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# The Future of the Common European Asylum System: The disgrace of a Regulation

Dublin II and III by comparison

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## **Abstract**

The current asylum crisis in Europe chips away at the image of the future of the Common European Asylum System. Member States located at the external borders are currently experiencing massive problems handling the amount of asylum-seekers while some non-bordering Member States participation is relatively low. The main promoter of the grievances within the system is the Dublin II Regulation. Hereby especially two issues can, according to the concepts of Langford, Thielemann and El-Enany be identified, namely the lack of a multinational shared responsibility and the lack of an effective burden sharing mechanism.

Since the Regulation is now in its third generation both Regulations can be compared in order to evaluate, whether the Dublin III Regulation is able to remedy the failures promoted by the Dublin II Regulation. In order to achieve such answers, a detailed comparison of the articles of both Regulations on the basis of four features that characterize the issues of shared responsibility and burden sharing will be conducted. By applying a rating in which the features will be labelled as either realized or not realized, conclusion will be derived. The analysis showed that only two out of four features could be realized. This implies that although some positive changes could be identified, Dublin III will not be able to remedy the failures made under Dublin II and will hence not contribute to a well-functioning Common European Asylum System.

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## 1. Introduction

Since 2011 the European community experienced a massive influx of asylum-seekers to its area. The individuals, mostly from Northern Africa, who are escaping from ramifications of the Arab Spring and from Iraq, Iran, Turkey, Somalia and Eritrea, in which poverty, political corruption and instability is the daily fare, try to reach the borders of the European Union (EU) with hopes for a better life. Additional to the asylum-seekers who already entered the borders of the EU, the Guardian states that up to 600,000 people only in Libya are still waiting to enter (Guardian 2014). The massive influx of asylum-seeker to the southern Italian island Lampedusa, is a representative case of the dramatic situation the persons after arrival have to face. This is namely a failing asylum system with profound grievances within the policies associated with it. Beck extends this thought towards the EU itself: "People from sub-Saharan Africa or Arab world continue to regard it [Europe] as the Promised Land and are willing to set out for its shores at tremendous risk to themselves. The fact that Serbia and other nations of the former Yugoslavia are eager to join the Union likewise testifies to its continuing attractions as a haven of freedom and prosperity. And now, all this threatens to fall apart".

The current Asylum crisis and its disastrous extent on the lives of asylum-seekers triggered the attention of the publicity with which the understanding of the Common European Asylum System (CEAS) came under critic. The System consists of a set of five Regulations and Directives outlining, among others, reception conditions, protection standards and a fingerprint database. Designed to foster co-operation between Member States (MS/s) and to harmonize national asylum legislation in order to "ensure that asylum seekers are treated equally in an open and fair system" (Commission 2014), the CEAS has reached a crossroad between many obstacles to tackle.

Many scholars describe the shortcomings of the system in various fields: Carrera & Guild identified a dysfunctional as well as failing asylum system, which poses great difficulties "to the foundations and well-functioning of EU external borders and asylum law" (Carrera and Guild 2010). Furthermore Papadimitriou & Papageorgiou describe the establishment of the CEAS as "fragmented and haphazard" which results in "potential danger [...] of asylum seekers in our continent" and that is "not tenable for long" (Papadimitriou and Papageorgiou 2005). Additionally Langford sees MSs confronted with an "impossible task [under] the current CEAS framework" (Langford 2013).

The failure of the system in recent month is attributable to the failure of an important component of the system, the Dublin Regulation. Langford describes the latter as "the root of the problem" of the asylum crisis in general as well as for the flaws within the CEAS (Langford 2013). The Regulation, since January 2014 in its third generation (Dublin III), was

originally established as the Dublin Convention. The convention of 1990, the predecessor of the Dublin II and III Regulation was designed to prevent the situation of asylum-seekers "in orbit" and "asylum shopping" by examining the responsibility of dealing with an asylum application by one country only, that is, in most cases, the country of first entry (Schuster 2011). MSs had to implement a set of new policies, which differed in their efficiency and time frame. The Convention lacked in many respects as it is discussed of multiple scholars such as Schuster and Papadimitriou as well as non-governmental organizations (NGOs) and international organizations such as UNHCR, ECRE and Amnesty International (Hatton 2005, Papadimitriou and Papageorgiou 2005, UNHCR 2006, Schuster 2011, ECRE 2013). After critics have become more pressuring, the Dublin Convention was then, in 2003, replaced by Regulation (EC) 343/2003, the Dublin II Regulation (Council 2003) as part of the Common European Asylum System (CEAS). Dublin II reformed the original Convention towards a more socially inspired Regulation by laying emphasis on family reunification and the right to appeal. Nevertheless, considering the again arisen critics, the changes cannot be considered as significant. Consequently also Dublin II came under the line of critic and only three years after the implementation, the United Nation High Commission for Refugees (UNHCR) launched a discussion paper in 2006, in which the key problems were evaluated and recommendations were given (UNHCR 2006).

The most significant shortcomings of the Regulation are the issues of burden-sharing and multinational (shared) responsibility. Both will be the basis for this thesis. The former issue deals with the unequal distribution of asylum-seekers over MSs of the EU and the increasingly pressure on countries located on the external borders of the EU. The latter issue describes a system in which responsibilities are shifted almost exclusively to external bordering states such as Italy, Greece, Cyprus, Malta and Spain. Both issues are closely linked and it is assumed that only by finding solutions to a fair shared responsibility between MSs, also the burden can be equally and fair distributed.

Burden-sharing was discussed by Thielemann, who criticizes the general conception of burden-sharing within the Regulation and proposes a more comprehensive approach (Thielemann 2008). He explicitly sees an "unequal distribution of asylum burdens among [...] European states" and argues that the major aim of the construction of a CEAS, namely the process of policy harmonization, can be considered as undermining a fair distribution of asylum-seekers (Thielemann 2004, Thielemann 2005, Thielemann 2008, Thielemann and El-Enany 2010). He also touches on the issue of shared, multinational responsibility, however the main contribution to this topic is delivered by El-Enany as well as Thielemann and Langford (Thielemann and El-Enany 2010, Langford 2013). It is commonly agreed that responsibility is in fact not shared and the CEAS is in need of an enhanced responsibility sharing mechanism (Langford 2013). Furthermore NGO's provide critic on both phenomena. The European

Council on Refugees and Exiles (ECRE) highlights the drastic situation, in which responsibilities have been shifted by MSs towards the border states of the EU which are the least developed countries in terms of asylum policies (ECRE 2008).

The issues, burden-sharing and the lack of shared responsibility have been rudimentary in the discussion on the critique of the Dublin Regulation, however; so far, they have not been connected and evaluated as dependent on each other.

The thesis follows a Comparative Policy Analysis by comparing the two Regulations Dublin II and III and aims to identify and to evaluate the improvements that have been made in Dublin III in order to give conclusion whether the Dublin III Regulation is able to actually increase the sharing of responsibility as well as the burden between MSs.

The main assumption of the thesis is that the failures of the Dublin Regulation (namely not enhancing the fair distribution of the burden and the shifting of responsibility) constitute the failure of the Common European Asylum System which hence results in an ineffective, unequal and unfair system.

The research question will therefore be (assuming that Dublin II is the main reason for the failure of the CEAS):

**What are the potentials of Dublin III remedying the failure of Dublin II and contribute to a well-functioning CEAS by increasing burden-sharing and shared responsibility?**

The research question seeks to elaborate whether the Dublin III Regulation is on the one hand, responsive to the shortcomings of its predecessor and on the other hand, if it makes an effort to remedy (namely restating or adding new articles) the shortcomings. Hereby the focus lays especially on the criticism of the key authors Langford, Thielemann and El-Enany. This is most importantly if and how, the gap of responsibility taken over by MSs can be equalized and if/how MSs with a greater share of the burden of asylum-seekers can be acquitted. Can the comparison exhibit any significant changes in the way the articles are set up and what they imply that contribute to the future of the Common European Asylum System and if they can, can these changes be considered as positive or negative?

Furthermore, three sub-questions that serve as a structure through the chapters of the thesis will be posed:

- (1) How can shared responsibility and burden-sharing be conceptualized?**
- (2) How can the two regulations, Dublin II and III be measured?**
- (3) What are the most influential features of shared responsibility and burden-sharing?**

To follow a clear line of argumentation, the sub-questions divide the overlying research question in three parts. The first part aims at the second chapter and refers to the major topics (the CEAS, shared responsibility and burden sharing). Hereby the yet vague topics will be conceptualized on the basis of a detailed discussion of the most relevant literature. The second part aims at the research design within the methodology chapter. This part establishes the procedure on which basis the main research question will be answered.

The third part will as well be conducted in the methodology chapter. Hereby four features of the two issues will be established. These features will be the basis for the analysis. Furthermore respective keywords will be found by which means the Dublin II and III articles can be identified and compared.

The central question will be whether the Dublin III Regulation responds to the shortcomings of Dublin II or if it continues to bring disgrace on the Common European Asylum System. It is assumed that the Dublin II Regulation can be made responsible for the disproportionate asylum system established by the EU. Therefore the thesis seeks to confirm this assumption and gives answers to the question if Dublin III succeeds in remedying these flaws which would eventually result in increased proportionality and efficiency of the system in general.

In order to achieve such answers the thesis is structured as in the following: the Theoretical Framework will be divided into three parts whereby the first will be a discussion of the Common European Asylum System, the second will deal with the issue of burden-sharing and the third will deal with the issue of multinational shared responsibility. The methodology will conceptualize both issues mentioned as well as identify the data collection, the identification of features and the research method followed in the analysis. Also in the methodology, a rating will be constructed, that then, after the comparison of the articles of the Regulations, labels the features as either “realized” or “not realized”. The conclusion will subsequently answer the raised research and seeks to give some recommendations based on the findings of the analysis.

## **2. The Common European Asylum System**

The current is designed to establish the ground rules of treatment, protection and proceedings to countries as well as asylum-seekers in the Euro area. The fundament of the system is the Geneva Convention Relating to the Status of Refugees and the 1967 protocol which has been signed by all EU MSs (UNHCR 1951, Hatton 2005). During the 1970s and 80s the Euro area faced a large and increasing level of influx of asylum-seeker due to “instability and communal conflict in the CIS, Balkans, and parts of Africa and south Asia, the economic impacts of globalization on developing countries, not to mention the opportunities for sophisticated trafficking networks” (Boswell 2000). Countries faced a two-sided problem in which the administration as well as the legal situation contained difficulties in the treatment of asylum-seekers. But it was not until the 1990s that the first policies, which together should establish the Common European Asylum System, had been agreed upon (Boswell 2000). Today the CEAS consists out of five policies: the first is the “Reception Conditions Directive” (Council Directive 2003/9/EC) of 2003 which formulates the “minimum standards for the reception of asylum seekers across member states” (Kaunert 2009). The second policy is the “Asylum Qualification Directive” (Council Directive 2004/83/EC), that outlines the recognition of a refugee, the substance of a refugee status and the approximation of the rules applied. The third policy within the system is the “Asylum Procedure Directive” of 2004 which formulates the standards for procedures such as appeal procedures, access to interpretation and legal assistance procedures (Kaunert 2009). The fourth Regulation of the CEAS is the EURODAC Regulation, which is an EU asylum fingerprint database that allows MSs to track asylum-seekers with the purpose of checking criminal records, however mainly to receive information where the seeker first entered the Euro area (Commission 2014). The last Regulation is the Dublin Regulation which according to the Commission “enhances the protection of asylum seekers during the process of establishing the state responsible for examining the application, and clarifies the rules governing the relations between states” (Commission 2014).

