



The Dublin system in 2017

Overview of developments from selected European countries

March 2018



2017 was marked by complex and divisive negotiations between European Union Member States on the reform of the Dublin Regulation,¹ the “cornerstone” of the Common European Asylum System.² These debates illustrate the inherent dysfunction of the system of allocation of responsibility for asylum seekers and the persisting lack of a shared vision among European governments to make it work.³ The discussions within the Council of the European Union remain sensitive, politically charged and difficult to navigate, despite recent encouragement from the current Presidency towards progress on technical aspects of the Regulation.⁴

Alongside these discussions, governments have also renewed domestic commitments to increase and strictly enforce transfers under the Dublin system. A recent French Ministry of Interior instruction identified Dublin transfers as a priority objective and urged Prefectures across the country to systematically issue requests to other European countries, to place asylum seekers falling in Dublin procedures under house arrest from the moment their claims are registered, and to set aside specific accommodation places to that end.⁵ The Italian Minister of Interior, for his part, announced the establishment of a stricter Dublin procedure in the north eastern region of the country with support from the European Asylum Support Office (EASO), with a view to carrying out transfers of asylum seekers to countries of first entry.⁶ The Belgian Secretary of State for Asylum and Migration had already stated in 2016 that Belgium “would work harder on increasing Dublin transfers for 2017.”⁷

Against this backdrop, there is great need for up-to-date evidence from the application of the Regulation on the ground to inform the debate on the Dublin system and the administrative and human costs of its operation.

This statistical update provides an overview of 2017 statistics and practice relating to the Dublin system from the countries covered by the Asylum Information Database (AIDA). Given persisting gaps in the provision of timely and comprehensive Europe-wide data,⁸ the update relies on figures made available by national authorities in 18 European countries.

¹ European Commission, *Proposal for a [Dublin IV Regulation]*, COM(2016) 270, 4 May 2016.

² European Council, *The Stockholm Programme – An open and secure Europe serving and protecting citizens*, OJ 2012 C115/32, para 6.2.

³ See e.g. AIDA, ‘CEAS reform: State of play of negotiations on the Dublin IV Regulation’, 30 November 2017, available at: <http://bit.ly/2GgaFS1>.

⁴ For a discussion, see ECRE, *Beyond solidarity: Rights and reform of Dublin*, February 2018, available at: <http://bit.ly/2FUJzyE>.

