

# Prisoners of the Dublin Dilemma

*How to reform the Common  
European Asylum System?*

*foraus*-Discussion Paper No. 32 / August 2017  
Program Migration



The humanitarian crisis at the internal and external borders of Europe and the dysfunctionality of the Dublin Regulation call for political responses to the challenges posed by humanitarian migration to Europe. The European countries are deeply divided on how to reform the Common European Asylum System. Attempts to relocate asylum seekers across Europe have not succeeded and revealed the lack of solidarity among European countries. In this paper, we analyse the causes of the current asylum policy crisis in Europe and propose potential policy solutions. We conduct a thorough game-theoretical analysis of the incentive structures of countries and asylum seekers influenced by the rules of the Dublin Regulation. Based on this analysis, we propose a comprehensive reform of the Common European Asylum System.

We found that the Dublin Regulation provides systematic disincentives for asylum seekers as well as member states with regard to the registration of asylum seekers and hence undermines the functionality of the Common European Asylum System. Member states aim to avoid financial and political costs resulting from processing

*The Dublin Regulation provides systematic disincentives for asylum seekers as well as member states to carry out a registration and hence undermines the functionality of the system.*

and accommodating asylum seekers. Therefore, buck-passing becomes a rational strategy for states, creating negative externalities for other European states. In contrast, asylum seekers often have a preferred

destination country which in most instances does not correspond with the country of first entry. For this reason, the Dublin Regulation incentivizes asylum seekers to avoid or to ignore registration in the country of first entry and to continue their journey irregularly within Europe.

Consequently, Europe faces a coordination dilemma: Both the states and asylum seekers are in principle interested in formal registration, yet the Dublin Regulation creates strong incentives for the actors involved to not comply with the registration rules. Building on these insights, the authors propose a comprehensive reform based on the following four measures:

- Firstly, the responsibility for registering asylum seekers is separated from the responsibility for processing asylum requests. This removes the disincentives for member states to register asylum seekers.

- Secondly, individual asylum requests are still processed by one state only. However, the preferred destination country of asylum seekers is taken into consideration when relocating them to other states. This measure is key to restore the incentives for asylum seekers to register at the European country of first entry, providing them with increased autonomy as well as with better perspectives for long-term integration.
- Thirdly, the financial expenses linked to asylum procedures are shared between the European countries on the base of the existing refugee quota. This measure establishes European solidarity as a common denominator, so that countries will receive support for the provision of humanitarian protection.
- Fourthly, a solidarity clause is introduced that allows countries to temporarily stop the intake of new asylum requests if these numbers largely exceed the refugee quota of a country. This measure offers an insurance against excessive responsibility for individual countries that is in line with the Geneva Convention.

Our proposal for reforming the Common European Asylum System enriches the current debate among states and NGOs and stands out from existing reform approaches of the European Commission, by factoring in the rational strategies of actors affected by European asylum policies. Moreover, the reform outlined in this paper is likely to gain political support since it offers benefits to all European countries. Countries at EU's periphery will be relieved from the responsibility to process the majority of asylum requests and thus they have incentives to ensure registration. Principal reception countries (i.e. Northern European countries) will be provided with financial assistance. Last, countries unwilling to accept a binding refugee quota can instead contribute with financial means to European solidarity. The current crisis provides a window of opportunity for comprehensive reforms of the Common European Asylum System in order to craft sustainable institutions for the protection of refugees.

## Authors



### Philipp Lutz

Philipp Lutz is Senior Policy Fellow for Migration at the Think Tank *foraus* and PhD Candidate in Political Science at the University of Bern. He studied in Bern, Fribourg and Ljubljana.



### David Kaufmann

is a political scientist at the *KPM* Center for Public Management, University of Bern. He is specialized in the analysis of urban policy as well as asylum and migration policy. David Kaufmann is a former Senior Policy Fellow for Migration at the Think Tank *foraus* and a long-standing member of the Migration program.



### Anna Stünzi

is an economist and Phd Candidate at the Center for Economic Research of the ETH Zurich at the Chair of Resource Economics. She runs her own company in the photovoltaic sector. Furthermore, she is a long-time member of the *foraus* Migration program and Co-Director of the program for Energy, Environment, and Transport.



### Stefan Egli

is Junior Policy Fellow for Migration at the Think Tank *foraus*. He has studied International Relations at the University of Geneva and is currently completing a master's degree in Political Philosophy and Gender Studies at the University of Bern.

## Copyright

### Citation

*foraus* – Swiss Forum on Foreign Policy, 2017, *Prisoners of the Dublin Dilemma, How to reform the Common European Asylum System?, Discussion Paper, Zurich*.

### Acknowledgements

This policy paper has benefited from valuable input and feedback on draft versions of the text. For critical feedback, we would like to thank Delphine Bracher, Anna Frey, Pascal Roelcke, Dr. Johan Rochel and Dr. Stefan Schlegel. The game-theoretical model has also benefited from comments by Prof. Dr. Holger Herz of the University of Fribourg, and for critical assistance regarding asylum law by Dr. Constantin Hruschka from the Swiss Refugee Council.

### Disclaimer

The views and opinions expressed in this policy paper are those of the authors and do not reflect the official position of *foraus*. Responsibility for the content lies entirely with the authors.

[www.foraus.ch](http://www.foraus.ch)

<b>1. Introduction</b> .....	<b>1</b>
<b>2. The Dublin System: What’s going wrong?</b> .....	<b>3</b>
<b>2.1 Refugees: Incentives to Irregularity</b> .....	<b>4</b>
<b>2.2 Member States: Lack of Responsibility</b> .....	<b>7</b>
<b>2.3 Game-Theoretical Analysis of the Dublin Mechanism</b> .....	<b>9</b>
<b>2.4 First Reflections on a Reform Proposal</b> .....	<b>12</b>
<b>3. Dublin Reform</b> .....	<b>13</b>
<b>3.1 Aims of a Reform</b> .....	<b>13</b>
<b><i>3.1.1 Mutual Incentive to Comply with the Rules</i></b> .....	<b>14</b>
<b><i>3.1.2 Resilience to Crises</i></b> .....	<b>14</b>
<b><i>3.1.3 Political Feasibility</i></b> .....	<b>15</b>
<b>3.2 A Comprehensive Dublin Reform</b> .....	<b>15</b>
<b><i>3.2.1 Effective Registration System</i></b> .....	<b>15</b>
<b><i>3.2.2 Distribution of Refugees</i></b> .....	<b>16</b>
<b><i>3.2.3 Advantages Against Alternative Proposals</i></b> .....	<b>18</b>
<b><i>3.2.4 Similar Reform Proposals</i></b> .....	<b>20</b>
<b>4. Conclusions</b> .....	<b>21</b>

# Table Of Contents

# 1. Introduction

Over 65 million people worldwide have been forced to leave their homes in 2016.<sup>1</sup> More than 1.25 million people sought asylum in Europe in 2015.<sup>2</sup> The so-called ‘refugee crisis’ dominates headlines and stirs political turmoil throughout the European continent. However, the actual number of refugees is neither unprecedented in Europe nor did the share of refugees in relation to the global population increase over time.<sup>3</sup> Furthermore, only a small fraction of all refugees have actually filed an asylum request in Europe – while up to 90% are hosted by developing countries. This, notwithstanding the recent arrivals of refugees, brought Europe’s asylum institutions to the brink of collapse.

European policy makers struggle to find common ground on how to approach the mounting strain on European borders and asylum policies as the humanitarian crises along the EU’s external and internal borders deteriorate. While the actual numbers of arrivals do not constitute an insurmountable challenge, the lack of coordination of European countries resulted in an ineffective political response to humanitarian migration. Therefore, Europe does not face a ‘refugee crisis’, but rather, a crisis of the European asylum policy. The irregular entry and movement of refugees is not only a quantitative or technical issue, but also raises fundamental questions on the approach

towards humanitarian migrants seeking protection in Europe. The political tools employed by European countries to deal with these movements of people have proved to be unreliable at the very moment when they are needed the most. The recent policy crisis revealed the systemic dysfunctions of the Dublin Regulation. As a consequence, the arrival of humanitarian migrants resulted in a political divide within the European community and threatens to deepen the current crisis of European institutions.