### **2.1 The Tensions of the CEAS**

All policies and Regulations within the system follow the purpose to smooth the asylum procedure and to serve asylum-seekers as well as MSs. According to the system asylum-seeker have multiple rights and access to state support and full protection. Furthermore it is stated (as in the Asylum Procedure Directive) that the harmonization under the system of national asylum legislation will simplify the process to MSs and will establish common standards of handling and preceding an asylum application. However many scholars identified several shortcomings within the system.



Langford states that the approach of harmonizing national legislation did fail to succeed because MSs were not able to follow common standards outlined in the Articles of the Directives and Regulation. This results in different processes taking place within the MSs which cannot be applied to each other. The treatment of an asylum-seeker as well as the handling of his or her application is largely disproportionate between MS. Langford carries on by criticizing that under such disproportionate conditions, human rights were violated. This additionally can be connected to the failure of MSs which neglect to apply “human rights obligations under EU and international law” (Langford 2013). Consequently Hatton discusses the asylum system and identifies that the policies in it can be considered as “too tough [in] their procedures and affording less generous treatment to asylum seekers (Hatton 2005). He suggests that the solution to simplify the process lies within a proper burden-sharing mechanism.

All scholars who’s research field concerns the asylum system, asylum crisis and in particular the Directives and Regulations within the CEAS identify two major shortcomings within the system. Langford argues that the lack of solidarity between MSs results in a lack of (shared) responsibility. Besides that this is one of her main concerns, she identifies the unequal burden distribution between MS (Langford 2013). Furthermore El-Enany and Thielemann discuss the reasons for a current unequal allocation of responsibility as well as the motivation and consequences of an shared responsibility mechanism (Thielemann and El-Enany 2010). Boswell especially emphasizes the need of burden-sharing in order to reduce costs and “address some of the welfare-based concerns” (Boswell 2000). The main contributor to the topic of burden-sharing is Thielemann, who builds much of his research on this issue. On the contrary to those scholars, deploring the Dublin Regulation as a perpetrator for the two issues of burden-sharing and shared responsibility is Guild, who takes advantage of having responsibility. He states that having the responsibility on the determination of asylum applications in only seen as “burden and a punishment for the Member States” (Guild 2006). However, assuming responsibility can be an advantage, considering that the MSs themselves are able to maintain authority over deciding, by means of capacity and other incidents, what is going to happen with the asylum-seeker. Nevertheless, Thielemann and Langford both repeatedly point out that MSs are apprehensive of taking over responsibility since this also implies to take over a greater burden of asylum-seekers.

Both issues, the lack of shared responsibility as well as burden-sharing are highly relevant with reference to the Dublin Regulation, but also to the future of the Common European Asylum System. Therefore it is useful to examine the discussions on the two topics more in detail. Although many scholars dedicated their research to one of the issues, both have not been seen as interdependent. The further two parts will hence evaluate both issues and afterwards connect them.

## 2.2 The lack of multinational shared responsibility

As outlined, one of the major issues concerning the CEAS and especially the Dublin Regulation is the lack of shared responsibility between MSs. This has, among others, been the topic of the work of El-Enany, Thielemann and Langford, who all contribute to the understanding and problem identification of shared responsibility. Langford especially refers to the consequences of this particular shortcoming. An important component of the problem is the lack of cooperation and solidarity between MSs. She states that in order to achieve a functioning CEAS, the commitment to it (in terms of shared responsibility) must precede out of the national level, the MSs (Langford 2013). Since some countries are less affected of the high influx of asylum-seekers than others, such commitment is hard to achieve as well as hard to recognize. Voluntary participation, namely absorbing asylum-seekers of congested MS, has only been successful on a minimal scale. Langford claims a revised regime, including the revision of the Dublin Regulation which she considers as the root of the disproportionality within the current system, promoting not only an unfair distribution of responsibility but also the lack of burden-sharing between MS (Langford 2013). El-Enany and Thielemann develop Langford's approach by stating that since there is no obligatory approach for MSs to cooperate, it "provides [European] states with an incentive to discourage or prevent asylum-seekers from seeking protection on their territories, or to encourage them directly to seek protection elsewhere" (Thielemann and El-Enany 2010). They assume that under policies which in fact "allow" or "don't prohibit" free-riding by certain MSs, the concept of "Fortress Europe" emerged. Given this fact, they identify three potential motivations for MSs to cooperate, hence increase shared responsibility. The first motivation is the promotion of European integration. Through solidarity between MS under the "principle of solidarity", MSs can foster European integration, which leads to more responsibility-sharing. Furthermore it is assumed that an appropriate sharing mechanism in an integrated Europe can function as mutual insurance in the long run in which countries can react in case of an pressuring event outside its borders. "On the basis of an insurance rationale, it might make sense for states to accept losses in the short term in order to insure themselves against the possibility of being faced with even higher costs at some point in the future" (Thielemann and El-Enany 2010). The second motivation is the facilitation of more effective protection to the asylum-seeker. Hereby it is the matter of adopting restrictive measures for MSs national legislation, which is stated to be a "race to the bottom" in protection standards among Member States" in order to limit the responsibility on asylum-seekers of MSs. By restricting the scope for national legislation, MSs could ultimately be pressured to oblige to policies and be forced to share responsibility with countries that are in charge of more responsibility as the non-bordering countries are. The third motivation is collective "free-

riding” incentives in which especially the provision of the “safe [third] country” is under critic. Under this provision, MSs are able to deny access to an asylum-seeker to their country, if it is verifiable that the seeker passed or originates from a country which can be considered as a safe country “where either no persecution is deemed to exist or where the asylum seekers could have sought protection status” (Thielemann and El-Enany 2010). This not only touches on countries outside the EU but is also widely applied by EU countries themselves and functions as a gap to shift responsibility. It is assumed that with restrictive measures that aim to limit these particular actions, responsibility between MSs can be pressured.

### **2.3 The lack of an efficient burden-sharing mechanism**

The lack of burden-sharing between the MSs of the European Union is an important and widely discussed issue. It especially touches on the topic of the asylum crisis as well as the distribution of asylum-seekers among the countries in the Euro area. Boswell describes this lack as not a “little surprise”. In fact, it is comprehensible that states which already host a high number of asylum-seekers argue in favor of a more proportional system rather than countries that would under such mechanism are pressured to host more asylum-seeker as they already do. She states further that this lack of cooperation between the countries can be considered as the root of the problem (Boswell 2003).

Thielemann however recognizes the efforts made so far by the EU in order to enhance the burden-sharing mechanism but argues that these have not been “particularly effective” and that they are in need of a “new conception” (Thielemann 2008).

He describes two types of international burden-sharing: one-dimensional and multi-dimensional burden-sharing. The former type’s “aim is to equalize the efforts of states on one particular contribution dimension”. This is usually the amount of asylum-seekers a state has to host (Thielemann 2008). Hereby it is distinguished whether the hosting happens on a mandatory (policy harmonization, quotas) or voluntary basis (as for instance asking MS to alleviate asylum-seekers to their territory). It is stated that the European Union largely operates on a one-dimensional scale. The multi-dimensional regime does not particularly focus on one contribution dimension but on many. One example for this is an agency, which assigns quotas to states on refugees, another example is pro-active measures such as sending troops to countries which areas struggle and hence result in migration to the concerned countries. A last example are re-active measures which are actions taken once there is a problem concerning an asylum-seeker/s application (Thielemann 2008). He quotes Noll by discussing three additional initiatives of burden-sharing. These are “(1) physical burden-sharing (sharing people); (2) harmonizing of asylum legislation (sharing policy) and (3) financial burden-sharing (sharing money)” (Noll 2000, Thielemann 2008). The EU has

largely tried to apply the second approach, of harmonizing asylum legislation, but also the two other approaches have found recognition.

## **2.4 Concluding remarks**

Having theorized both issues, a strong pattern becomes visible. Thielemann and El-Enany as well as Langford are convinced of the fact that the main reason for the lack of responsibility and burden-sharing between MSs is accompanied by the fact that MSs share no solidarity between each other, which results in no cooperation. The often referenced fail of the Dublin Regulation stands in a close relationship with the voluntary participation character of the Regulation. Langford argues apprehensively about the lack of cooperation and utters furthermore that the compliance of EU asylum directives is varying to a great extent, which forms a potential threat to the general coherence of the CEAS (Langford 2013). Thielemann additionally emphasizes the lack of cooperation and solidarity between MSs and furthermore rejects the most common approach of burden-sharing within the European Union, namely policy harmonization. He argues that policy harmonization actually undermines the burden-sharing process, however, he extends this issue by stating that it is the unwillingness of MSs to comply with article, which triggers the problem that harmonization does not function properly (Thielemann 2004). All scholars agree on the fact that tackling the current situation implies overcoming mistrust and relinquish potential advantages. They express their misbeliefs in such fulfillment on which Langford comments that “most importantly, achieving true unity will require that states take seriously the union’s founding principle of “sincere cooperation”” (Langford 2013). The appeal on MSs to take on responsibility on the basis of solidarity seems to have failed since the Regulation has been adopted. MSs rather use the imperfections, the little gaps of the Regulation to escape any responsibility and to keep the burden as low as possible. Truly this resembles that a Regulation on a sensible topic such as asylum cannot function efficiently on a “soft touch”, namely on a voluntary basis and will be a difficult task. However Langford phrases the consequences of inaction that: “member states of the EU risk deeper internal disharmony [...] and the ultimate unraveling of greater European unity” (Langford 2013).

### **3. Methodology**

The methodology chapter will give a closer insight into the procedure the thesis is following. It will construct an analytical framework, on which basis the analysis will be conducted. This is necessary to raise conclusions on the research question. The chapter is divided into two sections that address the outstanding sub-questions. The first section will address the *research design*, the Comparative Policy Analysis the thesis will follow. It will give an insight into the design and it will show why the Comparative Policy Analysis is the most suitable design for the comparison of the Dublin Regulation II and III. With reference to the chosen research design, it is important to address the data and information collected and used for the analysis. This will be the topic of section two called the *method of data analysis*. Based on the data and information identified and additionally based on chapter two of the thesis, which discussed the main concepts, four features will be established. These features can be considered as characteristics or main attributes of the issues, contributing to a detailed comparison of Dublin II and III in the light of shared responsibility and burden-sharing. Finally at the end of the section, a rating will be established which will allow to give a conclusion to the actual accomplishment of the features within the Dublin Regulations in the analysis.