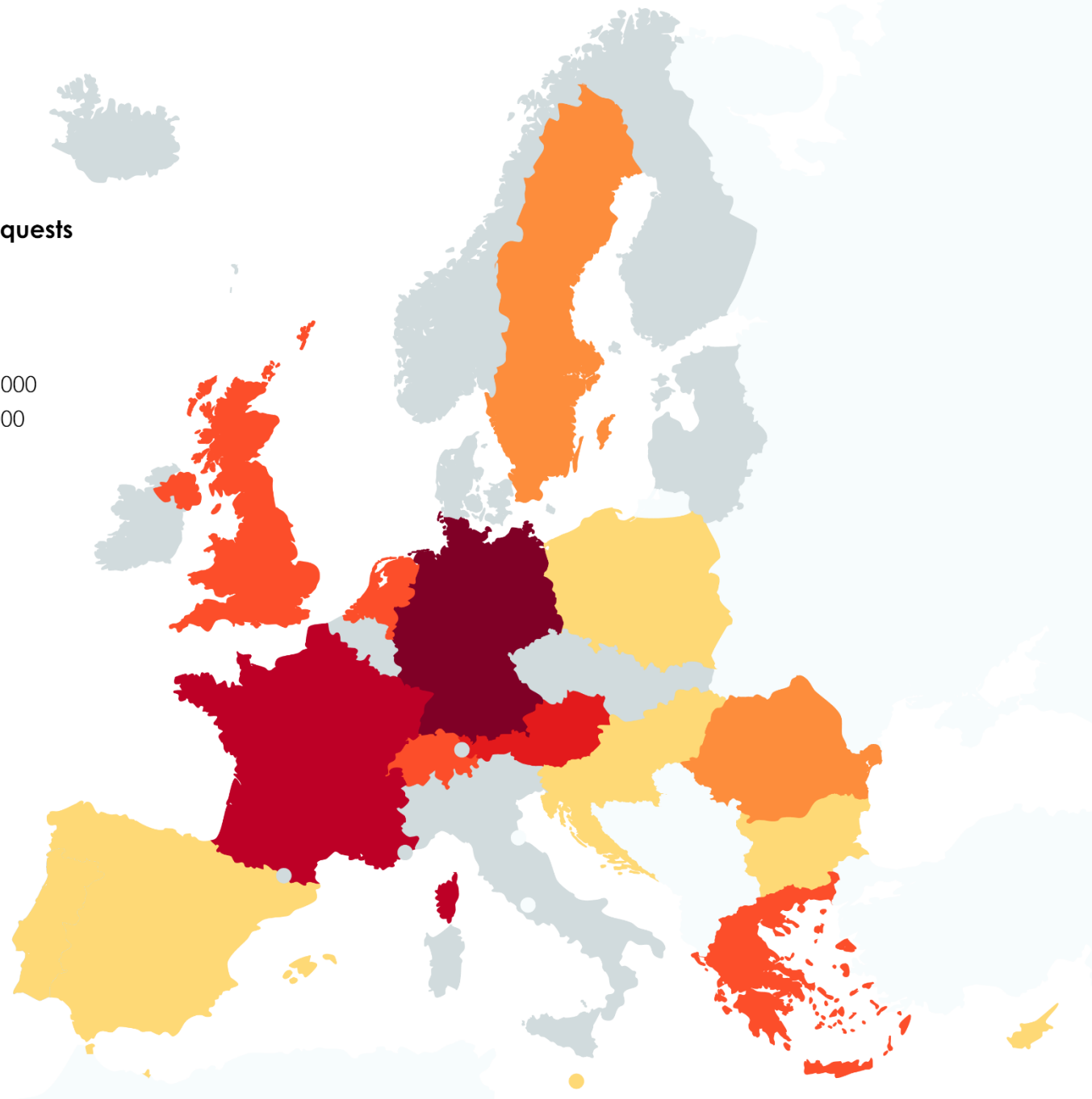
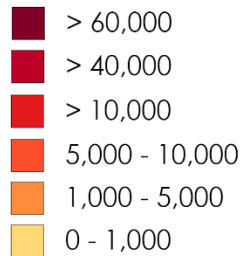
⁵ French Ministry of Interior, Instruction No INTV1730666J of 20 November 2017 “Objectifs et priorités en matière de lutte contre l’immigration irrégulière”, available in French at: <http://bit.ly/2mbcFBf>.

⁶ Italian Chamber of Deputies, ‘Minniti: regolamento di Dublino III e applicazione in Italia per l’immigrazione’, 20 December 2017, available in Italian at: <http://bit.ly/2F6xKZa>.

⁷ Belgian Chamber of Representatives, *General Policy Note on asylum and migration*, 27 October 2016, available in French and Dutch at: <http://bit.ly/2mrlIW4>, 28.

⁸ See also AIDA, *The Dublin system in the first half of 2017*, August 2017, available at: <http://bit.ly/2wyoCg6>.

Outgoing requests



The dominant role of **Germany** in the operation of the Dublin system appears a continuing trend, with a record number (64,267) of Dublin procedures initiated in 2017. This figure should be read in the light of 745,545 asylum applications registered in 2016 and another 222,683 in 2017, far ahead of all other countries in the continent. Germany was the top sender of Dublin requests in the majority of countries (**Austria, Bulgaria, Spain, Greece, Hungary, Poland, Portugal, Romania, Sweden, Switzerland**).