The political strain on the Common European Asylum System (CEAS)<sup>4</sup>, which also includes the Dublin Regulation, let the dysfunctions of the current institutional arrangement become apparent. States employ *beggar-thy-neighbour* policies by striving to deter refugees and shirking their humanitarian responsibilities. Thus, national asylum policies inevitably create externalities for other European countries and the ongoing political crisis threatens the functioning of crucial European institutions such as the internal market or the Schengen area. Therefore, only a common European response can offer remedy to the problem at hand. Any national response to the current crisis remains ineffective and costly. The flight of humanitarian migrants towards Europe is likely to continue because of structural forces such as armed conflicts, demographic trends, and economic inequalities that drive migratory movements to Europe. From that perspective, the recent increase of refugee arrivals has been predictable and there

was the possibility to find common solutions in advance.<sup>5</sup>

On a positive note, the current crisis of European asylum policy offers a window of opportunity for institutional reforms towards a more reliable and sustainable asylum system. Tackling the refugee challenge is of utmost importance to Europe. The Schengen Area brought an end to internal border controls and with free movement of people national labor markets have opened up. This openness necessitates increased coordination of national migration and asylum policies.

The Dublin Regulation defines the responsibilities between states regarding the registration and processing of refugees: Applicants have the right to file an asylum request in one single European country, in most cases the state, where a person first entered EU territory is responsible for the processing of the request. This regulation guarantees a fair procedure to every applicant and prevents multiple asylum requests by the same person in different European countries. In this policy paper, we demonstrate why the Dublin Regulation provides strong incentives for non-compliance self-inflicted by design. Furthermore, we show why the oft-articulated policy solution – the redistribution of refugees across Dublin member states – is likely to fail because of both the unwillingness of the states and the unwillingness of the refugees. By game-theoretical modelling, we demonstrate how diverging national

interests could be reconciled in favor of a common European solution that provides the necessary incentives for states and refugees alike to comply with the rules. We present a coherent reform for the Dublin Regulation to craft an efficient and effective asylum coordination system for Europe and to overcome existing shortcomings. Therefore, the current asylum policy crisis can be seen as an opportunity for an encompassing reform of the European asylum policy that provides the tools for the future challenge of humanitarian migration.

To reform the Dublin Regulation is a thorny issue with conflicting interests involved, and thus, is a major challenge to European policy makers. While many member states have expressed discontent over the existing rules, they also have no interest to repeal the Dublin regulation or withdraw from the CEAS. However, the numerous deaths of refugees on their flight to European shores, the lack of shared responsibility among European countries, the unorganized entry and secondary movements of refugees across Europe as well as the inadequate fulfillment of administrative duties proves one thing: reforms are dearly necessary.

Any reform is required to find common ground among the opposing national interests. A functioning regime for humanitarian protection can be seen as public good<sup>6</sup>: States benefit from positive externalities when other countries grant refugee protection in a system of shared responsibility but

*Therefore, Europe does not face a ‘refugee crisis’, but rather, a crisis of the European asylum policy.*

*In this policy paper, we demonstrate why the Dublin Regulation provides strong incentives for non-compliance self-inflicted by design.*

*Any reform is required to find common ground among the opposing national interests.*

1 UNHCR: Figures at a Glance: <http://www.unhcr.org/figures-at-a-glance.html>

2 Eurostat: Asylum and first time asylum applicants – annual aggregated data: <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tps00191&plugin=1>

3 Hein de Haas (2016) refugees: A small and relatively stable proportion of world migration. Blog post, maybe quote also Nature <http://heindehaas.blogspot.ch/2016/08/refugees-small-and-relatively-stable.html>

4 The common European asylum system consists of a bundle of five acts: the Asylum Procedures Directive, the Reception Conditions Directive, the Qualification Directive, the Dublin Regulation, and the EURODAC Regulation.

5 The UNHCR has forecast 2012 large migratory movements to Europe, <http://www.spiegel.de/politik/ausland/syrien-uno-rechnet-mit-mehr-als-halber-million-kriegsfluechtlingen-a-859179.html>

6 Alexander Betts (2003) Public Goods Theory and the Provision of Refugee Protection: The Role of the Joint-Product Model in Burden-Sharing Theory. *Journal of Refugee Studies*, 16(3): 274-296.

the same states have little incentive to contribute to it.<sup>7</sup> But, if a common political approach fails, the asylum policy crisis is likely to be enduring and impair Europe's capacity to develop effective asylum policies.

The policy paper is structured as follows: In a first step, we provide a game-theoretical analysis of the incentives for member states and refugees resulting from the Dublin Regulation. We discuss the major shortcomings of the current system and derive a set of objectives for a reform to restore functional and uniform cooperation throughout Europe in managing asylum issues. Then we outline a comprehensive proposal for a reform of the Dublin Regulation that not only eliminates existing disincentives, but also offers a realistic perspective to reconcile opposing national interests. We contrast our ideas with alternative proposals and discuss their political feasibility. We believe that our proposal provides a potential path to solve the enduring crisis of European asylum policy.

## 2. The Dublin System: What's going wrong?

In this chapter, we outline the incentive structures for the different actors in the CEAS that are set by the Dublin Regulation. In a game-theoretical analysis<sup>8</sup>, we first describe the incentive structures of both refugees and member states. In a second step, we analyze the interplay of these actors in the CEAS presented as a prisoner's dilemma. The analysis reveals that the Dublin Regulation incentivizes refugees and member states *not to comply* with the very same rules set by the Dublin Regulation. Refugees often choose the risk of irregularity in order to reach their favored destination country instead of staying regularly in the country of first entry. As a result, the Dublin Regulation incentivizes irregular secondary movements within Europe. Member States, the other crucial actor in this game-theoretical setting, have little incentives to register refugees because they would become responsible for carrying out the refugee status determination procedures and for accommodating the asylum seekers. This problem is accentuated by high numbers of arriving refugees. The Dublin Regulation that sets systematic incentives for actors not to comply is at the heart of the problems of the CEAS and therefore in urgent need of a substantial reform.

<sup>7</sup> Astri Suhrke (1998) Burden-sharing during Refugee Emergencies: The Collective Action versus National Action. *Journal of Refugee Studies*, 11(4): 396-415.

<sup>8</sup> Game theory examines decision-making situations in which results are determined by the strategic interaction of multiple actors.

### Responsibility criteria according to Dublin Regulation

The Dublin Regulation provides a list of criteria for deciding which country is responsible for implementing an asylum procedure.<sup>9</sup> The most important criterion of responsibility is family ties; refugees are to be accommodated by those countries where they already have family members. If this is not the case, the state for which refugees have valid or expired residence permits or visas becomes responsible. If neither are the case, the state of first entry to the Schengen/Dublin area becomes responsible for the processing of the asylum request. Due to restrictive visa requirements, the irregular entry is the only option for many refugees to access the right to seek asylum. As a consequence, countries at Europe's periphery became the main entry points of refugees and according to the Dublin criteria these countries bear the responsibility for their asylum requests. During the current crisis of European asylum policy, this allocation of responsibility has led to an overburdening of the states on the Schengen external border.

### 2.1 Refugees: Incentives to Irregularity

In this subchapter, we discuss how the Dublin Regulation incentivizes refugees not to comply with its rules. In a nutshell, factors that explain the choice of refugees' destination country are primarily structural in nature and therefore largely exogenous to European asylum policies. Refugees often achieve a higher 'payoff' when they move irregularly to their destination country of choice (so-called secondary movements) compared to the 'payoff' of staying regularly in the country of first entry. Refugees thereby violate the Dublin rules and thus risk relinquishing their legal residence status.

As in any other policy field, the effectiveness of

<sup>9</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=en>

asylum policies depends on how the target group responds to formulated policies. Policies can only be effective if the preferences and the behavioral responses of the policy target group are properly anticipated and understood. However, asylum policies are often designed against the background of misperceptions of refugees and their motivations.<sup>10</sup> We identified two different misperceptions that are prevalent in the political discourse on asylum. First, refugees are described as abusers of a (too) liberal asylum system. This misperception is prevalent in the discourse of right-wing parties that are critical towards migration in general. According to their policy stance, national asylum policies should reduce the attractiveness as an asylum destination country. The second misperception constructs refugees as passive, helpless objects without having their own preference structures or agency. This conception may be shared by governmental organizations, and in some cases, also by NGOs because both types of organizations may try to steer refugees' decision making while neglecting the agency of the policy target group. We now discuss both misperceptions and then sketch a more realistic picture of refugees' decision making under the constraints of the Dublin Regulation.

The first conception overestimates the influence of asylum policies on the individual decision making of refugees about their preferred destination country. The numbers of asylum applications are hardly influenced by asylum policies and restrictive admission rules, but mainly driven by factors in the country of origin, such as warfare, humanitarian crises,

<sup>10</sup> Lucy Mayblin (2016) Complexity reduction and policy consensus: Asylum seekers, the right to work, and the 'pull factor' thesis in the UK context. *The British Journal of Politics and International Relations* 18(4).

and persecution.<sup>11</sup> Yet, these crucial determinants escape the control and authority of national governments' asylum legislations. In most instances, refugees do not have a specific country in mind when they flee. Refugees are dependent on information provided by third parties such as their transnational networks, but they also have to rely on information by third parties during their flight (such as border crossing helpers or smugglers).<sup>12</sup> Therefore, transnational networks play a crucial role for humanitarian migrants. These social networks may be personal, linguistic, or cultural.<sup>13</sup> They provide valuable resources and are therefore an important factor in explaining refugees' choice of destination countries.