#### **3.1 Research Design**

In order to answer the posed research question the thesis follows, a certain design called Comparative Policy Analysis. According to Cyr and DeLeon “comparative analysis raises the possibility of much richer insights concerning the influence [...] on characteristics of public policy”. Furthermore it is stated that “it [...] lead[s] to more stimulating and incisive conclusions on both the specific and general policy levels” (Cyr and DeLeon 1975). Hereby it is referred to the Comparative Policy Analysis being richer and more stimulating in comparison to the content analysis, more specific the conceptual analysis, which focus is solely on the words and phrases in a text. The words are counted and most commonly on the basis of the frequency of word appearances, conclusions are derived (Berg 2001). Although the content analysis is a common tool in comparative work, the Comparative Policy Analysis suits the topic of the thesis best. Hereby not only the words but also the actual substances of the articles compared are important. A simple example is the word responsibility, which occurs more than twenty times in the Dublin II Regulation, what can be considered as relatively much. However the count of the word does not imply anything about whether the conception and application amongst all the distribution of responsibility (between MSs) have been revised or adjusted. Besides the lack of other suitable comparative analysis designs, the comparative policy analysis can be considered as the best tool offered, since it leaves the freedom to come up with an own method of comparison, dependent on the topics content

and with which method the most valid answers can be derived. The methods may vary from a comparison on the basis of features or indicators, or a comparison in which a scale is created or policies are labeled with numbers representing values that imply a certain conclusion.

With regard to the two issues being the basis of the comparison of Dublin II and III and ensuing that the topic can be considered as rather normative it has been decided to compare the Regulations by means of features. These features derive from the concepts of Thielemann, El-Enany and Lanford but also from the information of the discussion papers of organizations and the Dublin Regulations.

The comparison of the two Regulations, Dublin II and Dublin III, will be carried out in four steps: First, all relevant articles within both Regulations will be identified by reference to the feature. Hereby certain keywords, which are posed in the following section “methods of data analysis”, will lead to those articles of high interest. Second, a difference in the wording and phrasing of these articles will be visible in order to compare the article of Dublin II to Dublin III. Third, after identifying those articles that are different, the actual content of these articles will be analyzed and interpreted. By interpreting the content, a strong connection to the concepts of the thesis (the CEAS, shared responsibility and burden sharing) is important to consider. It must be investigated whether the new, changed article actually increases the share of responsibility and the burden. Furthermore the background information of organizations, academic literature and any other kind of documents is essential to apply. Finally the last step is to give conclusions on the outcome of the analysis of the articles by labeling the feature as either realized or not realized. After conducting all these steps on every feature, an overall answer to the research question can be given by counting how many features have been realized. The rating, which is presented in the section method of data analysis, will hereby be the assessment tool.

Besides the specific analysis of the features, also general changes, which not directly touch on the two issues of shared responsibility and burden-sharing, will be considered and mentioned.

## **3.2 Methods**

The section method of data analysis will give the key insights into the methods of how the comparison of the two Regulations, Dublin II and III, will be conducted. Hereby the section discusses all data and information used in the thesis, how they have been collected and where they have been derived. Section four poses the features with their keywords on which basis the analysis will be conducted. In the end, the rating will be presented and described.

### 3.2.1 Data collection

Given the research design described in the former section, the data as well as the background information to the content of the thesis will be identified and collected in order to examine the phenomenon properly. The actual data of the thesis are the two Regulations Dublin II and III. Since those two are the units of analysis, they form the key data on which the comparison will be conducted. The Regulations are derived from the online database EUR-lex and could be identified by searching for the year and specific number of the Regulation (EUR-lex 2014). Most of the background information was found through internet research but also the libraries of the University of Twente as well as the University of Münster provided books to the topic. Almost all articles found through the internet derived from the web search engine Google Scholar. Additionally some articles were found on Jstor. In order to find quantitative data, a reliable source is Eurostat, which provides statistical data of the European Union's MSs but also on the regional level with the main purpose to conduct comparisons among the countries (Eurostat 2014). Eurostat was chosen since the data of interest mainly concerns European countries and Eurostat derives its data directly from national databases, which are validated regularly (Eurostat 2014). Concerning the topic of the thesis, Eurostat provides data on the amount of applications listed over years (2012-2013)<sup>1</sup>, outgoing as well as incoming "Dublin" requests by submitting and receiving country<sup>2,3</sup>, and transfers<sup>4</sup> of asylum-seeker (also incoming/outgoing by submitting and receiving country). These datasets contribute highly to the analysis of the two Regulations since they reveal relevant disparities between the countries from which conclusions can be derived whether for instance one country shares more responsibility and burden of asylum-seekers than another.

Another useful source is the UNHCR database as well as the AIDA database, which is part of ECRE. The statistics derived from these sources will be quantitative data, providing an insight to numbers on asylum applications per country/year. UNHCR is an agency of the United Nations which key task is the support and protection of refugees. With reference to the thesis, the UNHCR's Population Statistics data on Asylum applications and refugee status determination provides a detailed analysis by country and year as well as the number of persons and the status of their application (UNHCR 2014). The agency's support is not solely directed towards the refugees but also to governments by providing critical analysis to policies and regulations (UNHCR 2014). However ECRE is the European Council on Refugees and Exile which "is a pan-European alliance of 82 NGOs protecting and advancing the rights of refugees, asylum seekers and displaced persons" (ECRE 2014). Their main

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<sup>1</sup> See Appendix: 1. Asylum application and first instance decisions on asylum applications

<sup>2</sup> See Appendix: 2. Outgoing 'Dublin' requests by receiving country

<sup>3</sup> See Appendix: 3. Incoming 'Dublin' requests by submitting country

<sup>4</sup> See Appendix: 4. Incoming/Outgoing transfers by submitting/receiving country

mission is to advice on policies so that these are in accordance with Human Rights standards as well as International and EU law. Both databases have been chosen because they provide expertise knowledge and validated data on the topic of asylum-seekers. Additionally, the analysis conducted by the UNHCR on the Dublin II Regulation gave insights to the most striking issues of the Regulation by a detailed analysis of invalid articles and highlighted the two issues of shared responsibility and burden-sharing.

Further qualitative data can be derived from these organizations but also from governmental sources as well as newspaper articles. "The Guardian" as well as "open democracy" provided articles of this kind. Additionally articles published by several scholars who dedicated their work on asylum matters provide some useful data on the topic of the thesis. Hereby it is important that the data is up to date (within the last six years) and is derived from reliable journals. Journals such as the *Harvard Human Rights Journal* (e.g. Lanford's "The Other Euro Crisis: Rights Violations Under the Common European Asylum System and the Unraveling of EU Solidarity" (Langford 2013)), the *Journal of Refugee Studies* (e.g. Boswell's "Burden-sharing in the European Union: Lessons from the German and UK Experience" (Boswell 2003)) and the *European Journal of Migration and Law* proofed to be reliable. All journals presented in the thesis have been chosen since they provide articles of high profile scholars, which can be considered as a significant source with an added value to the topic field of interest. An additional source that also provided papers on the topic, is the Centre of European Studies and the Centre for European Policy Studies (CEPS).

### **3.2.2 Operationalization**

In order to accomplish the third sub-question posed in the introduction of the thesis, the two topics, shared responsibility and burden-sharing, must be made measurable in order to carry out the analysis. This process contains the construction of precise features under which such an analysis can be achieved. If the comparison were conducted without these features, the analysis would run the risk of neglecting the intended research goal of given conclusion on whether the Regulation Dublin III is able to increase shared responsibility and burden-sharing. It is assumed that both issues are interconnected and that the one (burden-sharing) is dependent on the other (shared responsibility). Based on this assumption, four features could be identified, representing both issues equally. Furthermore, the features identified can be related to the approaches of Langford, Thielemann and El-Enany, who combined a revised version of the Dublin Regulation with special emphasis on the former mentioned issues. Special emphasis will be given to the conclusion, which could be derived from the discussion of the authors since the main supposition was that the goals of remedying the failure of Dublin II cannot be fulfilled by maintaining the voluntary character of the Regulation. This means it will be interesting to see whether Dublin III includes a kind of forced



mechanism for MSs to share responsibility and to share the burden. Furthermore, as derived from the theory chapter, a strong focus will also lay on the elaboration of whether the highly pressured external-bordering states can be acquitted or compensated for additional effort and expenses or if no pressure can be relived at all.

### **3.2.2.1 Transfers**

The first features transfers reflect one of the three initiatives, namely physical burden-sharing or “sharing people” (the other two initiatives are the harmonization of asylum legislation or “sharing policy” and the initiative financial burden-sharing or “sharing money”) after Thielemann and Noll (Noll 2000, Thielemann 2008). Thielemann states that since the harmonization of national legislation is the most commonly used approach by the European Union, physical sharing is appreciated, however, not applied regularly. Langford further explains that transfers are often one-sided, since asylum-seekers who have been send to a second country after entering the EU, are then send back to the state of first entry, which lifts the burden from the sending country. She further clarifies that those states receiving asylum-seekers are most notably bordering states whose amount of asylum-seeker is already high (Langford 2013). The indignation of MSs to welcome asylum-seeker is reflected by ECRE which cites the European Commission by stating that the key issue of the Dublin system is the “low transfer rates” (ECRE 2008). And indeed, in 2012, only about 11% of all decisions ruled in resettling an asylum-seeker to another country. ECRE further argues that the number of the agreed transfers between MSs, which in fact have been conducted, is very low, meaning that countries simply do not stick to agreements. Hereby the claims were made by notably bordering countries to non-bordering countries. The result is that the bordering state remains in charge (has responsibility) on an asylum-seeker and is unable to reduce the total amount of asylum-seekers the country hosts. The LSE released data on the percentage difference between “fair share” and actual number of asylum applications<sup>5</sup>. That shows that countries like Cyprus, Malta and Greece actually take up to three times more responsibility as their “fair share” allows. On the other hand smaller countries such as Estonia and Latvia fail to take on any responsibility (UNHCR 2006). It is assumed that under a forced mechanism for MSs to actually take responsibility on agreed transfers of asylum-seeker, some burden could be taken off bordering countries and be allocated on all MS of the EU. Langford criticizes that voluntary allocation of asylum-seekers between MSs has so far failed to be performed (Langford 2013). Furthermore Thielemann and El-Enany describe the lack of cooperation between MSs which is in line with the low rate of transfers. The potential

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<sup>5</sup> See Appendix: 5. Uneven sharing of responsibility for asylum seekers by Member States

motivations outlined in the theory section imply forced mechanisms which lay pressure on MSs to take on responsibilities and hence cooperate (Thielemann and El-Enany 2010).