At the same time, a substantial number of Dublin procedures were conducted by **France** (41,500), as well as **Austria** (10,490) and **Greece** (9,784).

The 'dead letter' hierarchy: prevalent criteria

In its study on the implementation of the Dublin III Regulation, the United Nations High Commissioner for Refugees (UNHCR) found inconsistency in European countries' compliance with the hierarchy of criteria, with many disregarding the primacy of the family provisions and/or applying restrictive

conditions to reject incoming requests on those grounds. Instead, authorities tend to give priority to entry-related criteria.⁹

These observations are corroborated by available figures from a selected number of countries (Greece, Switzerland, United Kingdom, Romania and Slovenia) for 2017:

Outgoing Dublin requests by criterion: 2017						
Dublin III Regulation criterion	GR	CH	UK	RO	SI	PT
Family provisions	7,606	76	233	33	2	1
Documentation and entry	18	2,870	1,506	21	107	33
Dependency and humanitarian clause	1,642	50	2	11	1	6
“Take back” requests	518	5,374	3,971	1,207	632	183
Total outgoing requests	9,784	8,370	5,712	1,272	742	250

The family provisions¹⁰ formed the basis of no more than 0.4% of outgoing requests by **Portugal** and **Slovenia**, 1.5% by **Switzerland**, 3.4% by **Romania** and 4.1% and by the **United Kingdom**. The majority of requests issued by these countries were grounded in entry-related criteria or “take back” cases regarding previous asylum applications in another country.

In the same vein, 41,850 of the record-high 64,267 outgoing requests (65.1%) issued by **Germany** in 2017 were based on Eurodac ‘hits’,¹¹ while 3,200 of the 3,654 requests (87.6%) sent by **Sweden** were based on a ‘hit’ in Eurodac or the Visa Information System (VIS).¹² The majority of requests issued by **Croatia**, 101 out of a total of 123 (82.1%) were “take back” requests.¹³

A worrying related trend is emerging in **Italy**, traditionally conceived as a country of first entry and thereby a recipient of Dublin requests and transfers. Although statistics on the application of the Regulation are not available, the Ministry of Interior has started implementing a specific Dublin procedure in police authorities (*Questure*) in the Friuli-Venezia Giulia region bordering Austria and Slovenia, in response to an increasing number of asylum seekers entering in Italy. Civil society organisations have witnessed an unprecedented acceleration of the procedure in the *Questure* of Trieste and Gorizia in January and February 2018, where applicants are notified of a Dublin transfer decision within one or two months of arrival and fingerprinting in Italy. In many cases the *Questure* notify the transfer decision without even proceeding with the lodging (*verbalizzazione*) of the asylum application, as they set the lodging appointment at a distant date to be able to obtain replies from the requested countries beforehand. Subsequently, they cancel the lodging appointments, as a result of which asylum seekers have no authorisation to stay in Italy, without being informed about the procedure or given the possibility to highlight any family links or vulnerabilities. The authorities in Friuli-Venezia Giulia are reportedly organising mass transfers towards Austria and Slovenia, with some already implemented in February 2018.¹⁴

On the other hand, **Greece** remains the best example of systematic use of the family provisions and discretionary clauses of the Dublin Regulation. The Greek Dublin Unit issued 7,606 requests out of a total of 9,784 based on the family criteria. However, these requests have often been read restrictively

⁹ UNHCR, *Left in Limbo: Study on the implementation of the Dublin III Regulation*, August 2017, available at: <http://bit.ly/2kPx9SX>, 86 et seq.

¹⁰ Articles 8-11 Dublin III Regulation.

¹¹ AIDA, Country Report Germany, 2017 Update, March 2018, available at: <https://bit.ly/2lpbOqa>, 27.

¹² AIDA, Country Report Sweden, 2017 Update, March 2018, available at: <https://bit.ly/2E20Sfw>, 27.