Furthermore, structural factors such as a functioning labor market, educational opportunities, a country's reputation for respecting democracy and human rights, and the geographic location are important when choosing a destination country.<sup>14</sup> All these three mentioned determinants of a refugee's destination country – information during flight,

social networks, and structural factors – are exogenous to national asylum policies. Thus, national asylum policies are hardly a decisive factor when explaining refugees' choice of destination.

The second misconception of refugees as passive victims underestimates the agency of refugees. It is important to keep in mind that refugees take high risks when they decide to flee their country of origin. Thus, refugees are not only striving for humanitarian protection, but also for perspectives to build up a new life. The need for protection does not oppress the pursuit of happiness and the desire for a self-determined course of life. This also means that refugees make strategic decisions based on their information. These considerations are not just game-theoretical assumptions, they are, as described so far, empirically observable and important in order to understand the agency of refugees.

Refugees have to enter Europe irregularly since only very few, costly, and lengthy regular entry paths exist. The irregular entry into Europe is dangerous and expensive: around € 1 billion is paid annually to migrant smugglers between 2000 and 2014 and there were 22'394 reported deaths at the European external borders in this time period.<sup>15</sup> Once inside Europe, refugees must continue their irregular journey to reach their destination country and to file an asylum request. Given the danger and high costs of an irregular entry to Europe, it is illusory to believe that refugees stop at the country of first entry, especially if they have good reasons (such as family

or job opportunities) to move to another country. If they arrive in Europe and are determined to reach their destination country, borders within Europe are just the remainder of many obstacles.

The incentives for refugees to undertake these so-called secondary movements, i.e. leaving the country of first entry to seek residence in another European country, are often stronger than the deterring effect of risking an illegal status upon arrival. Although refugees have a strong interest in regularizing their status, many seem to prefer an irregular status in their preferred country over a regular status in the country of first entry. This is exemplified in the large number of secondary movements and as well as in the refugee camps at Europe's internal borders such as in Calais. In Calais and other French towns near Great Britain, people endure inhuman conditions and are willing to risk further dangerous border crossings. Apparently,

these refugees expect better opportunities in the British labor market, they want to access their networks in the UK, or simply because they speak English as their only European language.<sup>16</sup> The refugees in these camps show that their personal incentives to reach the UK trump national asylum and border legislations.

In sum, the Dublin Regulation fails because it ignores the interests and preferences of refugees. Secondary movement of refugees, irregular refugee camps within Europe and the academic literature

on decision making of refugees show that the incentives to risk an irregular status in the preferred destination country are often stronger, at least in the short run, than to stay in the country of first entry. In game-theoretical terms this means that the 'pay-off' of a regular status is often smaller than the 'pay-off' of reaching the preferred destination country.

The incentive structure of refugees explains the ineffectiveness and inefficiency of the current Dublin Regulation. The Dublin Regulation is ineffective because it fails to provide incentives to its target groups to comply with the rules. The Dublin Regulation is inefficient because refugees are not allowed to regularly enter their preferred destination country, the place where their perspectives are the best and the relative costs of admission and integration the lowest. In addition, public expenditures are costly for forced relocation of secondary movers back to the country of first entry. Thus, studying the Dublin Regulation from the per-

spective of refugees reveals that the Dublin rules prevent effective protection and integration of refugees in Europe, which should be in the interest of both refugees and member states. The current asylum regime fails, because it does not take account of the policy responses of its target group. Effective asylum policies should conceptualize refugees as agents of their own lives and strategic actors that operate within the setting of European asylum policies, but that are not determined by them.

*All these three mentioned determinants of a refugee's destination country – information during flight, social networks, and structural factors – are exogenous to national asylum policies.*

*In sum, the Dublin Regulation fails because it ignores the interests and preferences of refugees.*

*The incentive structure of refugees explains the ineffectiveness and inefficiency of the current Dublin Regulation.*

11 Schmeidl, S (1997) Exploring the Causes of Forced Migration: A Pooled Time Series Analysis. *Social Science Quarterly* 78: 284–308. Hatton, Timothy J. (2009). 'The rise and fall of asylum: What happened and why?' *The Economic Journal* 119(535): 183–213.

12 Crawley, Heaven (2010). Chance or choice? Understanding why asylum seekers come to the UK. <https://www.refugeecouncil.org.uk/assets/0001/5702/rechance.pdf>; MEDMIG (2016). Boat migration across the Central Mediterranean: drivers, experiences and responses. <http://www.medmig.info/wp-content/uploads/2016/09/research-brief-03-Boat-migration-across-the-Central-Mediterranean.pdf>

13 Robinson, Vaughan, and Jeremy Segrott (2002). Understanding the decision-making of asylum seekers. Vol. 12. London: Home Office. Neumayer, Eric. (2004) 'Asylum Destination Choice What Makes Some West European Countries More Attractive Than Others?' *European Union Politics* 5.2: 155-180.

14 Thielemann, Eiko R. (2006) The effectiveness of government's attempts to control unwanted migration. In: Parsons, Craig A. and Smeeding, Timothy A., (eds.) *Immigration and the Transformation of Europe*. Cambridge University Press, Cambridge, UK. Thielemann, Eiko R. (2012) How effective are national and EU policies in the area of forced migration? *Refugee Survey Quarterly*, 31 (4). 21-37.

15 <http://www.themigrantsfiles.com/>

16 <http://www.bbc.com/news/uk-29074736>

## 2.2 Member States: Lack of Responsibility

*“For a long time, I have also been relying on the Dublin Regulation which – simply speaking – took all worries away from Germany. And that was not good.”* – Angela Merkel, German Chancellor<sup>17</sup>

After discussing incentive structures for refugees in the last subchapter, we analyse in this subchapter the incentives the Dublin Regulation creates for the member states. The current Dublin rules discriminate countries on the basis of their geography. External border countries have to register the majority of the refugees since they are most often the country of first entry. Therefore, they are responsible to process the majority of asylum requests. So why did these countries agree to join the Dublin system in the first place? One possible explanation could be the responsibility cascade regulation (see responsibility criteria according to the Dublin Regulation on page 4), according to which the country of first entry appears relatively far down as a criterion and therefore could not be recognized as the most relevant criterion at first. Finally, the Dublin system put the cart before the horse. While at the beginning the regulation of the responsibility criteria was always discussed in combination with responsibility sharing<sup>18</sup>, the latter was of less interest for the non-peripheral countries as soon as the Dublin Agreement was adopted.

In reality, however, it is not the case that the peripheral countries actually receive most of the asylum requests.<sup>19</sup> The discrepancy between the ideas behind the Dublin system and the reality makes it clear that the mechanisms provided do not apparently have the desired effect. Despite the responsibility criteria of the Dublin Regulation, many refugees reach their country of destination by irregular means and the non-compliance of state and refugees to registration rules.

As a consequence, member states of the periphery have little to no interest to register arriving refugees, as intended by the Dublin Regulation. Many countries at Europe’s external borders are overstrained with the registration and accommodation of the refugees as well as with setting-up a fair refugee status determination procedure. This is confirmed by judgments of the European Court of Human Rights (ECHR), which prohibit returns to countries such as Italy, Greece or Hungary, as they are not able to guarantee human rights standards sufficiently.<sup>20</sup> The peripheral countries not only lack the political will, but also the necessary financial and human resources to adequately complete the task of registering, proceeding, and hosting refugees.

The Dublin system does not provide much support for countries that receive an above average share of refugees. Furthermore, there are no incentives for these countries to register arriving refugees. Thus,

many countries are not registering refugees (they are, so to speak, “waved through”) to avoid the costs of registering, proceeding, and hosting refugees. This practice makes another country the official country of first entry and this country becomes responsible for the asylum request. This tendency of non-registration is aggravated by the fact that the country of first entry is in most cases not the desired destination country of the refugees. Refugees likewise do not have incentives to register in the Dublin system. Both actors – the refugees and the country of first entry – are therefore not interested to comply with the Dublin rules. These systemic disincentives for compliance created by the Dublin Regulation explain a large part of the dysfunctionality of the CEAS.

An additional problem consists in the fact that these incentives to non-compliance, in combination with a high number of asylum requests, lead to a race to the bottom in asylum standards: as long as the allocation of responsibility 1) does not take into account the preferences of the refugees and 2) runs against the interests of the member states, the more member states aim to be as unattractive as possible for refugees by tightening their asylum policies. Contrary to the objective of the CEAS, standards and norms in the area of asylum are not sufficiently harmonized or aligned to minimum standards, but are deteriorated by negative competition. This leads not only to an inefficient CEAS, but additionally worsens existing national asylum standards and procedures.