In order to assess whether Dublin III includes this feature, a keyword helps to further structure the analysis.

- The keyword “**Transfer**” leads to the articles or paragraphs that deal with any issues related to the phenomenon of transfers of asylum-seeker.

By applying this feature, with its associated keyword, it is expected to reveal the assumed disparity between MSs of burden- and responsibility-sharing. This is whether external bordering countries in fact have a greater share of the named issues than those countries that are not located at any external borders. Furthermore, the feature’s objective is to identify any implications within the articles of Dublin III, which might shift the unequal treatment of the MSs towards a more balanced system.

### **3.2.2.2 State of first entry criteria**

Langford touches on the state of first entry criteria issue by stating that the State of first Arrival rule (here referred to as State of first entry) provokes and “develop[s] anti-immigration policies that are fundamentally at odds with its international obligations” such as the Articles laid out in the Dublin Regulation (Langford 2013). Furthermore one of the main arguments Langford gives is that bordering states (with the specific example of Greece) suffer under this criteria since multiple asylum-seeker are send back and are hence stuck in these countries. This results in a general overcrowding of detention centers, administrative buildings and homeless shelter (Langford 2013). The State of first entry criteria outlined in the Dublin system increase the pressure on those countries, which are geographically located on the external borders, in which asylum-seekers first enter the European Union. Furthermore the Regulation demands that in case of a denied transfer of another country, the asylum-seeker has to be reallocated to the country of first entry (ECRE 2008). As a well-known fact, bordering countries struggle with a high influx of asylum-seeker resulting in bad humanitarian conditions for the individual person (UNHCR 2006). The seeker hence tries to leave those countries and travels to those in political, - social - and economic wise stable condition, namely non-bordering countries. It is assumed that if an asylum-seeker can appeal his/her transfer back to the state of first entry, additional burden could be taken from external bordering countries.

With reference to the analysis, also in this case, a certain keyword can be identified to conduct a comparison:

- In order to identify the relevant articles concerned with this particular feature, the keyword “**first**” will lead to them. Hereby it is import to consider only those words that

are related to the entry criteria or more specifically to the evaluation of the Member State responsible for the application of an asylum-seeker.

It can be assumed that the Dublin III Regulation will not touch upon the foundation of the state of first entry criteria, since it would raise the general set-up and structure of the Regulation at all to question. However, by analyzing this feature and its attached keyword, perhaps articles that lessen the negative consequences of the state of first entry criteria can be identified.

### 3.2.2.3 Voluntary basis

The conclusion derived from Chapter two through the discussion of the key authors determined that the lack of solidarity and consequently the lack of cooperation can be considered as one of the main grievances of the Dublin Regulation. Both Thielemann and Langford agree on the fact that without an increase of a united consciousness of the MSs of the EU towards a proportionate system in which responsibility as well as the burden is shared, the Dublin Regulation will continue to be the product of injustice of bordering MSs and asylum-seeker in person (Thielemann and El-Enany 2010, Langford 2013). Again both scholars refrain from expecting that MSs will begin to build such consciousness since the voluntary character of the Regulation does not force them to take over any duties.

Articles of the Regulation that concern such voluntary character can be considered as the tool for leeway of MSs. It can be expected that by a strengthening of such articles, by obliging MSs to cooperate and by issuing consequences of non-compliance, the share of responsibility and of the share of burden can be distributed more equally.

In order to analyze those articles, which represent the voluntary basis of the Regulation, some keywords can be identified:

- The first keyword is “**voluntary**”. It is expected that by searching for this word, all relevant articles concerning any implementations which are on a voluntary basis will be found.
- The second keyword is “**binding**” which seeks to identify those articles, which in fact are binding and force MSs to act in accordance with these articles. It is assumed that a juxtaposition of binding and voluntary articles gives more information for a final interpretation of the feature.

By analyzing this feature with its two keywords, it can be predicted to find answers to the misconduct of MSs, by not participating in the share of burden and responsibility. Hereby special focus lies on articles which justify actions by MSs evading responsibility. Finding such articles would imply that the Dublin III Regulation indeed is a promoter of further failures in

the asylum system. However, finding articles that object such voluntary basis raises the question of by what means MSs are violating the principles of the Regulation.

#### 3.2.2.4 Sharing costs

The last feature is the criteria of sharing costs, which is closely related to Thielemann's approach on financial burden-sharing (sharing money) (Thielemann 2008). Since solidarity among MSs under the Dublin regime could not be found and the gap between bordering and non-bordering countries tends to increase in terms of responsibility as well as who has to bear the burden, a financial compensation of countries who can be considered as rather unaffected of the asylum crisis is appropriate. ECRE states that "The European Refugee Fund and other resources provide incomplete support to MSs for the financial costs associated with hosting asylum seekers and processing their claims" (ECRE 2008). Furthermore Hatton cites Noll by stating that: "Given the total costs of reception in the Member States and the share guaranteed to each MSs, the redistributive effects of the ERF are but a drop in the ocean. It must be praised as a dam-breaker construction with regard to the many dilemmas of fiscal burden-sharing" (Hatton 2005). Noll further describes the Fund as "negligible" with low influence to change the situation of the lack of shared responsibility and burden-sharing (Noll 2000). The Organization alliance ECRE states that most of the costs of Dublin operations are hardly accessible since MSs are sparsely transparent on this issue. So far proper cost-benefit analyses are not constructed due to the lack of statistics from national authorities. It is assumed that with a precise presentation and reporting of the respective costs associated with the Dublin system of MSs, more equal allocation can be guaranteed. Furthermore either stricter conditions for MSs to deposit money to the Refugee Fund or a direct compensation of most affected countries can be exonerated. However such a process of sharing costs should be anchored within the Dublin Regulation in order to prevent gaps for MSs to escape responsibilities.

To assess the feature properly in the analysis, certain keywords can be identified within the articles of the Regulations:

- The first keyword used is "**costs**". By searching for this word, every issue related to any costs of any procedure will be mentioned. Hereby it needs to be distinguished if the word can be found and if it actually relates to the issue of compensation to MSs who share the highest burden.
- The second keyword is "**Fund**" or "**funding**". This is more precise than "costs" since it implies the act of financing. Nevertheless it has to concern MSs directly
- The third keyword is "**compensation**" and must be understood as a financial settlement of one or more MSs who can be considered as those who do not bear the same burden on asylum-seeker or responsibility as others.

By elaborating the articles from the perspective of sharing costs, it will be interesting to evaluate whether the articles in fact provide any indications for the compensation of affected MSs. A special focus lies hereby, on whether a connection within the Dublin Regulation (either II or III) has been made to the European Refugee Fund on when and how the fund accesses.

### 3.3 Rating

Given the particular research question the thesis needs to be structure in form of a rating, in order to give a clear answer to the question. A rating is used to estimate and asses the findings of an analysis and subsequently generalize these findings, on a larger population. By means of the outcome of the rating, in this case a definite conclusion can be given, on whether the Dublin III Regulation succeeded in remedying the failures of the Dublin II Regulation, or not. The rating has hence been chosen, to give a conclusion on the basis of four representative features and to present a valid generalization of the issue. Hereby, the features on which basis the comparison will be conducted will be assessed and labeled as either “realized” or “not realized”. Since every feature is considered as equally important, the just mentioned, dichotomous label can be applied.

As already indicated in the research design section of this chapter, conducting the rating will be the last final step of the analysis. The assessment of the features will then be the basis for the conclusion. The rating is organized in the following:

1. **0 out of 4 features have been realized:** With no feature fulfilled at all, the Regulation failed to attempt to enhance the Dublin II Regulation.
2. **1 or 2 out of 4 features have been realized:** it is assumed that with a minor positive change in the Dublin III Regulation, the Regulation failed to enhance and contribute to an efficient solution in order to stabilize the Common European Asylum System.
3. **3 out of 4 features have been realized:** in this case the revised Dublin III Regulation can be considered as a serious attempt to remedy the failures accrued in Dublin III in the light of the two issues, the lack of shared responsibility and burden-sharing among EU MSs.
4. **4 out of 4 features have been realized:** if all of the features have been realized, the Dublin III Regulation can be with reference to the question of the thesis considered as a well-established tool, which gives reason to doubt further exacerbates of the asylum situation.

The rating allows giving an answer on the research question which can either be positive: Dublin III is able to remedy the failure of Dublin II and to contribute to a well-functioning CEAS by increasing burden-sharing and shared responsibility, or negative: Dublin III is not able to remedy the failure of Dublin II and will hence not contribute to the enhancement of the CEAS in the of the two issues. Nevertheless, the research question seeks to evaluate the potentials of Dublin III. These potentials can however only be identified in the case that point two and/or three (3-4 features have been realized) of the rating are fulfilled. In the case that only point one (1-2 features have been realized) is fulfilled, the conclusion must be that the increase of shared responsibility and burden-sharing failed to be conducted and Dublin III has no potential to remedy the failure of Dublin II.

### **3.4 Concluding remarks**

This chapter gave insights into the methodological steps taken during the thesis. First, the design used in the analysis was presented and discussed. Second, the most important data and information were listed, by what means they will support the Research design and how they will be conducted in the analysis chapter. Third, the four features, the tools on which basis the comparison of the two Regulations Dublin II and III will be conducted have been identified. Those features have been mostly derived from the concepts discussed in Chapter two of the thesis. The statements of the key authors Langford, Thielemann and El-Enany contributed to the identification, understanding and finally to the conclusion that those features identified are the best by representing the two issues of shared responsibility and burden-sharing. Transfers, the state of first entry criteria, the voluntary basis of the Regulation and sharing costs can hence also be considered as those features of the Regulation which deform the Regulation in its legitimacy at the most. Furthermore, keywords have been found to simplify and at the same time validate the analysis. By applying the keywords, the threat of analyzing the wrong articles, which do not touch on the topic of the two issues, shared responsibility and burden-sharing, can be cancelled out. However, close attention has to be drawn to the exact content of the article since formulations and wording may vary. It can for instance be assumed that certain keywords are not covered in the analysis at all which should not raise prejudgments but rather be a reason to focus on other articles and their contents to find possible outstanding implications. The last section of the methodology chapter is the rating, which presents the final step of the analysis. On the basis of this rating, conclusions will be given on the Regulation and keeping in mind the research question posed, on the future of the Common European Asylum System.