¹³ AIDA, Country Report Croatia, 2017 Update, March 2018, available at: <https://bit.ly/2Hb4hvE>, 33.

¹⁴ AIDA, Country Report Italy, 2017 Update, March 2018, available at: <https://bit.ly/2Ga01zb>, 42-43.

by recipients of family-related requests. On the one hand, countries such as Austria have rejected family reunification requests for cases where one family member had already reached its territory, on the ground that the family had been deliberately separated.¹⁵ On the other hand, for requests sent within three months from the lodging of the application in Greece but well beyond three months from the making of the claim, countries such as Germany have relied on the interpretation of the Regulation by the *Mengesteab* ruling of the Court of Justice of the European Union (CJEU) to reject requests as being submitted too late.¹⁶

It should be noted that the *Mengesteab* ruling has had a broader impact on German practice. Prior to the judgment, Germany held that the time limit for sending a request started running from the point of lodging of an application rather than the applicant’s expression of intention to apply.¹⁷

The discretionary clauses

The use of the “dependent persons” clause¹⁸ and the “humanitarian” clause,¹⁹ offering complementary avenues for asylum seekers to be reunited with family members based on need or humanitarian considerations, remained equally limited in 2017. The following figures refer to the use of the “humanitarian” clause under Article 17(2) of the Regulation in selected countries:

Outgoing requests based on the “humanitarian” clause: 2017			
*	“Humanitarian” clause requests	Total requests	Percentage
GR	1,500	9,784	15.3%
BG	21	162	13%
RO	11	1,272	0.9%
PT	6	234	2.6%
HU	2	896	0.2%
SI	1	742	0.1%
UK	0	5,712	0%
ES	0	11	0%

Greece, on the other hand, issued 1,500 requests based on the “humanitarian” clause, often applied in cases where the three-month time limit for issuing a request had expired. These requests have usually been rejected by other countries, however.²⁰

¹⁵ AIDA, Country Report Austria, 2017 Update, March 2018, available at: <http://bit.ly/2tmJVfW>, 29.

¹⁶ CJEU, Case C-670/16 *Mengesteab*, Judgment of 26 July 2017.

¹⁷ AIDA, Country Report Germany, 29.

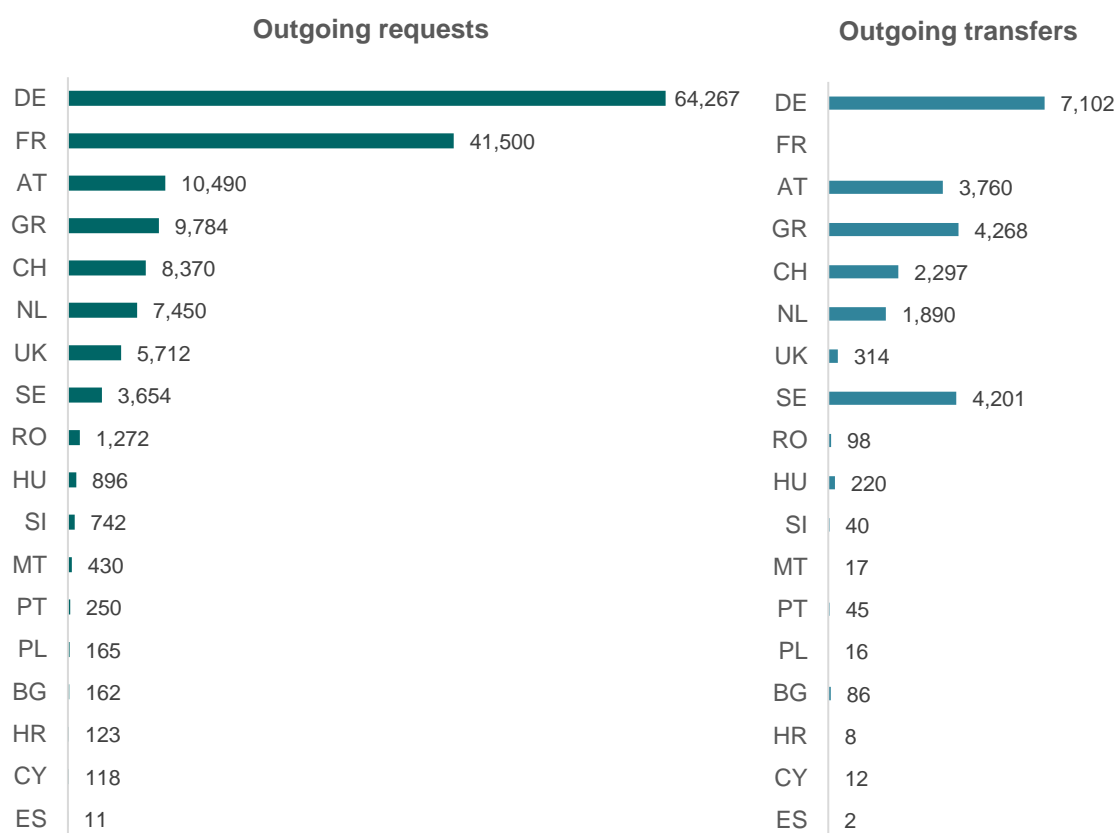
¹⁸ Article 16 Dublin III Regulation.