*The Dublin system does not provide much support for countries that receive an above average share of refugees.*

*States try to shift costs of humanitarian protection to third parties such as their neighbouring states.*

The Dublin rules can even lead to bizarre situations in which refugees are transferred to mem-

ber states where they have never been before.<sup>21</sup> The Dublin Regulation provides that so-called ‘take-charge requests’ that are not answered for two months are considered accepted. For example, France can send refugees to Italy (whose often overburdened authorities are not responding to take-charge requests in time), even if they have not entered the Dublin Area via Italy. On the basis of such regulations, the Dublin system results in relocating refugees across Europe before their asylum application is officially examined.<sup>22</sup> The coupling of the described incentives to non-compliance leads ultimately to buck-passing of responsibility by member states that try to pass on as many refugees as possible to other Dublin states – instead of processing their applications in a coordinated manner. These fundamental structural disincentive lead to a lack of solidarity and cooperation between the Dublin member states and to *beggar-thy-neighbour* behaviour; states try to shift costs of humanitarian protection to third parties such as their neighbouring states.

<sup>17</sup> Merkel continued as follows: “And if I could, I would rewind the time for many, many years, in order to be able to better prepare myself with the whole federal government and all the responsible stakeholders on the situation, which was rather unprepared for us in the late summer of 2015.» (own translation): [www.handelsblatt.com/politik/deutschland/merkel-raeumt-fehler-in-fluechtlingspolitik-ein-wenn-ich-koennte-wuerde-ich-die-zeit-zu-rueckschulen/14567592.html](http://www.handelsblatt.com/politik/deutschland/merkel-raeumt-fehler-in-fluechtlingspolitik-ein-wenn-ich-koennte-wuerde-ich-die-zeit-zu-rueckschulen/14567592.html)

<sup>18</sup> We use the term responsibility-sharing rather than burden-sharing.

<sup>19</sup> [Http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/database](http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/database)

<sup>20</sup> See «M.S.S. V. Belgium and Greece» or «TARAKHEL v. SWITZERLAND» [http://www.humanrights.ch/upload/pdf/110127\\_EGMR\\_Urteil\\_MSS\\_v\\_BELGIUM\\_AND\\_GREECE.pdf](http://www.humanrights.ch/upload/pdf/110127_EGMR_Urteil_MSS_v_BELGIUM_AND_GREECE.pdf) <http://hudoc.echr.coe.int/eng?i=001-148070>

<sup>21</sup> Article 22 (7) of the Dublin Regulation

<sup>22</sup> [http://www.swissinfo.ch/eng/asylum-policy\\_switzerland-s-defence-of-the-dublin-accords-is-not-a-coincidence/41970948](http://www.swissinfo.ch/eng/asylum-policy_switzerland-s-defence-of-the-dublin-accords-is-not-a-coincidence/41970948)

### 2.3 Game-Theoretical Analysis of the Dublin Mechanism

In the following analysis, the inconsistencies inherent to the Dublin Regulation are illustrated by game-theoretical modelling. The malfunction can be described by a three-player prisoner's dilemma in a sequential game.<sup>23</sup> In this scenario, the refugee (R) arrives in a first step in the country of first entry (E), which often does not correspond to the destination country of the refugee (D) (in line with the previous arguments). The country of first entry, the destination country as well as the refugees themselves all have different incentives (payoffs) based on possible decisions they can take. In order to model the payoffs, the following assumptions are made:

- 1) Refugees in Europe are mostly regarded as a burden (economic costs and political price) – at least in the short-run. The registration, processing, and hosting of refugees are therefore considered as costs carried by the admitting country whose payoff is reduced as a result. Potential long-term social, cultural, and economic benefits of refugee admission are not included. As shown by research, national governments generally aim to reduce the numbers of refugees rather than increase them.<sup>24</sup>
- 2) Refugees are recognized in international law as persons in need of protection within the framework of the Geneva Convention. When a state registers a refugee, the responsibility to humanitarian protection falls into the ju-

isdiction of this state and the refugee cannot be transferred to any other country.<sup>25</sup>

The following example illustrates the game-theoretical analysis of the Dublin mechanism:

*A Syrian family fled from the war and irregularly crossed the European border in Greece. The family wants to join their distant relatives in Germany. Greece has no incentive to register the family, because it does not want to bear the costs of registering, proceeding, and hosting the family, in particular if the family does not plan to stay in Greece. Also the family has incentives to avoid a registration in Greece, since their destination country is Germany, and to continue their irregular journey through Europe.*

In a formal model, the decision options can be described as follows: E can either register (register) or not register (not register). D can also register or not register. R, in turn, can either comply with the rules (comply) or move by irregular secondary movement after the registration (not comply). Likewise, R can actively try to evade registration in E. The scenarios are as follows:

#### E does register

- 1) R complies: E has in each case costs of -2 for the registration and -3 for the incorporation of R, thus a total payoff of 0; R has a payoff of 2 for the legal residency status in Europe and D has a payoff of 5 since no effort has been undertaken. In this scenario, the Syrian family would remain with a legal residency status in Greece.

<sup>23</sup> A prisoner's dilemma describes a situation in which the actors involved have no incentive to cooperate, although this would bring them all advantages.

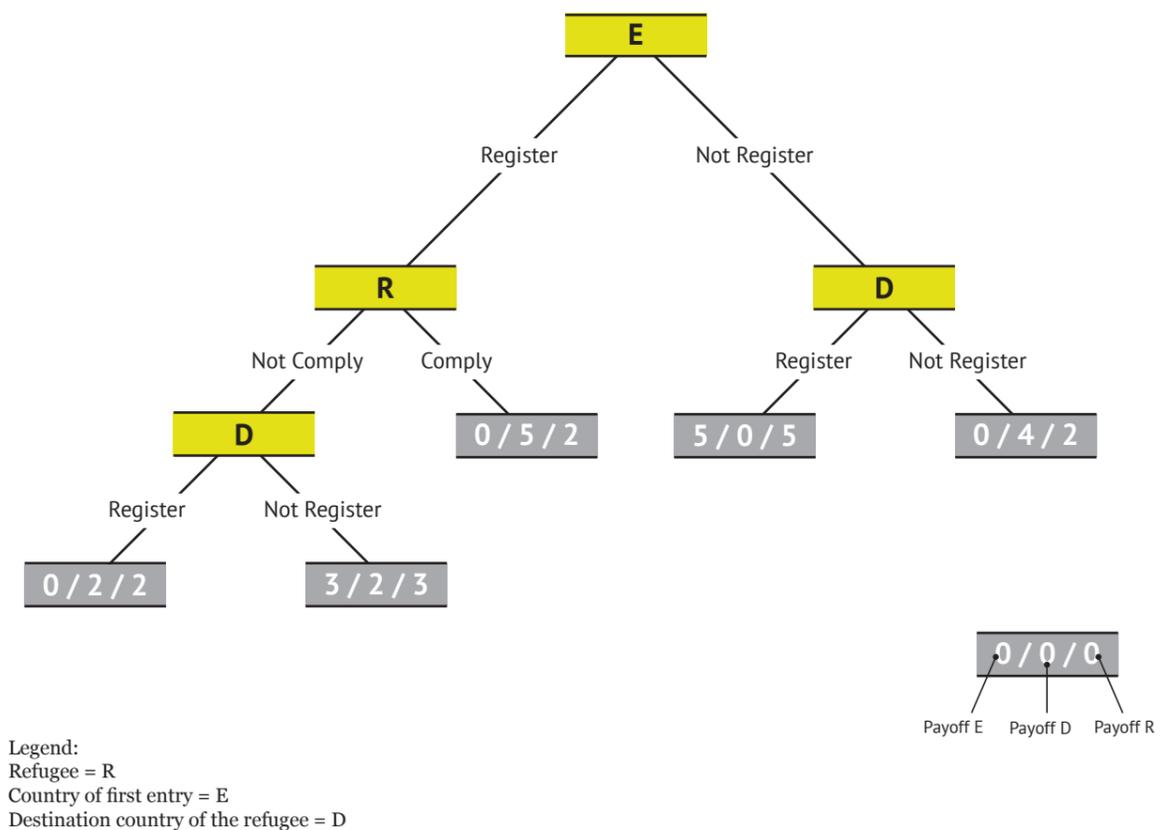
<sup>24</sup> Hatton, Timothy J. 2009. "The rise and fall of asylum: What happened and why?." *The Economic Journal* 119(535): 183-213.

<sup>25</sup> A return scenario where refugees return to the country of origin would also be conceivable, but makes the game much more complicated and is not necessary for the core of this argument.