## **4. Dublin II and Dublin III by comparison**

The following chapter reveals the comparison between the two Regulations Dublin II and III based on the features and their associated keywords. Resting upon the findings of the analysis, conclusions will be given on the two issues, the lack of shared responsibility and burden-sharing, identified through the discussion of Langford, Thielemann and El-Enany. The analysis chapter will be structure in the following: first, every feature will be assessed independently from each other. Hereby, a short introduction of the relevant background information, that is the data derived from the databases of for instances the UNHCR or ECRE, will be presented. Subsequently, the analysis that is the identification and assessment of the certain feature will be conducted. After the analysis, every feature will be labeled as either “realized” or “not realized”. Second, after having analyzed all four features, the rating outlined in the last section of chapter three will be applied. Hereby the labels given in the analysis will be added up in order to give conclusions on whether the Dublin Regulation succeeded or failed to enhance and contribute to an efficient solution in order to stabilize the Common European Asylum System. Finally a preliminary conclusion will be given, based on the finding of the analysis, which seeks to answer the research questions.

### **4.1 Transfers**

In order to present a wider picture of the status quo in several MSs of the European Union, some background information on the transfers of asylum-seeker made in recent years is important to consider.

Beginning with a general introduction of the data derived from Eurostat, the issues of the lack of shared responsibility and burden-sharing are put into context. Appendix 2 shows the total number of transfers of asylum-seekers, which are taken in response to a request of a Member State or are taken back by a certain Member State. The countries highlighted in red are those, which can be considered as countries located at the external borders of the European Union (such as Italy, Greece, Cyprus, Malta, Spain and Portugal). The countries highlighted in yellow are those, which are considered as non-bordering countries (such as Germany, France, Netherland and Sweden). Beginning with the table of Appendix 4, it can be seen that Italy takes on responsibility for the most transfer requests (3,460 incoming transfers in 2013). This number is followed by Germany with 1,702 incoming transfers in 2013. Considering the fact that Italy is taking responsibility for twice as much transfer requests as Germany while the latter country is bigger in size and better performing measured by GDP as well as Socio-economic status (Mundi 2013, Mundi 2013), reveals the disparity of responsibility as well as burden-sharing between bordering and non-bordering countries. Unfortunately, this pattern applies to many other bordering countries, such as

Malta, that is in fact the smallest EU country. Malta takes responsibility for more than twice as much transfers of asylum-seekers (118 incoming transfers in 2013) than Luxembourg (46 incoming transfers in 2013) that is comparable in size however also the richest country in the European Union. Furthermore, France shares approximately as much incoming transfers in 2013 as Hungary (834 incoming transfers in France to 830 in Hungary). However, Hungary is much smaller than France and located at the borders of Ukraine, a non-EU country. This result in a great influx of asylum-seekers to Hungary and the share of France can therefore be interpreted as insignificant and below the fair share of what France could actually accept on incoming transfers.

By considering the outgoing transfers by receiving countries (which are revealed in Appendix 4 and which show the numbers of transfers which are send back to the responsible country according to the Dublin Regulation), the disproportional distribution of responsibility and burden-sharing is clarified. Hereby, Germany, The Netherlands, Sweden and Austria maintain the top countries that transfer asylum-seekers back to those states in which the asylum-seekers have lodges their application. The discussion in chapter two revealed that the countries receiving the asylum-seekers back are in most cases the external bordering countries. Those however, by looking at the data, have basically no outgoing transfers. Putting this fact in numbers, Germany had 4,316 transfers outgoing its borders in 2013, whereby Italy had 5 outgoing transfers. This phenomenon applies to the comparison among all bordering and non-bordering countries. The numbers reveal that the latter countries are massively disadvantaged in terms of taking responsibility and the burden of asylum-seekers than the former countries, which escape and push away the just mentioned issues.

After having introduced the problem by means of the information derived from Eurostat, which revealed major disparities between the countries, the analysis of the articles of Dublin II and III will be conducted. Hereby, first the relevant articles will be identified by means of the keywords outlined in chapter 3. It is assumed that on the basis of the analysis of certain articles through the identification of keywords, conclusions can be given for the research questions.

The keyword for the feature transfers is “**transfers**”. The word “transfers” is widely used throughout both Regulations. Hereby many articles in which the word is mentioned can be omitted since they do not touch on the issue of an unequal share of burden and of responsibility through the transfers carried out. Those articles rather concern for instance unification of families or the treatment of unaccompanied minors. After having eliminated all those articles which can be considered as irrelevant for analyzing the two issues shared responsibility and burden sharing, six relevant articles could be identified within the Dublin II Regulation and sixteen articles within the Dublin III Regulation. In order to structure the



comparison between the articles, a tabular overview has been created<sup>6</sup>. In the table it can be seen that in eight columns, articles of Dublin II could be attributed to articles in Dublin III. The content of these articles is broadly the same; however, in most cases, crucial alteration between Dublin II and Dublin III is added. Another nine articles within Dublin III have been newly established. Although all articles presented in the comparison are relevant by means of the two issues shared responsibility and burden-sharing, three articles can be considered as the determining ones, revealing the two issues and those that respond the most to the assumption posted within chapter three, namely that a forced mechanism is needed to compensate the burden and responsibility.

The first Article (recital 24) identified within Dublin III concerns the voluntary basis of the Regulation: “[...] *transfers to the Member State responsible for examining an application for international protection may be carried out on a voluntary basis*” and further: “*Member States should promote voluntary transfers*” (Council 2013). The text implies that if an asylum-seeker arrives in a certain MS but another MS is responsible for the asylum-seeker (through first entry), the MS in which the asylum-seeker resides is not obligated to keep the person and can freely decide to transfer he or she back to the country of first entry. Considering the often-mentioned fact that there is no cooperation between MSs, **this article promotes an unequal share of responsibility**. The information derived from Eurostat shows that bordering countries are overcrowded due to both, the influx from non-EU countries and the transfers coming back from EU countries. The latter fact is promoted by MSs not having the obligation to keep arriving asylum-seeker on their territory. Since MS are interested in keeping their share on asylum-seekers as low as possible, applicants are sent back to the responsible countries. Ensuing from the text of the article it can be said the **Dublin III Regulation does not provide a mechanism, which forces MSs to keep the asylum-seekers within their territory**.

The second article, which is considered as decisive, is Article 27 (27.3 b/c and 27.4) of Dublin III. This article reveals the newly established right to appeal for an asylum-seeker. Although it was already possible to appeal a decision within the Dublin II Regulation, the extent to which such appeal was effective was very limited. The applicant has now the right to appeal against a transfer decision and even to appeal against a court decision, which reviewed the first appeal. This right of appeal is certainly in the interest of countries at the external borders since applicants often prefer to travel to other countries than those in which they arrived at. The opportunity of making a transfer of an applicant out of their territory is more likely due to the right of applicants to appeal a negative decision could push the low transfer rate from these countries and lift the burden. Furthermore, **more responsibility is taken from these countries and shifted to other**. Since the preferences of asylum-seekers

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<sup>6</sup> See Appendix: Comparison for the feature transfers

country of destination are commonly different, the general share of responsibility and burden is more equally distributed.

The third important article is article 29.3 of the Dublin III Regulation. The article concerns the question for responsibility in case of an erroneous transfer, which was not handled in the Dublin II Regulation. Hereby a Member State has to take an asylum-seeker back, if a transfer was erroneous carried out or not carried out at all. This new establishment is important since under the time period of the Dublin II Regulation, erroneous transfer (through erroneous applications, non-compliance of time limits and no response on transfer applications, transfer of wrong persons (UNHCR 2006)) repeatedly occurred. This resulted in the situation that bordering countries were hindered to transfer asylum-seekers to another country or take back persons who were transferred under an erroneous transfer what left bordering countries with additional responsibility and burden. The article settles this situation by clearly determining that the Member State that failed the transfer application or the execution of a transfer, must accept the responsibility for the person. Thus, **responsibility and the burden can be shared more equally** so that MSs cannot use failures in the Regulation to escape one of the former mentioned issues.

## 4.2 State of first entry criteria

The second feature in the analysis is the often-referenced state of first entry criteria which is a common point of criticism of the Dublin II Regulation. It raises the basic set-up of the Regulation to question and challenges the approach of putting responsibility on those countries, in which asylum-seekers first enter the European Union. The information derived from Eurostat in the analysis of the feature “transfers” is also valid and applicable on the feature “state of first entry criteria”. It shows that external bordering countries share the highest numbers among all other EU countries in terms of transfers to their territory. Nevertheless in order to give a more precise picture of the situation, Eurostat provides also data on the decisions on outgoing 'Dublin' requests by receiving country<sup>7</sup>, also referred to as “taking back requests”. It can be seen that Germany filed twice as much requests to take back asylum-seekers than Italy (Germany: 4,463 requests and Italy: 2,250). Furthermore France, Sweden and Switzerland are among those countries with the highest number of taking back requests, compared against Malta, Spain, Portugal and Greece, which numbers are relatively small. Again a pattern becomes visible: on the one hand, the non-bordering states are excessively willing to shed asylum-seeker outside their borders and on the other hand bordering countries are left with responsibility and burden for the applicants. The Dublin Regulation and its state of first entry criteria are assumed to be a promoter of this issue. By searching for the keyword “**First**”, some articles could be identified as relevant to the topic of

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<sup>7</sup> See Appendix: Outgoing 'Dublin' requests by receiving country

the state of first entry criteria. Overall three articles within the Dublin II Regulation and six articles within Dublin III have been classified as relevant. Again, the comparison was conducted in form of a table<sup>8</sup>. Five of the six articles within the Dublin III Regulation cover the content of the Dublin II articles; most of them are extended with further implications. Three articles of the in total nine are considered as the most important by means of the state of first entry criteria.

The first article is article 5.2 of Dublin II. The article defines that the Member State in which an asylum-seeker first lodged his or her application shall be the one responsible for the asylum-seeker. This foundation principle of the Dublin Regulation is considered as the root of the problem, promoting an unequal distribution of responsibility and the sharing of the burden. Instead of noticing and considering this profound issue, Dublin III repeats the exact same article (article 7.2 in Dublin III) with minor supplements in the following article 7.3, which states that all available evidence must be taken into consideration to determine which MS is responsible. Considering that there is no change between these two articles and that they still build the basic principle of the Regulation it **implies that Dublin III does not remedy this deficiency of Dublin II.**

The next article which can be considered as significant is article 20.5 of Dublin III, a newly added article which signifies that a MS of first entry must take back applicants who lodged an application in their country in case they have been identified in another MS without any residence documents. Both articles discussed do not contribute to an improvement in terms of a fair share of responsibility and a shared burden. Nevertheless, in Chapter three, it has been argued that if the asylum-seeker has the possibility to appeal a decision, he or she has the opportunity to get send back to the first country of entry but stay in another country. As already indicated in the discussion of the right to appeal with the feature transfers, the right to appeal of an applicant can possibly take the burden and the responsibility from MS which are commonly a first entry country.