¹⁹ Article 17(2) Dublin III Regulation.

²⁰ AIDA, Country Report Greece, 2017 Update, March 2018, available at: <http://bit.ly/2G5vKP2>, 56.

The 'efficiency' question: transfers

European countries carried out the following numbers of outgoing transfers during 2017:



As illustrated by the above statistics, the renewed political impetus for Dublin transfers has resulted in a sizeable increase in effective transfers in 2017 compared to the year before:

Rate of outgoing Dublin transfers per requests: 2016-2017						
*	2016			2017		
	Requests	Transfers	Rate	Requests	Transfers	Rate
DE	55,690	3,968	7.1%	64,267	7,102	11%
AT	21,293	2,582	12.1%	10,490	3,760	35.8%
GR	4,886	946	19.3%	9,784	4,268	43.6%
CH	15,203	3,750	24.6%	8,370	2,297	27.4%
BG	134	16	12%	162	86	53.1%
CY	157	62	39.4%	118	12	10.2%
HU	5,619	213	3.8%	896	220	24.5%
PL	180	82	45.5%	165	16	9.7%
MT	120	12	10%	430	17	4%
HR	57	12	21%	123	8	6.5%
ES	10	2	20%	11	2	18.2%

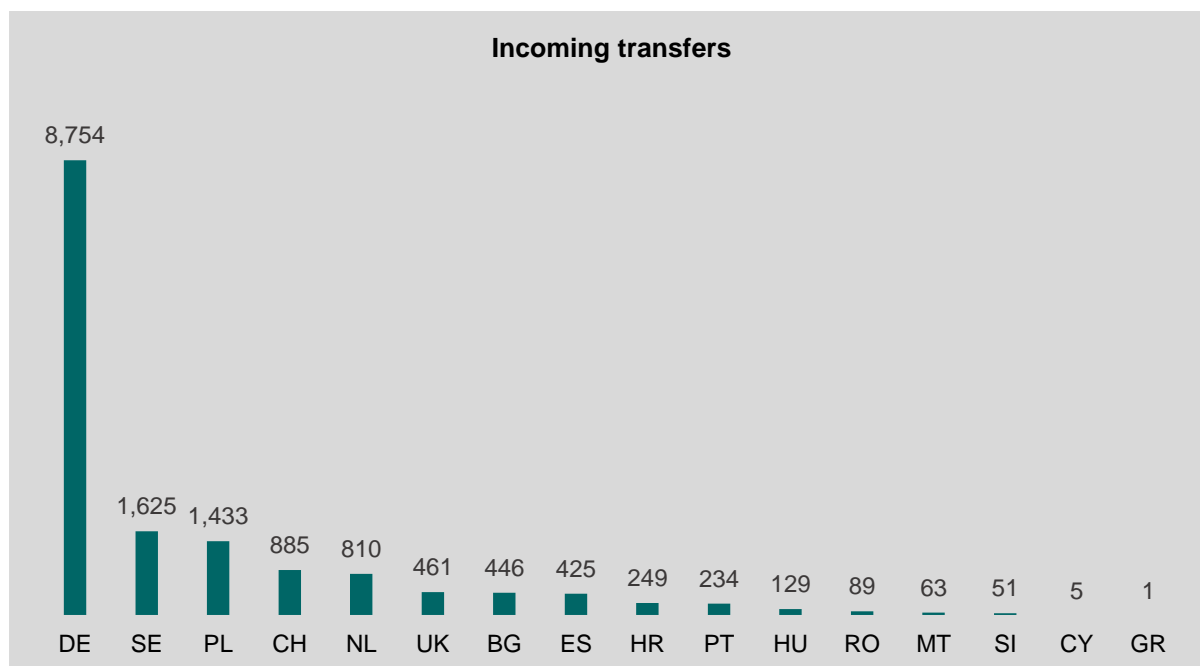
The main countries recording higher absolute figures in actual transfers include **Germany, Greece, Austria, Hungary, Bulgaria** and **Malta**.

At the same time, relative figures – comparing actual transfers to outgoing requests issued by a country – also give a useful illustration of the efficiency of Dublin procedures and the reasonableness of Member States’ investment in the system. As indicated in the table above, for instance, the increase in Dublin transfers conducted by **Germany** during 2017, while significant in absolute numbers, has had minimal effect on the high administrative, financial and human costs incurred for the purpose of initiating procedures for asylum seekers whose applications are eventually examined *in situ*; 89% of procedures did not result in a transfer.