**Table 1:** Game-theoretical payoffs

Payoff for refugees (R)	Payoff for the country of first entry (E)	Payoff for destination country (D)
Flight fails or is not undertaken at all: 0	Public good of humanitarian protection in another country: 5	Public good of humanitarian protection in another country: 5
Legal residency status: +2	Registration: -2 -> 5-2 = 3	Registration: -2 -> 5-2 = 3
Stay in destination country: +3	R remains in the country: -3 -> 5-2-3 = 0	R remains in the country: -3 -> 5-2-3 = 0
		Return of R to E: -1

**Figure 1:** Sequential game according to Dublin mechanism



- 2.1) R does not comply and D registers: E has cost of -2 for the registration; R travels further. D bears the registration cost of -2 and the cost of the return of -1, and has thus a payoff of 2; R has a payoff of 2 for the legal residency status in E, but not in D. In this scenario, the Syrian family is transferred from Germany to Greece and has a legal residence status in Greece.
- 2.2) R does not comply and D does not register: In this case, D would bear the cost of the illegal stay of R, but no registration costs. R remains in the destination country with a payoff of 3. In this scenario, the Syrian family remains irregularly in Germany.

### E does not register

Regardless of whether R has actively withdrawn from the registration or has been “waved through” by E, R will continue to travel to D and lodge an asylum request there. In a next step, we have to distinguish whether D can prove that R should have been registered in E. If D can do this, it will not register R and will send them back to E.

- 1) D registers and accepts to be responsible for R (register): E has a payoff of 5 as no costs for the registration, proceeding, and hosting of R. For D, there are registration, proceeding, and hosting costs, so D has a total payoff of 0; R has a payoff of 5 (legal residency status in D). In this scenario, the Syrian family can remain with a legal residency status in Germany, their destination country.
- 2) D does not accept the responsibility (not register) and transfers R back to E: E has a payoff 0 as registration, proceeding, and hosting costs. D has a payoff of 4 (-1 for the costs of transfer-

ring the refugee). R has a payoff of 2 for the legal residency status in E. In this scenario, Germany transfers the Syrian family back to Greece. Thus, Greece is responsible for the asylum procedure and the hosting of the family.

By means of backward induction, we can now demonstrate that *not register/not comply* are the preferred strategies of all players, because the expected payoffs are higher, independent of the decisions taken by the other players. The result is a classic public good dilemma: although all countries share the interest in a proper registration of refugees, no country has the incentive to implement this registration by itself. In addition, refugees have the incentive to ignore the Dublin rules (i.e. to travel and live irregularly in the destination country) in order to not be transferred back to the country of first entry. If E does not conduct the registration, D has the incentive to transfer R, although this is not always possible (depending on the situation).

*Although all countries share the interest in a proper registration of refugees, no country has the incentive to implement this registration by itself.*

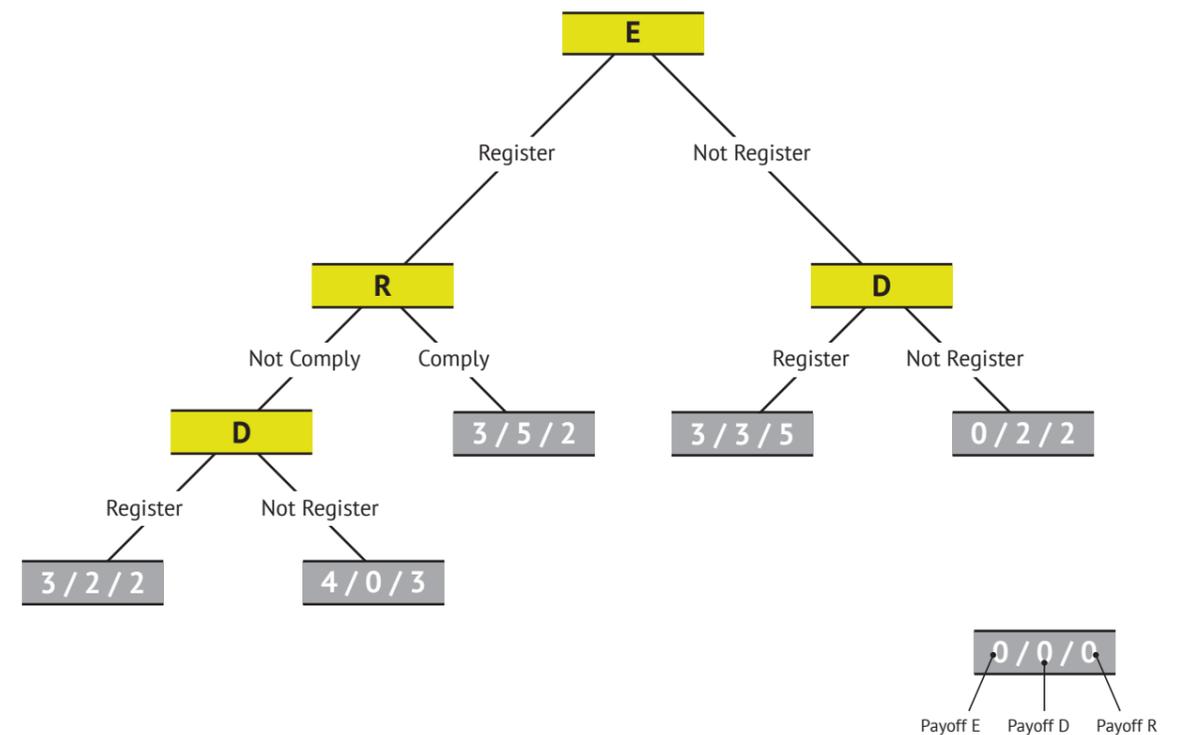
Extending this simplified scenario (not shown in the model), R has an incentive to avoid the risk of this return from D to E and to prefer the irregular stay in D (no registration). This would result in a payoff of (5/2/3) and illustrates once more that avoiding registration and non-compliance are the preferred strategies of the players that are acting under the Dublin Regulation.

## 2.4 First Reflections on a Reform Proposal

Next, we will consider some reform elements to the Dublin Regulation that can be used to change the current system so that registration and compliance become dominant strategies.<sup>26</sup> Main leverage to alter payoffs in favor of compliance could result if the Dublin Regulation sanctions non-compliance (i.e. not-register) (-2) as well as supports countries bearing the cost of registration (+1) and integration (+2) of refugees. In consequence, the corresponding payoffs of the players increase so that compliance becomes the dominant strategy for states (see Figure 2).

Nevertheless, even if registration is the dominant strategy for E and D in this case, R would still have a higher payoff with the strategy of non-compliance. R has incentives not only to ignore the registration in E, but to consciously bypass it, knowing that D will conduct the registration. Thus, even with a system of responsibility sharing among states and/or sanctions for non-compliance, the Syrian refugee family would still try to circumvent the Dublin Regulation and continue the irregular journey to Germany.

**Figure 2:** Sequential game according to the reform proposal



<sup>26</sup> A strategy is dominant when it is preferred in any case independent of the decisions taken by the other players.

Hence, any reform of the Dublin Regulation has to take into account the preferences of the refugees, i.e. the very target group of this regulation. Otherwise, refugees will continue to deliberately ignore the Dublin rules. The Dublin member states should have a strong interest that refugees comply with the rules.

This can only be achieved if the refugees have a greater or at least equal benefit from registration (payoff of compliance  $\geq$  payoff of non-compliance) compared to the irregular journey to and residence in the destination country. We will show in the next chapter how a comprehensive reform could look like to correct the outlined malfunctions of the Dublin Regulation.

## 3. Dublin Reform

Based on the previous analysis, the following chapter will outline the key factors of a successful reform.

*Hence, any reform of the Dublin Regulation has to take into account the preferences of the refugees, i.e. the very target group of this regulation.*

In a second step, we will elaborate and discuss a comprehensive reform proposal that will allow the CEAS to function as

a whole and that has the potential to garner broad political support.

### 3.1 Aims of a Reform

The Dublin system does not meet its expectations and needs a reform – a judgement almost universally recognised. However, the realization of such a reform has hitherto proved to be extremely difficult. Conflicting interests can hardly be brought to a common denominator. The rise of eurosceptic parties and politicians hostile to immigration across Europe, make a reform even more difficult. Before arriving at the concrete elements of a Dublin reform, we first outline the fundamental objectives any Dublin reform should fulfill to be both technically feasible and politically acceptable.