Another very important article is article 3.2 of Dublin III. It covers article 13 of Dublin II, which states basically the same as article 5.2, namely that the first MS in which an application was lodged shall be the one responsible for the asylum-seeker. But significant additional information is given in Dublin III which is that if national flaws in an asylum system and a risk of inhumane treatment can be detected, the applicant shall not be transferred to that particular country but shall stay in the current country. That country is thus the responsible country. This article is especially important since in the past years many incidents occurred on Greek territory in which according to Amnesty International asylum-seekers have been exposed to the risk of detention and refoulement. Some MSs reacted and banned the transfers to Greece for a certain time period; however, others carried on sending applicants

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<sup>8</sup> See Appendix: Comparison for the feature State of first entry criteria.

despite being aware of the threat (International 2010). Article 3.2 hence can be understood as actions or reactions taken too late since the Greek administration has been completely overburdened by the massive influx of asylum-seekers as well as additional transfers from other EU states. Although actions are late, they are now anchored, which can be interpreted as **a step forward in equalizing the burden and share responsibility EU-wide.**

### **4.3 Voluntary basis**

The third feature, which needs to be discussed, is the voluntary basis of the Regulation. One of the most important conclusions derived from the discussion of the main concepts in chapter two as well as the establishment of the features and their associated keywords is that the Dublin Regulation is difficult to implement on a voluntary basis. It has been clarified that MSs of the EU do not share great solidarity, which would result in cooperation and a fair share of responsibility and burden. Rather is every Member State anxious to manage its own share of asylum-seekers and keep the additional burden as low as possible. Hereby it occurs that MS do not voluntarily undertake the duty to comply with the requirements of the Regulation. A range of infringements happened under the Dublin II Regulation in which asylum applications have been defectively evaluated and performed, in which there was no compliance with the articles outlaid and in which transfers mistakenly have been conducted. All these flaws are usually at the applicant's costs and violate human rights and dignity. It is mentionable that these flaws occur on both sides, bordering as well as non-bordering countries; however, considering the fact that bordering countries are overburdened and struggling with shortcomings in their own asylum legislation, it can be abstained from blaming those countries excessively but it has to be said that well situated countries cannot use such excuses. The Dublin II era showed that a voluntary participation of MS is nominal, thus the Regulation needs an absolute mandatory character, which in case of non-compliance must be punished. The analysis of the keywords identified in chapter three aims to reveal whether the Dublin III Regulation made an effort to change the mentioned grievances and difficulties that arose through Dublin II.

The first keyword posed is the word **“voluntary”** which has been chosen in order to identify all articles that reference to the voluntary basis of the Regulation. Within the Dublin II Regulation the word voluntary does not occur at all, which is surprising considering the free-riding attitudes of non-bordering states. Therefore, the question arises on what basis and by what right MS took actions violating the Regulation, if it is not implied in Dublin II that actions are on a voluntary basis. It gives the impression that MSs themselves interpreted the content of the articles as not binding and that by means of that assumption actions have been carried out. It can be concluded that the Regulation always had a binding character however lacked in compliance of MSs and hence also in taking appropriate actions by the EU.

Searching for the keyword in the Dublin III Regulation only one article appears, recital 24 that has already been elaborated under the feature transfers. This recital addresses, that transfers shall be carried out on a voluntary basis. Hereby the voluntary character is applied on a very sensitive topic in terms of the share of responsibility and the burden of asylum-seekers. It implies that although Dublin II did not have such clause, Dublin III promotes a voluntary character. The recital therefore **does not improve the two issues mentioned but exacerbates the situation and legitimizes potential shirks of taking on responsibility and a fair share of the burden.**

The second keyword is the word “**binding**” which occurs in both, Dublin II and Dublin III Regulations and is stated at the very end of the Regulations. It is stated: “*This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties*” (Council 2013). The word binding is unambiguous in its meaning, stating that every Member State has to comply with and adopt the articles of the Regulation. Nevertheless some MSs did not comply with articles for which no proper mechanism is established to penalize such delinquencies.

#### **4.4 Sharing costs**

Chapter two of the thesis presented that the Dublin II Regulation lacks in an appropriate mechanism of sharing the costs associated with any actions, which have to be fulfilled under the Regulation. The background information on this feature is mainly derived through the Discussion Paper of ECRE, which provides overviews on the costs which come with the Dublin System. According to ECRE the major operations under Dublin which include costs are: “office equipment, personnel, EURODAC infrastructure support including the taking and storing of fingerprint data as well as the cost of conducting transfers to other Member States” (ECRE 2013). Since the statistics on the costs are information reserved from MSs and which is not completely transparent and accessible, a clear overview or the possibility to ascertain a cost-benefit analysis is hard to conduct. The analysis of the keywords outlaid in chapter three will reveal however whether the Dublin Regulation anchors such process.

By searching for the first keyword “**costs**” within the Dublin II Regulation there is no such word to be found. The Regulation hence does not concern any issues under which many bordering MSs suffer, namely the lack of money (and hence the lack of resources) for a proper treatment of asylum-seekers, especially since the Regulation was applied in a period of economic crisis. Most of the countries, which can be considered as highly pressured due to their geographical location in terms of congestion of asylum-seekers, were also victims of great economic consequences triggered by the crisis. Countries like Spain, Greece, Italy and Portugal on the southern borders of the European Union still suffer from high unemployment and vehement fiscal deficits with an increasing public dept. The problem reveals the double

burden for the bordering countries while the share of others, such as Latvia or Lithuania is relatively small.

By searching for the first keyword within the Dublin III Regulation four articles can be identified which are presented in Appendix 10<sup>9</sup>. All articles clarify which Member State has the responsibility to bear the costs. The most important article hereby is article 30, which concerns the costs of transfer of an applicant. It states that the costs of the transfer shall be incurred by the transferring Member State. In the context of the two issues shared responsibility and burden-sharing this article can be interpreted as positive. It could lift the burden since statistics reveal that most transfers, which are conducted to send an asylum-seeker back to the first country of entry, are performed by non-bordering states. Hereby the bordering states could be acquitted of any related costs to the transfer. In comparison transfers of bordering states are rather low, so additional costs are cancelled. Furthermore, the next article additionally lifts the burden of the former mentioned countries through the article 30.2 which states that in case of an: *“erroneous transfer or of a transfer decision that has been overturned on appeal or review after the transfer has been carried out, the Member State which initially carried out the transfer shall be responsible”* (Council 2013). Since reports by the UNHCR state that transfers, which can be considered as erroneous, are often conducted by non-bordering MS (Kok 2006) and appeals on a transfer are more likely to be claimed in non-bordering states than bordering states, **responsibility as well as the burden can be more equally allocated**. Although article 30 can be considered as a positive step towards a fairer system, by searching for the two outstanding keywords, **“Fund/Funding”** and **“compensation”**, neither in Dublin II, non in Dublin III the words can be found.

#### 4.5 Application of the Rating

In this section the relevant findings of the comparison between Dublin II and III will be presented and the rating will be conducted. In order to assess whether a feature is realized or not, an interpretation of the findings is necessary.

Beginning with the feature transfers it needs to be stated that the general outline of the Regulation stays the same. In chapter three it was assumed that a forced mechanism should bind MSs to cooperate and build solidarity so that responsibility and the burden can be more equally allocated. Recital 24 showed that transfers should be on a voluntary basis. From the mentioned invocation to MSs to promote voluntary transfers can be expected, considering the proceedings of transfers of the past with especially the low transfer rate, little. Although recital 24 promises not many successes in terms of the improvements of the two issues mentioned, Dublin III tries to deal with these problems little by little. By giving the asylum-

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<sup>9</sup> See Appendix: Comparison for the feature Sharing costs

seeker the right to appeal a transfer decision and clarifying the situation of erroneous transfers, two of the major issues promoting an unequal allocation of responsibility and burden are addressed. No conclusion at this point can be derived if these changes can remedy the failure promoted by Dublin II. However, as already implied, the initial demand of a forced mechanism to transfer asylum-seekers, which implies the equalization of numbers of applicants shared, could not be met. Therefore the first feature must be interpreted as **not realized**.

The second feature analyzed the state of first entry criteria, which challenged the basic outline of the Regulation. Article 5.2, 7.3 and 20.5 of the Dublin III Regulation do not improve the drastic situation that bordering countries are still highly pressured under the high influx of incoming asylum-seekers from countries overseas and the territories in the eastern part of Europe. All articles adhere to the principle that the first country in which an asylum-seeker arrives and his or her application lodges, shall be the one responsible for the applicant. However, as it was stated in chapter three of the thesis, if applicants have the right to appeal a transfer decision, additional burden as well as responsibility could be taken from the bordering countries. The analysis showed that Dublin III established the right to appeal for asylum-seeker, a fact on which basis the feature state of first entry criteria can be considered as **realized**.

The third feature analyzed concerns the voluntary basis of both Regulations. The assumption in chapter three was that both Regulations act under a voluntary character which promoted a leeway for MSs by what means the countries did not comply with the articles. This assumption was however disabused by analyzing the relevant articles of the Regulations which both revealed that the Regulations are binding in its entity. Nevertheless Dublin III established an additional article in which voluntary transfers are promoted. This article does however not claim that all transfers carried out should be on a voluntary basis. It rather implies that besides the regular transfers conducted, MSs should promote more transfers which then are carried out on a voluntary basis and not because the MS was found as the responsible state. Ensuing from these findings, also the feature voluntary basis can be considered as **realized**.

The last feature analyzed dealt with the fair share of costs of the Dublin Regulation. In chapter three it was stated that MSs need to report their costs related to any Dublin actions carried out. Furthermore, under stricter conditions to deposit money or direct compensation to MSs, which are pressured more than the paying countries, responsibility and the burden can be more equally distributed. The analysis showed that Dublin II dealt with none of the issues since no keyword could be identified. Dublin III however dealt with the cost concerning the transfer of an applicant and clarified which MS has to bear those costs. Nevertheless, also the two remaining keywords fund/funding and compensation could not be found.

Therefore the issue was only partly taken up, however the claims made on providing more insights on the costs by national authorities as well as any form of compensation was not mentioned. Therefore the feature sharing cost is **not realized**.

The labeling of the features showed that only two of the four features could be realized.

By considering the research question: “*What are the potentials of Dublin III remedying the failure of Dublin II and contribute to a well-functioning CEAS by increasing burden-sharing and shared responsibility?*” the rating implies that even though there are minor positive changes, the Dublin III Regulations cannot be considered as a remedy to the failures promoted in Dublin II and hence also not as a contribution to the Common European Asylum System since the two issues, namely the lack of shared responsibility and burden shared, could not be significantly increased.

The conclusion will interpret this outcome and generalize the findings. Furthermore, it will give a possible outlook on future events in form of recommendations.