Conversely, **Austria** and **Switzerland** have had higher transfer rates while sharply reducing the number of outgoing requests sent to other countries in 2017.

The ‘efficient’ use of the Dublin system comes at multiple costs. Beyond pointing to an excessive and often unreasonable use of administrative and financial resources on the part of asylum authorities, the continued push for more Dublin transfers has translated into an expansion of abusive practices and deterioration of procedural safeguards in some countries. In **France**, where Prefectures have been advised to resort to freedom-restrictive measures as a rule, asylum seekers have seen their access to court being severely curtailed. In addition, Prefectures have resorted to issuing transfer decisions before having obtained the agreement of the responsible Member State with the “take back” or “take charge” request in order to detain applicants (*decision de transfert anticipée*), contrary to EU law according to the Opinion of the Advocate-General of the CJEU in the pending case of *Adil Hassan*.²¹ Throughout 2017, civil society organisations have witnessed instances of *de facto* deprivation of the right to an effective remedy in several Prefectures, including Ile de France and Rhône, where applicants have been placed in detention on a Friday to avoid the possibility for him or her to access legal assistance during the weekend, and to carry out the transfer within 48 hours. In these frequent cases, there is no effective appeal for the people concerned.²²

As regards the main recipients of asylum seekers under the Dublin system, the number of incoming transfers implemented in 2017 was as follows:



²¹ CJEU, Case C-647/16 *Adil Hassan v. Préfet du Pas-de-Calais*, Opinion of Advocate-General Mengozzi of 20 December 2017.

²² AIDA, Country Report France, 2017 Update, February 2018, available at: <http://bit.ly/2BsOFmB>, 115.