The introduction of the Dublin Regulation is as follows:

*HAVING REGARD to the objective of the harmonization of asylum policies [...] (adopted by the European Council) on 28 July 1951 [...] on the legal status of refugees, hereinafter ‘the Geneva Convention’ The Protocol of New York “– to provide adequate protection to refugees, [...] recognizing the need for action to avoid the creation of situations that lead to [the] free movement of persons, applicants for asylum are left in doubt for too long*

*as regards the likely outcome of their applications and concerned to provide all applicants for asylum with a guarantee that their applications will be examined by one of the Member States and to ensure that applicants for asylum are not referred successively from one Member State to another without any of these States acknowledging itself to be competent to examine the application for asylum [...]*<sup>27</sup>

The basic idea of the Dublin Regulation outlined in these lines can

provide the baseline for a reform. The first priority should still be to effectively fulfill its core function of humanitarian protection for those in need and to efficiently conduct the registration and assessment of the asylum requests. Both, ‘refugees in orbit’ (refugees without clear legal status) and ‘asylum shopping’ (same person requesting asylum in several states) should be prevented. However, the main objectives of the existing Dublin Regulation can serve as guidelines for a reform and address issues that any reform has to consider. In the following, we discuss which benchmarks can be derived from these objectives for reform proposals.

#### 3.1.1 Mutual Incentive to Comply with the Rules

The current asylum system creates strong incentives for refugees to circumvent registration in the country of first entry. Uncertainty about the outcome and duration of

the procedure, as well as the lack of prospects even in the case of granted asylum, increase the incen-

<sup>27</sup>[http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A41997A0819\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A41997A0819(01))

tive for irregular secondary migration. Following the results of the game theoretical analysis, an effective reform must include not only the interests of the countries of arrival but also the refugees. This is the only way to ensure that the rules are not bluntly ignored because they run against fundamental interests of refugees. Regularity has to be sought by all players involved and the Dublin Regulation should

*The first priority should still be to effectively fulfill its core function of humanitarian protection for those in need.*

provide appropriate incentives to guarantee effective registration and processing of refugees.

#### 3.1.2 Resilience to Crises

The chaotic conditions at external and internal borders of the European Union during the last couple of years have shown both the lack of coordination between European countries as well as the lack of political will to strengthen common European responsibility in the provision of humanitarian protection. The current Dublin III regulation already contains approaches with respect to specific crisis scenarios (Article 33). These, however, tend to be rather inert and unhelpful instruments with regard to the current unfolding crisis (e.g. the elaboration of action plans and crisis management plans by singular countries concerned). In fact, the mechanism addresses only country-specific crises, which are clearly limited and selective, rather than those situations that place burden

on the entire system. Thus, in addition to a business-as-usual scenario, a reform should

ensure that a ‘crisis scenario’ is integral part of a common asylum system. This means that the agreement is resilient to both short- and long-term changes in the pattern of humanitarian migration.

Rather than detailed guidance in specific scenarios, this would entail common rules that guarantee responsibility sharing in times of crisis and provides tools for countries to deal with their particular challenges. The agreement should include a definition when the 'crisis scenario' is triggered and of the subsequent political proceeding (e.g. convening special summits, immediate release of funds or the like).

### **3.1.3 Political Feasibility**

Without the support of the member states, a Dublin reform does not only lack democratic legitimacy but also the common political ground to decide on a binding agreement since every member state has to agree to it. In order to reach political feasibility, a reform requires the reconciliation of conflicting national interests. The pooling of national sovereignty is currently extremely unpopular, as indicated by the electoral succession of EU-sceptical parties throughout the continent. The game-theoretical analysis has shown that under the current institutional set-up, non-compliance is often more attractive to individual states than joint action. A reformed Dublin system must be designed in such a way that cooperation is more attractive than unilateral action with negative externalities for the other countries. The implementation of the reform faces a dilemma: the current crisis needs a common European response, which is difficult to implement in light of current wave of euroscepticism. On the other hand, both the peripheral and the central/northern European countries have a great interest in improving the current system to guarantee its proper func-

*Thus, in addition to a business-as-usual scenario, a reform should ensure that a 'crisis scenario' is integral part of a common asylum system.*

*Therefore, we propose the decoupling of jurisdiction for the registration from the jurisdiction for the processing of the asylum request.*

tioning. In the following, we are developing a reform proposal which not only promises to improve the overall system, but also has the potential to garner support from countries with different interests.

### **3.2 A Comprehensive Dublin Reform**

The game-theoretical analysis has shown that the Dublin system is trapped in a public good dilemma and that fundamental reforms are necessary to ensure the survival of the CEAS. The basic idea of the Dublin Regulation does not have to be abandoned, but new approaches are needed, that provide both member states and refugees with incentives to comply with the rules.

#### **3.2.1 Effective Registration System**

The registration of refugees upon their arrival in Europe is the foundation for a proper functioning of common European responsibility. To ensure functioning registration at the moment when refugees enter the European Union, the existing incentives for refugees and the states have to be altered. Therefore, we propose the decoupling of jurisdiction for the registration from the jurisdiction for the processing of the asylum request. This decoupling changes the incentives for both the refugees and the member states. In this way, the registering states and the registering refugees can derive a direct benefit from the registration and thus receive an incentive to register: refugees are given a regular status as soon as they enter the European Union, and they can then be legally transferred to the country in which the asylum

request is assessed. The registration costs are significantly lower than the costs for the complete asylum procedure. Thus, the entry states are substantially relieved since they primarily have to ensure a regular and safe entry without automatically accepting the responsibility for the asylum procedure. States now have an incentive to register all arriving refugees to ensure a regular journey to the subsequent destination country.

At the time of registration, it is to be decided in which Dublin country the asylum procedure shall be carried out. This requires binding rules of responsibility and a common European distribution system, which is explained in the next section.

#### **3.2.2 Distribution of Refugees**

In order to provide all refugees seeking protection in Europe with the right to a proper asylum procedure, a fair distribution mechanism is needed that takes into account both the needs of refugees and the capacities of national asylum systems.

#### **A. European Distribution Key**

In 2015, the European Union agreed upon the introduction of a temporary quota system for refugees in order to relocate them among member states. In a first step, 160,000 refugees in Greece and Italy were to be relocated to other member states in order to temporarily relieve the two peripheral countries. The distribution key the countries agreed upon takes the following criteria into account (weights in brackets): population of the member state (40%); GDP per capita (40%), number of refugees already

*In the long-run, a continuous and stable coordination of national asylum systems is needed. This could be based on the already existing distribution key as described above.*

admitted (10%) and unemployment rate (10%).<sup>28</sup> In the long-run, a continuous and stable coordination of national asylum systems is needed. This could be based on the already existing distribution key as described above. In addition to demographic and economic factors, the key takes also structural differences between member states into account, and assigns a lower quota to an economically weaker country. Such a distribution key acknowledges the different prerequisites of the countries and is therefore more likely to garner sufficient political support.

#### **B. Taking the Preferences of Refugees into Account**

A distribution mechanism will only function if the preferences of the refugees are taken into account in the distribution process. This is achieved by adapting the Dublin Agreement so that during the registration in the country of first entry, refugees can decide their country of destination where their asylum request will be processed.

A similar approach would be that refugees can designate those member states in which they accept the processing of their asylum request. By thus having an influence on their own fate, the acceptance of the assignment decision by refugees could be substantially increased. This would ultimately counter the phenomenon of secondary migratory movements.

<sup>28</sup> [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_annex\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_annex_en.pdf)

### **C. Financial Compensation Mechanism**

Not all countries are equally attractive for refugees due to their social networks, life prospects, and integration opportunities such as the language, employment market, or political stability. Naturally, there already are, and will be, fluctuations in the shares of refugees to the member countries. In order to share responsibility and financial costs and to assist individual states receiving large numbers of refugees, we propose a financial compensation mechanism to be set in place. This would ensure that member states which receive significantly more refugees receive support according to the European distribution key and are financially compensated for the additional strain on their national asylum system. Such a solidarity fund would be financed by those member states which receive significantly fewer refugees than proposed by the distribution key. Compensation payments are triggered as soon as a member state exceeds or falls below the quota calculated under the distribution key by more than one person. The fact that certain member states are less attractive to refugees and have lower capacities is not to be taken into account for the calculation of the financial compensation, since the distribution key already includes demographic and economic differences between member states. Currently, states aim to be as unattractive as possible for refugees by tightening and their asylum policies and by deliberately creating obstacles for a successful integration. By contrast, the new system might have a further positive effect that members states aim to be more attractive and receptive for refugees and thus enable a successful integration. Furthermore, a financial compensation mechanism

accounts for the principle of flexible solidarity in the sense that states contribute to common European responsibility in accordance with their particular resources and capabilities.<sup>29</sup>

### **D. Temporary Solidarity Clause**

The emergence of fast-changing migration routes and high fluctuations, which can bring member states at their limits of infrastructure and resources, is exogenous to the Dublin Regulation. In such situations, it should be possible for the affected member states to suspend the admission of new refugees for a certain period of time. We propose the introduction of a solidarity clause in the Dublin Convention which member states can invoke if they experience a sharp increase in their share of total asylum applications (for example > 150% of the three-year average) or receive over 150% of their quota.<sup>30</sup>