#### **4.6 Concluding remarks**

This chapter presented and analyzed the data, by what means a final conclusion can be derived. It showed that only two out of four features has been realized. The first realized feature is the feature state of first entry criteria. This feature, which has often been referenced throughout the thesis, as the root of an unequal share of the burden and responsibility between the MSs, has not been touched in its foundation. However, the asylum-seeker has the chance to appeal a transfer decision. Hereby, the odds are that more asylum-seekers have the possibility to leave an external-bordering state and travel to another, potentially better situated state within the EU. Although this feature has been realized, an enhancement of the situation is difficult to obtain.

In case of an appeal, it is the asylum-seeker her/himself who is in control of one’s own destiny. Considering the cultural- and the language barrier, as well as a lack of knowledge about the system, the asylum-seeker has, the chances of a positive decision are difficult to achieve and therefore relatively doubtful. It is debatable whether the shift of responsibility to the individual applicant is the better solution to a more balanced system.

The second realized feature is the voluntary basis of the Regulation. Hereby surprisingly, no article that clearly indicated that MSs can act according to a voluntary principle could be identified. Only recital 24 of Dublin III implied that MSs shall promote voluntary transfers, which however, should be understood as the promotion of transfers besides their regular transfers already carried out. Concerning the voluntary basis, quite the opposite article could be identified, namely that all article shall be binding in its entity. In this case, clearly the MS can be considered as the promoter of the extremely important issue, namely the lack of



shared responsibility and the lack of burden-sharing, ignoring the restrictions made in the Regulation. Revealing this fact connects the finding to the most important point made by the key authors Langford, Thielemann and El-Enany. No solidarity and no cooperation between MSs hinder the possibility of a balanced system with a fair share of both issues.

The remaining two features, transfers and the feature sharing costs failed to be realized. Concerning the first feature transfers, the right to appeal and the handling in case of an erroneous transfer were changes that could not be considered as significant enough to label the feature as realized. No mechanism which would for instance bind MSs to an exact number of transfers (adjusted on size, population, GDP or other measurements) could be identified. Concerning the feature of sharing costs, not one point of criticism, stated by scholars as Noll and Thielemann, has been dealt with in the Regulation. Hereby, the Dublin III Regulation clearly missed an important issue, by which the dramatic differences between countries, by means of the economic and financial situation were beneath notice. The consequences for the treatment of asylum-seekers are in turn fatal.

On the basis of these outcomes, a final statement can be made: Overall, the Dublin III Regulation exhibits responsiveness to the failures of the Dublin II Regulation. The criticism that has been formulated since 2003 by many academic scholars, especially by Thielemann, Langford and El-Enany as well as by organizations such as the UNHCR and ECRE has been seized. The newly established right to appeal, the inclusion of handling an erroneous transfer and the consideration of national flaws of a MS are just some, of many articles that has been apprehended. These changes should not be considered as insignificant, however, the intention behind these changes do not touch on the ramification of the two issues burden-sharing and sharing responsibility. It can rather be stated, that the effort made in constructing the Dublin III Regulation is near nominal. Not one article addresses the most often, by scholars and organizations referenced issue, namely that there is no fair equation of the burden of asylum-seekers and responsibility, directly. Finally, with reference to this statement, it is justified that the Dublin III Regulation cannot be considered as a remedy to the failures promoted by the Dublin II Regulation.

## 5. Conclusion

As the analysis has shown, only two of the four features could be realized. The outcome implies that the Dublin III Regulation is not capable of increasing the share of responsibility as well as the share of burden of asylum-seekers between MSs in the European Union.

Cecilia Wikström, member of the European Parliament praised the Regulation, as now clearly defined in responsibilities and rules. The outcome of the thesis contradicts however with this statement. Although, articles have been more explicitly formulated, responsibilities can still be expected to lay foremost, with external bordering states.

Overall it needs to be stated that there is an extensive lack of scholarly debate on the Dublin III Regulation. This is attributable to the novelty of the Regulation and additionally to the fact, that potential ramifications are not yet possible to gather. Organizations such as ECRE and the JRS published comments on their websites, depicting the entering into force of Dublin III. However, most of these comments relate to the consequences that Dublin II had on the asylum-seeker as an individual, but not to the mistreatment of the MSs. Hereby it needs to be carefully distinguished. Dublin III may have an effective impact on the asylum-seeker (in terms of changes concerning for instance family unification and rules on unaccompanied minors) this however, was not the subject of the thesis.

Nevertheless it can be identified that such organizations remain suspicious. The JRS and ECRE remind, that the well-functioning of the Regulation depends on the willingness, thoroughness and correctness of MSs to adopt the articles of Dublin III (ECRE 2013). The outcome of the thesis concurs with this statement. It has been found, that the effectiveness of the Regulation depends on the compliance of the MSs.

Neither the Dublin II nor the Dublin III Regulation gives any basis, which could motivate MSs to non-compliance. Both Regulations are binding in their entirety and do not imply that some countries may stick and others may not stick to the articles. This implies that some of the flaws are actually not promoted by the Regulation but by the MSs themselves. Especially in terms of violations of human rights, time limits, accuracy of the examination of applications and the adherence to interstate agreements, MSs are seeking to find alternatives to keep the burden as low as possible and do not take on any responsibility. Those failures are often for the sake of convenience and in particular by MSs stated as problems promoted by the Regulation. However, in many cases, it is the MS (every MS in the EU) which does not stick to the Regulation and tries to cover the non-compliance. It is a debatable point whether the binding character of the Regulation has direct effect and/or supremacy and if an adoption of the two tools would support the binding character. Nevertheless, the evaluation of such adoption would be beyond the scope of the thesis.

Another remaining issue of the Dublin III Regulation is the state of first entry criteria. The feature is labeled as realized, since it met one potential possibility to lift the responsibility and

burden of bordering states (namely through the right of appeal). Nevertheless, this feature can be considered as the main problem of the system. By challenging the state of first entry rule one must also raise the Dublin Regulation generally to question. The analysis showed that even the third generation of the Regulation is not able to cope with two significant issues of shared responsibility and burden-sharing which are on the one hand only promoted through the basic elements of the Regulation (the state of first entry criteria) and on the other hand most discussed and criticized. The question should hereby be raised whether the Dublin Regulation is an effective tool at all, suitable for the asylum crisis of the 21st century. A fact that can be drawn from the analysis is that the Regulation is not fair. As long as the Dublin System does not come up with a functional mechanism to unburden bordering MSs, the practice of assigning responsibility to the first country of entry should be banned. This principle may have been applied in times of the Dublin Convention in 1990 but it does not apply in 2014, in a world and especially in a Europe in which states are economic-, political- and social-wise as close as they have never been and in which problems are no longer those of the other MSs, but also one's own. The European Union, that represents itself as a strong global player, is far from being in a position that would allow a disproportional and dysfunctional Regulation with such impact being handled so desultory.

Langford, Thielemann and El-Enany imply that the Dublin Regulation was the major reason for the flaws of the CEAS. Furthermore, all scholars evaluate the future of the regulation and thus the future of the CEAS extremely critical. It was not assumed that solidarity as well as cooperation could be built between MSs, which may equalize the asylum system and hence increase the share of responsibility and share of the burden. The findings of the analysis widely concur with this assumption, since non-compliance of MSs is widespread with an attitude that charity begins at home. Hence, considering the Dublin regulation as the biggest component of the CEAS, the system will find little appreciation and supporter in the nearest future.

Although the situation all around the Dublin Regulation seems desperate, some comments can be made which reveal hope. One thing that could have an effect on the current asylum situation is the presidency of Italy in the Council of the European Union. One top priority in this time period is "Migration and Border Control" under which is stated that Italy will focus on the implementation of "the EU action on migratory pressures as well as on a closer cooperation of actions taken by the MSs and EU agencies, as it expects the EU to profit from synergy effects" (Lesung 2014). While the statements are very broad, it can nevertheless be expected that Italy will move forward the discussion on the Dublin Regulation since it suffers under its obligations.

The last comment which needs to be made is a recommendation on the report of the parliamentary assembly (specifically the committee on Migration, Refugees and displaced persons): “The “left-to-die boat”: actions and reactions” (Assembly 2014). Induced by the incidents in the Mediterranean Sea, in which many asylum-seekers lost their lives trying to reach the borders of the European Union, the assembly gives multiple recommendations in order to prevent further responsibility gaps. One recommendation specifically concerns the Dublin Regulation and gives a new insight to the problem. It is stated that the Regulation triggers a discouragement for bordering MSs in the south to enhance “their standards on reception and procedures for asylum seekers, and thus threatens the aim of a Common European Asylum System” (Assembly 2014). As a reaction, the assembly arrogates and promotes the inclusion of a uniform asylum status, which implies that all articles under the Dublin Regulation are applied equally in the MSs of the EU. Only under such status solidarity could be achieved and harmonization in terms of a Common European Asylum System can be granted. This however also implies that the Dublin Regulation (in its current generation) needs correspondingly adjustments and more concentration on bordering MSs.

Putting the phenomenon dealt with in a broader picture, the lack of solidarity between the MSs in the EU is what persists. Saying it with the words of Ulrich Beck:

“Europe is an alliance of former world cultures and great powers, which are bent on finding escape route from their own warlike past. The arrogance displayed by northern Europeans in their dealings with the allegedly lazy, undisciplined southerners reveals an altogether brutal cultural ignorance and an obliviousness of history” (Beck 2013).

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## 7. Abbreviations

CEAS	-	Common European Asylum System
ECRE	-	European Council on Refugees and Exiles
EU	-	European Union
GDP	-	Gross domestic product
JRS	-	Jesuit Refugee Service
MSs	-	Member State/s
UNHCR	-	United Nations High Commissioner for Refugees



## 8. Appendix

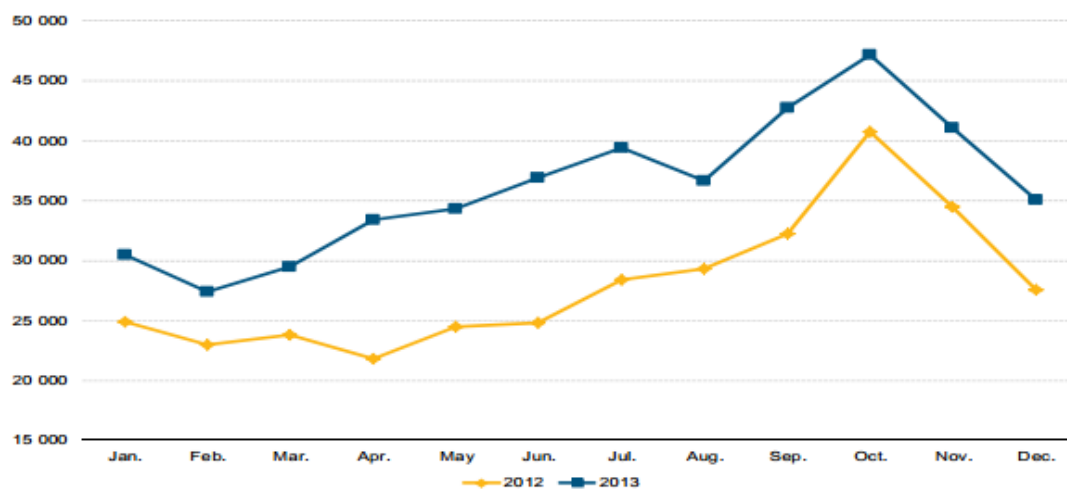
1. Asylum application and first instance decisions on asylum applications  
Data taken from Eurostat (2013)

