstitute.be/content/uploads/2017/03/EPB-A-Dublin-IV-recast-A-new-and-improved-system-new.pdf (Accessed: 15 March 2019)

United Nations High Commissioner for Refugees (2019) Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation, August 2017. Available at: https://www.refworld.org/docid/59d5dcb64.html (Accessed: 6 April 2019)

Valia, Matteo (2019) 'Italy receives more asylum seekers from Germany than from Libya

Why Rome is the winner of the EU's Dublin Regulation', Politico., Available at: https://www.politico.eu/article/italy-migration-refugees-receives-more-asylum-seekers-from-germany-than-from-libya/ (Accessed: 30 July 2019)

Visegrad Group (2019) About the Visegrad Group. Available at: http://www.visegradgroup.eu/about/about-the-visegrad-group (Accessed: 04 March 2019)

Zalan, Eszter (2019) Macron: 14 EU States Agree on a Migration 'Mechanism', Euobserver. Available at: https://euobserver.com/political/145514 (Accessed: 30 July 2019)