### **Example of relative share (model 1):**

Over the past three years, Switzerland has received an average of 4% of all refugees fleeing to Europe. If this share reaches more than 6% within one year, Switzerland can decide whether it wants to admit more refugees or to impose a temporary halt. If Switzerland activates the solidarity clause, refu-

<sup>29</sup> Solon Arditis, (2016) Flexible solidarity: the EU is rethinking its refugee relocation system. LSE Blog, <http://blogs.LSE.AC.UK/brexit/2016/10/10/flexible-solidarity-the-EU-is-rethinking-its-refugee-relocation-system/>

<sup>30</sup> The European Commission proposes a corrective distribution mechanism for a further development of the Dublin system (Dublin IV), if a country has recorded 150% of the quota calculated in accordance with the distribution key. The European Council on Refugees and Exiles (ECRE) criticized the threshold of 150% as arbitrary and undermining solidarity and proposed the relocation of refugees when reaching 100%. Therefore, our proposal takes the middle path by providing financial compensation for refugee admission between 100 and 150% of the distribution quota combined with a temporary stop when 150% is reached. <http://www.ecre.org/wp-content/uploads/2016/10/ECRE-Comments-Dublin-IV.pdf>

## **Concomitant measures**

### **A. Support for Schengen border & capacity building**

If the registration of refugees is to work as planned, the Schengen states should be supported in expanding their infrastructure. This is especially true for the Eastern European member states which until recently had not been the focus of European asylum policy and therefore were not among the most favored member states of the Asylum, Migration and Integration Fund (AMIF) and the Internal Security Fund (ISF). Given the current situation, it would therefore be appropriate for the EU to extend financial support to the Eastern member states for their asylum infrastructure as part of the structural funds policy. However, not just financial support, but also the transfer of experience and best practices is important for the successful re-establishment of the registration obligation. An enhanced exchange of knowledge between the member states should be promoted.

### **B. Unilateral relief measures**

As a short-term measure of solidarity, it is conceivable that states exercise their sovereign right to admit refugees even if the Dublin Regulation would allow them to send already registered refugees back to the overburdened countries of first entry. With such a measure, states can not only increase their foreign-policy reputation, but also contribute directly to a selective relief of peripheral countries.

### **C. Creation of legal migration routes**

Another approach for relieving the peripheral countries of first entry is to increase the number of legal entry pathways for refugees. For example, the reintroduction of the possibility to file an asylum request on European embassies, the facilitation of admission to humanitarian visas or the admission of quota refugees, which are selected by the United Nations directly on the region of origin and then can safely travel to a destination country. In the long run, the opening of legal migration routes is the only sustainable solution to prevent dangerous journeys and irregular entry of refugees.

gees can choose an alternative destination country or they can join a waiting list until the situation in Switzerland has subsided.

### **Example of contingent (model 2):**

According to the calculated quota, Switzerland should take in 3% of all refugees in the Dublin area. If Switzerland has admitted 4.5% of all those who have fled to Europe, they can decide whether they want to admit more refugees or to impose a temporary halt. If Switzerland activates the solidarity clause, refugees can choose an alternative destina-

tion country or they can join a waiting list until the situation in Switzerland has subsided.

### **3.2.3 Advantages Against Alternative Proposals**

#### **A. Dublin Reform Proposal by the European Commission**

The European Commission is aware of the institutional shortcomings of the Dublin procedure and is therefore trying to reform the European asylum system by proposing three reform elements. First,

the European Commission proposes a centralization of the CEAS by creating a fully-fledged European Union Agency for Asylum.<sup>31</sup> This would reduce coordination problems between countries. However, it is unlikely to find the support of the member states because the proposal involves a substantial transfer of sovereignty from member states to the EU. Our proposal avoids this strong interference with the sovereignty of the states and is therefore more likely to garner political support. Second, the so-called ‘Turkey deal’ between the EU and Turkey on the readmission of persons who entered the EU irregularly cannot offer long-term solutions because it does not include any European-level coordination. Third, the main policy proposal of the European Commission aims to relocate refugees within Europe according to a distribution key. This attempt has largely failed so far, precisely because of a lack of incentives by both the refugees and the member states. The refusal of Eastern member states to accept refugee resettlement remains strong also after the EU Commission launched an infringement procedure against them.<sup>32</sup> Our analysis has illustrated that this disincentives for cooperation are enshrined in the current Dublin system. In order to contribute to a better match between refugees and states, the agency of refugees should be taken into account. The European Commission recognizes this possibility but rejects it for reasons of solidarity and fear of increased attraction as asylum destination.<sup>33</sup>

<sup>31</sup>[http://europa.eu/rapid/press-release\\_IP-16-1620\\_en.htm](http://europa.eu/rapid/press-release_IP-16-1620_en.htm)

<sup>32</sup> <http://www.euractiv.com/section/justice-home-affairs/news/eu-opens-sanctions-procedure-against-hungary-poland-and-czech-republic-over-refugees/>

<sup>33</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160406/towards\\_a\\_reform\\_of\\_the\\_common\\_european\\_asylum\\_system\\_and\\_enhancing\\_legal\\_avenues\\_to\\_europe\\_-\\_20160406\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160406/towards_a_reform_of_the_common_european_asylum_system_and_enhancing_legal_avenues_to_europe_-_20160406_en.pdf), S. 7.

The proposal of the *foraus* authors demonstrates how the agency of refugees can be combined with European solidarity while ensuring that there is no significant shift in the distribution of refugees across Europe.

### B. Matching Procedures

The idea of asylum matching is to align the preferences of the states with the preferences of the refugees in order to ensure the most effective and efficient protection of refugees and to allow for their successful integration into the host society.<sup>34</sup> Refugees take rational decisions by selecting the destination country in which they expect the best perspective for their new life. The proposal of the *foraus* authors offers an effective solution to the matching problem by providing refugees with more autonomy in the selection of the destination country. This is much more effective and efficient than a centralized European bureaucracy, which would strive to keep track of the preferences of states and refugees in order to ensure a proper match. A market-based alternative would be the introduction of tradable admission quotas for refugees. Nonetheless, such a solution will hardly find political support, essentially because of moral concerns (“market for refugees”).<sup>35</sup> In comparison, our proposal is the more realistic option.

<sup>34</sup> Fernández-Huertas Moraga, Jesús, and Hillel Rapoport (2015) Tradable refugee-admission quotas and EU asylum policy. *CEifo Economic Studies* 61.3-4: 638-672. [http://www.nytimes.com/2016/01/30/opinion/ending-the-refugee-deadlock.html?\\_r=0](http://www.nytimes.com/2016/01/30/opinion/ending-the-refugee-deadlock.html?_r=0)  
Schuck, Peter (1997). «Refugee Burden-Sharing: A Modest Proposal», *Yale Journal of International Law*, 22: pp. 244-297.

<sup>35</sup> Michael Sandel (2012). *What Money Can't buy: the Moral Limits of Markets*. New York: Farrar, Straus and Giroux.

### 3.2.4 Similar Reform Proposals

Our reform proposal develops a comprehensive approach to reform the European Dublin Regulation. However, a number of other publications have brought up similar ideas – in particular the idea to take into account the preferences of refugees. Two interesting reform proposals have been outlined by German NGOs.<sup>36</sup> The so-called ‘free-choice model’ calls for a free choice of the destination country by refugees, accompanied by a financial compensation for countries hosting more refugees than others. The second idea is the ‘Dublin and free choice model’<sup>37</sup> that would like to continue the registration and asylum procedures in the country of first entry, but refugees may choose their destination country once they are granted protection. The European Green Party proposes a distribution of refugees, taking into account criteria such as family ties, language skills, links to the local diaspora, professional qualifications, past stays or working relationships.<sup>38</sup> Such distribution criteria may correspond better to the refugees’ actual preferences of destination country. In addition, refugees who have been granted protection should exercise the prerogative of freedom of movement within the EU. The reform presented by us has already been briefly outlined in a recent Swiss publication by Johan Rochel.<sup>39</sup>

*Refugees take rational decisions by selecting the destination country in which they expect the best perspective for their new life.*

While the analysis of the problem is similar in these various reform proposals from civil society, they propose different models to resolve the causes of the asylum-policy crisis. What they have in common is the aim to overcome the ineffective and inefficient Dublin system and to stimulate a political debate about a sustainable CEAS.