### Asylum applicants and first instance decisions on asylum applications: 2013

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Large increase to almost 435 000 asylum applicants registered in the EU-28 in 2013, nearly 100 000 more compared to 2012; largest group from Syria

Figure 1: Asylum applicants, EU-28, January 2012 – December 2013



Source: Eurostat (online data code: [migr\\_asyappctzm](#))

2. **Outgoing 'Dublin' requests by receiving country** and type of request (Total number of requests)

TIME ▶	2013
GEO ▼	
Belgium	593
Bulgaria	117
Czech Republic	:
Denmark	:
Germany (until 1990)	4,463
Estonia	4
Ireland	19
Greece	350
Spain	6
France	1,308
Croatia	182
Italy	2,250
Cyprus	3
Latvia	1
Lithuania	6
Luxembourg	78
Hungary	44
Malta	15
Netherlands	:
Austria	733
Poland	:
Portugal	3
Romania	17
Slovenia	32
Slovakia	64
Finland	189
Sweden	1,402
United Kingdom	:
Iceland	:
Liechtenstein	3
Norway	883
Switzerland	1,658

3. **Incoming 'Dublin' requests by submitting country** and type of request (Total number of requests)

TIME ▶	2013
GEO ▼	
Belgium	4,546
Bulgaria	1,073
Czech Republic	:
Denmark	:
Germany (until 1990)	3,624
Estonia	49
Ireland	157
Greece	59
Spain	2,368
France	2,278
Croatia	42
Italy	9,834
Cyprus	138
Latvia	130
Lithuania	342
Luxembourg	104
Hungary	6,530
Malta	724
Netherlands	:
Austria	1,846
Poland	:
Portugal	251
Romania	479
Slovenia	161
Slovakia	371
Finland	206
Sweden	1,883
United Kingdom	:
Iceland	:
Liechtenstein	2
Norway	1,049
Switzerland	1,819

Data taken from Eurostat (2014)

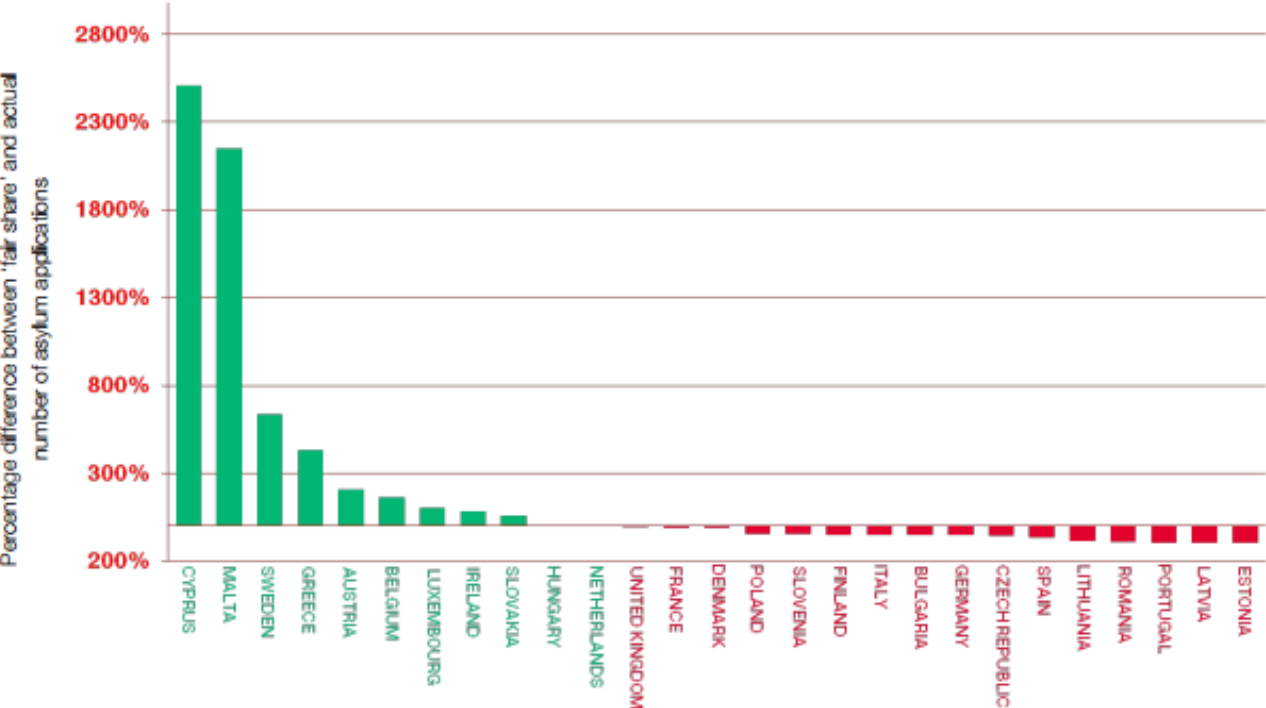
4. **Incoming/Outgoing** transfers by **submitting/receiving** country and type of 'Dublin' request

TIME ▶	2013		TIME ▶	2013
GEO ▼			GEO ▼	
Belgium	1,779	Incoming transfers by submitting country                      Outgoing transfers by receiving country                      	Belgium	738
Bulgaria	100		Bulgaria	29
Czech Republic	:		Czech Republic	:
Germany (until 1990)	1,702		Germany (until 1990)	4,316
Estonia	16		Estonia	7
Ireland	72		Ireland	84
Greece	7		Greece	675
Spain	734		Spain	12
France	834		France	645
Croatia	8		Croatia	2
Italy	3,460		Italy	5
Cyprus	15		Cyprus	4
Latvia	44		Latvia	2
Lithuania	108		Lithuania	9
Luxembourg	46		Luxembourg	143
Hungary	850		Hungary	32
Malta	118		Malta	2
Netherlands	:		Netherlands	:
Austria	765		Austria	1,145
Poland	:		Poland	:
Portugal	92		Portugal	9
Romania	109		Romania	19
Slovenia	52		Slovenia	31
Slovakia	144		Slovakia	41
Finland	0		Finland	0
Sweden	0		Sweden	2,869
United Kingdom	:		United Kingdom	:
Iceland	:		Iceland	:
Liechtenstein	0		Liechtenstein	11
Norway	0	Norway	945	
Switzerland	751	Switzerland	4,165	

Data taken from Eurostat (2014)

5. Uneven sharing of responsibility for asylum seekers by MSs

Uneven sharing of responsibility for asylum seekers by Member States



Data taken from London School of Economics and Political Science

6. Comparison for the feature transfers:

Dublin II	Dublin III
<b>Article 4.4:</b> outlines that information on the Dublin procedure must be given to the asylum-seeker	<b>Recital 34:</b> outlines that a leaflet, explaining the Dublin procedure must be given to the applicant
<b>Article 16.2:</b> Once the asylum-seeker receives a residence document of a certain country, that country shall be responsible	<b>Article 19.1:</b> is exactly the same as Article 16.2 of Dublin II
<b>Article 19.1 &amp; 20. (e):</b> outlines that the asylum-seeker shall be notified that if one MS takes charge of the application, the other MS will cease to examine the application	<b>Article 26.1:</b> is the same as Article 19.1 & 20. (e) of Dublin II but now the MS can also notify a legal advisor of the applicant if available.
<b>Article 19.2:</b> information's on the time, place and potential limits of the transfer must be given to the asylum-seeker as well as that the decision might be subject to appeal or review but shall not suspend the transfer unless a court decides otherwise	<b>Article 26.2:</b> is the same as 19.2 of Dublin II but now also information on the right on legal remedies , the right to apply for suspensive effect and on the legal entities must be given
<b>Article 19.3:</b> outlines that the transfer shall be in accordance with national law and as soon as practically possible	<b>Article 29.1:</b> is the same as Article 19.3 of Dublin II but now it is added that the transfer process shall be carried out in a humane manner, respecting human dignity
<b>Article 19.4</b> outlines the time limits of the transfer	<b>Article 29.2:</b> is the same as Article 19.4 of Dublin II however the wording is to a small extend different
<b>Article 20. 1-4:</b> Repetition on the time limits and the notifications to the asylum-seeker and the rules or more specifically the procedure of taking back an asylum-seeker	<b>Article 24:</b> some contents of the Articles are the same, however this Article specifies the taking back procedure much more by outlining the rules in case no application has been lodged at all of the applicant
<b>Article 21:</b> outlines the need for the exchange on personal data of the asylum-seeker between the transferring MS's.	<b>Article 31.1, Article 34 and Recital 27:</b> also outlines the need for the exchange of personal data but specifies on the time limits for MS's to reply on a request and gives the applicant the opportunity to bring an complaint before competent authorities which refuse the right of correction

7. See Appendix 2.
8. Comparison for the feature state of first entry criteria:

Dublin II	Dublin III
<p><b>Article 4.1:</b> determines that the process of finding the responsible MS starts when the application of asylum-seeker is first lodged with a MS</p>	<p><b>Article 5, 6 &amp; 20: Article 20.1</b> of Dublin III is the same as Article 4.1 of Dublin II; Article 5 introduces the use of an personal interview in which the applicant can forward any personal information</p>
<p><b>Article 5.2:</b> The MS in which an asylum-seeker first lodges his or her application is the MS responsible</p>	<p><b>Article 7.2:</b> is exactly the same as Article 5.2 of Dublin II Article 7.3 adds that any available evidence should be taken into consideration by examining the MS responsible for the applicant</p>
<p><b>Article 13:</b> The first MS in which application was lodged shall be the MS responsible for the applicant (similar to Article 5.2 of Dublin II)</p>	<p><b>Article 3.2</b> is the same as Article 13 but specifies that if any flaws in national asylum systems and violations of human treatment can be detected, the MS in which the applicant is present shall be the one responsible</p>

9. Comparison for the feature Sharing costs

Dublin II	Dublin III
<p>--</p>	<p><b>Article 27.5:</b> MS shall pay the costs of a legal remedy of an applicant</p>
<p>--</p>	<p><b>Article 30:</b> outlines that the transferring MS has to pay the costs necessary to transfer the applicant to another MS</p>
<p>--</p>	<p><b>Article 30.2:</b> in case of a transfer back to a MS, the MS which initially carried out the transfer must pay the costs</p>
<p>--</p>	<p><b>Article 30.3:</b> persons on which the Regulation applies do not have to bear any costs</p>