Germany received a higher number of asylum seekers compared to that transferred to other countries during 2017. The majority of transfers to Germany were carried out by **France**, followed by **Greece** and the **Netherlands**. While no obstacles to the implementation of transfers from France and the Netherlands have been witnessed, transfers from Greece have been heavily debated following a reported agreement between German and Greek authorities to limit the number of transfers to a certain quota from April 2017 onwards. The authorities denied the formal introduction of a quota, but the numbers of transfers from Greece decreased significantly in the second quarter of 2017, before increasing again towards the end of the year.²³

The suspension of transfers on human rights grounds

The Dublin system is premised on presumptions of mutual trust and equivalence of standards between European countries. While these presumptions inevitably yield to the reality of widely disparate asylum systems and living conditions across the continent, with some countries systematically falling below human rights standards, the positions taken on the safety of certain countries are not uniform. The following section provides illustrative examples from current practice of Dublin Units vis-à-vis Hungary, Bulgaria and Greece:

Hungary The latest developments in the Hungarian asylum system have led more countries to suspend Dublin transfers thereto on account of human rights risks. Countries such as the United Kingdom, the Netherlands, Sweden and Italy do not carry out transfers to Hungary,²⁴ while Germany has not implemented transfers since April 2017.²⁵ Switzerland has also clarified its practice following a reference judgment of the Federal Administrative Court in 2017 in which it requested the State Secretariat for Migration (SEM) to gather the necessary evidence on the current situation of Dublin returnees in Hungary.²⁶ In Poland's case, procedures are not initiated if the person is vulnerable.²⁷

Belgium initiates procedures for Hungary but does not carry out transfers.²⁸ In Austria's case, procedures are initiated and decisions are issued to asylum seekers vis-à-vis Hungary, which are upheld by the Federal Administrative Court on appeal. However, transfers are not carried out in practice.²⁹

On the other hand, France and Portugal have not systematically suspended transfers.³⁰

Bulgaria Only a few countries have systematically halted transfers to Bulgaria, despite evidence of worrying conditions for asylum seekers. One example is Sweden,³¹ while the United Kingdom has also suspended transfers pending the hearing of a case pending before

²³ AIDA, Country Report Germany, 27-28.

²⁴ AIDA, Country Report UK, 2017 Update, March 2018, available at: <http://bit.ly/2Fm4nTI>, 33; Country Report Netherlands, 2017 Update, March 2018, available at: <https://bit.ly/2G7z6Eo>, 31-32; Country Report Sweden, 31; Country Report Italy, 47. On a recent official announcement by the Netherlands, see Dutch Parliament, 'Bemiddelingsprocedure met Hongarije in het kader van de Dublinverordening', 19637-2374, 22 March 2018, available in Dutch at: <https://bit.ly/2GBS5Ha>.

²⁵ AIDA, Country Report Germany, 33.

²⁶ Swiss Federal Administrative Court, Decision D-7853/2017, 31 May 2017.

²⁷ AIDA, Country Report Poland, 2017 Update, February 2018, available at: <http://bit.ly/2ozUJm5>, 25.

²⁸ AIDA, Country Report Belgium, 2017 Update, March 2018, available at: <https://bit.ly/2Gz4w68>, 35-36.

²⁹ AIDA, Country Report Austria, 2017 Update, March 2018, available at: <http://bit.ly/2tmJVfW>, 39.

³⁰ AIDA, Country Report France, 44; Country Report Portugal, 2017 Update, March 2018, available at: <https://bit.ly/2lxQFtN>, 38.

³¹ AIDA, Country Report Sweden, 31.

the court, scheduled for June 2018.³² For its part, Poland does not initiate procedures for cases concerning vulnerable groups.³³

Conversely, Austria, Germany, France, Switzerland, the Netherlands, Italy, Hungary and Romania continue to issue decisions and to carry out transfers to Bulgaria, including for vulnerable groups, although suspensions have been ordered by courts in individual cases.³⁴ Belgium also continues to order transfers, albeit limited in number, but most of these are suspended on appeal.³⁵

Greece

Despite a recommendation from the European Commission to reinstate Dublin transfers from 15 March 2017 onwards,³⁶ a large number of European countries (Netherlands, Sweden, Spain, Portugal, Malta, Cyprus, Hungary, Ireland and Romania) have not revisited their position on the suspension of transfers to Greece.³⁷