<sup>36</sup> <https://www.proasyl.de/news/memorandum-Freie-Wahl-fuer-fluechtlinge/>

<sup>37</sup><https://www.svr-migration.de/en/press/press-expert-council/svr-releases-2015-annual-report/>

<sup>38</sup> [http://www.greens-efa.eu/leadadmin/dam/Documents/Policy\\_papers/Dublin\\_system/2016-02-25\\_Dublin\\_paper\\_DE.pdf](http://www.greens-efa.eu/leadadmin/dam/Documents/Policy_papers/Dublin_system/2016-02-25_Dublin_paper_DE.pdf)

<sup>39</sup> Johan Rochel (2016). *Die Schweiz der Andere*. Zürich: NZZ Libro Verlag. Johan Rochel is lawyer, political philosopher and former Vice President of *foraus*.

## 4. Conclusions

The humanitarian migration of people seeking protection in Europe has become a major challenge to the continent's political capacity to conduct common political action. In any case, refugee numbers to Europe are likely to remain on a high level in the foreseeable future. Therefore, Europe needs to address this issue that not only divides the continent but also threatens to undermine the institutions of the European Union. A large majority of 68 percent of the European population agrees that there should be a common policy on immigration what should not be left unheard.<sup>40</sup> In the recent crisis, Europe did not just fail to provide humanitarian protection as a common public good, but countries employed beggar-thy-neighbour policies and shirked their responsibilities. As a result the CEAS has partly disintegrated and has proven ineffective at precisely the moment when it was urgently needed.

In this paper, we have illustrated that the ineffectiveness of the Dublin Regulation rests upon the design of the Dublin mechanism itself that undermines its functioning by providing disincentives to compliance for the actors involved. The rule that the country of first entry bears in most cases the responsibility to register, process, and host refugees has created a situation where both refugees and the member states have strong incentives to not carry out registrations. To restore an effective system of shared responsibility, these

disincentives need to be altered into incentives. Based on a game-theoretical analysis we demonstrated how the Dublin Regulation affects the behavior of refugees and member states. The Dublin Regulation does not take into account the preferences of refugees when deciding about the responsibility for processing an asylum request. The unintended but inevitable consequences of this current system are that refugees will try to avoid registration or move to another country even after their registration in the country of first entry. A European asylum coordination can only work in practice if it takes into account how the policy affects the relevant actors, i.e. target group, and how they react to a political regulation. The comprehensive reform proposed in this paper incorporates both the preferences of refugees and member states and offers benefits to the member states when they provide the public good of humanitarian protection.

The attempts of the European Commission to resettle refugees across Europe in order to share responsibility among the member states do not address the core problem of disincentives to non-compliance for refugees. For this reason, the relocation program did not roll out as envisaged. Neither member states nor refugees have a genuine interest in participating in the relocation program. Alternative scholarly proposal to reform the CEAS, such as a matching system or tradable admission quota, are interesting thought experiments, but too technical and lacking realistic potential to be implemented. A matching model would require a complicated assessment of the preferences of the

member states and the refugees, which can hardly be effectively implemented in practice. A market for humanitarian protection would most likely be perceived as immoral and is therefore not likely to gain significant political support.

The reform proposal outlined in this paper avoids these problems and offers a solution that not only alters the actor's incentive in a favorable direction, but also comes with a policy design that is likely to reconcile diverging interests in Europe and brings along a rather easy practical implementation. In general, any reform proposal requires rules to determine responsibilities for the registration of refugees and for the processing of the asylum requests. Our reform proposal is based on three basic rules:

- 1) Every refugee has the right to apply for asylum in one European state of his or her choice.
- 2) The registration of refugees lies in the responsibility of the country of first entry to European territory. It does not include the responsibility to process an asylum request.
- 3) The costs of the asylum processing system are shared by the member states based on a European distribution key.

This threefold reform overcomes the shortcomings revealed by the game-theoretical analysis. Both refugees and member states are provided with an incentive to carry out an effective registration. The separation of the registration responsibility from the responsibility of processing asylum request removes the central disincen-

tive for states: they no longer face the risk that by registering arriving refugees they are also assigned the responsibility for the processing and hosting this asylum seeking person. Refugees, on the other hand, no longer face the risk that with the official registration in the arrival country they lose their right to ask for asylum in their preferred destination country. Furthermore, refugees should only be able to apply for asylum in one state. This rule guarantees an asylum procedure for each person while avoiding so-called 'asylum shopping' where individuals file different requests in multiple European countries. The increased effectiveness of refugee registration and asylum request processing yields benefits for all actors involved. The business model of human trafficking of refugees is destroyed, at least within Europe. The sufferings of refugees are reduced and the social-economic integration of refugees is facilitated. Last but not least, the reform provides the necessary political tools to respond to this humanitarian crisis.

Reforming the Dublin Regulation requires an agreement among all member states and, hence, to find common ground despite diverging national interests. The current crisis can only be solved by European cooperation because of the transnational nature of the refugee challenge. A Dublin reform must therefore offer specific benefits for all European countries in order to make this reform attrac-

tive to individual states and to allow for fair cooperation. Our proposal outlines an elaborated concept of how the Dublin Regulation can be reformed and is both technically feasible and politically realistic for the following five reasons:

*The comprehensive reform proposed in this paper incorporates both the preferences of refugees and member states and offers benefits to the member states when they provide the public good of humanitarian protection.*

*Both refugees and member states are provided with an incentive to carry out an effective registration.*

<sup>40</sup> Eurobarometer (2015) 'Public Opinion in the European Union', Standard Eurobarometer 84.

- 1) States hosting a high numbers of refugees will receive financial and logistical support (e.g. Germany or Sweden)
- 2) Peripheral states, that are first entry points to European territory for many refugees, will no longer bear the main responsibility for the processing and hosting of refugees (e.g. Italy or Greece)
- 3) States that host only few refugees will not be obliged to accept relocations of refugees to their countries (e.g. Slovakia or Poland), but will be able to bear their share of the European responsibility by financial contributions.<sup>41</sup>
- 4) All states reap the benefits of an effective CEAS: cooperation will restore rule of law and regular procedures while avoiding negative externalities of unilateral policies by member states. The phenomenon of refugees in orbit (person without clear legal status) as well as asylum shopping (the same person with asylum requests in several states) can be avoided more effectively. The rule that refugees' preferences of destination country are taken into account, facilitates the fast and successful integration of refugees because they can go where they assess their future life perspective as best. Lastly, political tensions between European countries can be reduced, as well as the predictability of the refugee processing is improved.
- 5) Assurance for states: On the one hand, states will be given the guarantee that European assistance will be provided in the event of a

sudden increase in the numbers of refugees. On the other hand, the Solidarity Clause allows states to activate measures to attenuate high numbers of asylum request in a single country. Likewise, a European solution guarantees that individual states will not take unilateral measures that could harm other states.

In this paper, we have shown that reforms of the CEAS are necessary to maintain its functioning as well as to ensure the proper functioning in case of future challenges. However, the current crisis can be a window of opportunity to reform the existing Dublin Regulation and to build a European asylum coordination on a sustainable basis. This paper provides important ideas for policy makers and a basis for arguments to push forward the reform debate.

---

<sup>41</sup> The Visegrad countries Poland, the Czech Republic, Slovakia and Hungary have stated in a joint statement that they prefer a flexible solidarity in which the contributions of the individual countries are based on their different conditions. They also oppose the compulsory redistribution of refugees in Europe. The reform proposal for the reform fulfils these two conditions and may therefore also hope for political support in the immigration-critical Central Eastern European countries.

# Become part of the global *foraus* network

## ***as a member***

A membership in our unique network and a voluntary involvement at *foraus* is open to everyone. We offer you access to an extraordinary network, fascinating personalities, and the possibility to bring your academic know-how into the public debate.

## ***as an author***

*foraus* enables you to tackle the challenges in Swiss and international foreign policy and offers you a platform where you are invited to publish your innovative ideas in the form of a discussion paper, a short analysis or a blog.

## ***as a benefactor***

Our circle of benefactors, the «Cercle des Donateurs», contributes to the dissemination of the sponsorship, and offers interested personalities the possibility to support and promote *foraus*.

## Most recent publications

*foraus* Policy Brief

**The Option of Association: The United Kingdom Post-Brexit and the European Free Trade Association**

*foraus* White Paper

**International Humanitarian Law 2.0. How to Update the Law of War to Address New Challenges on Today's Battlefields?**

*foraus* global Policy Brief  
**europe.think.again**

[www.foraus.ch](http://www.foraus.ch)

**Zürich** | *foraus* – Forum Aussenpolitik | Röschibachstrasse 24 | 8037 Zürich  
office@foraus.ch | +41 44 501 68 65

**Genève** | *foraus* – Forum de politique étrangère | c/o IHEID | CP 136 | 1211 Genève 21  
bureau\_romandie@foraus.ch | +41 22 908 44 56

IBAN: CH06 0900 0000 6017 6892 9