Germany, Switzerland, Belgium and Croatia have reinstated Dublin procedures for Greece, however. Germany requests individualised guarantees prior to any transfer, while Switzerland does not apply Dublin procedures in respect of vulnerable persons or asylum seekers who are not in possession of a Greek visa.³⁸ Poland does not initiate procedures for cases concerning vulnerable groups.³⁹ Bulgaria and Austria no longer apply a suspension of transfers to Greece as a matter of policy but have not started Dublin procedures yet.⁴⁰

To some extent, many disparities in appeal outcomes stem from different legal tests used by national courts rather than diverging evidence on the conditions in countries of destination. In February 2017, the CJEU affirmed a long-awaited alignment of position with the case law of the European Court of Human Rights by clarifying that an asylum seeker cannot lawfully be transferred to a country where he or she would face a real risk of inhuman or degrading treatment, regardless of whether or not such a risk stems from “systemic deficiencies” in the asylum procedure and reception conditions of the receiving country.⁴¹ Nevertheless, national courts’ legal tests in Dublin cases have continued to be inconsistent, with many insisting on considering “systemic deficiencies” as a necessary condition to declare a transfer unlawful.

Available information from **Germany** reflects the approach taken by its administrative courts in relation to appeals against Dublin transfers. The following table illustrates the number of court decisions on requests for urgent legal protection i.e. requests to restore suspensive effect of appeals in Dublin cases:

³² AIDA, Country Report UK, 33.

³³ AIDA, Country Report Poland, 25.

³⁴ AIDA, Country Report Austria, 39-40; Country Report Germany, 34; Country Report France, 44; Country Report Switzerland, 2017 Update, February 2018, available at: <http://bit.ly/2FoL9tg>, 36; Country Report Netherlands, 32; Country Report Italy, 47; Country Report Hungary, 2017 Update, February 2018, available at: <http://bit.ly/2Fnqu8V>, 35-36; Country Report Romania, February 2018, available at: <http://bit.ly/2GIET0j>, 36-37.

³⁵ AIDA, Country Report Belgium, 36.

³⁶ Commission Recommendation of 8 December 2016 addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No. 604/2013, C(2016) 8525.

³⁷ AIDA, Country Report Netherlands, 32; Country Report Sweden, 31; Country Report Spain, 2017 Update, March 2018, available at: <http://bit.ly/2plANDI>, 30; Country Report Portugal, 38; Country Report Malta, 2017 Update, February 2018, available at: <http://bit.ly/2FoMolW>, 26; Country Report Hungary, 35; Country Report Ireland, 2017 Update, March 2018, available at: <https://bit.ly/2JjOfQU>, 35; Country Report Cyprus, 2017 Update, February 2018, available at: <http://bit.ly/2CPFFVt>, 33.

³⁸ AIDA, Country Report Germany, 34; Country Report Belgium, 36; Country Report Croatia, 37-38; Country Report Switzerland, 35.

³⁹ AIDA, Country Report Poland, 25.

⁴⁰ AIDA, Country Report Bulgaria, 2017 Update, February 2018, available at: <http://bit.ly/2ErP7Qz>, 27; Country Report Austria, 39.

⁴¹ CJEU, Case C-578/16 PPU C.K., Judgment of 16 February 2017.

German courts' decisions on requests for suspensive effect in Dublin appeals: 2017		
Country	Halting Dublin transfer	Upholding Dublin transfer
Belgium	58	432
Bulgaria	259	266
Denmark	27	305
Estonia	0	68
Finland	23	457
France	75	1,138
Greece	21	10
United Kingdom	1	10
Ireland	0	1
Iceland	0	3
Italy	1,912	6,676
Croatia	45	170
Latvia	21	77
Lithuania	11	292
Luxemburg	0	5
Malta	41	33
Netherlands	48	315
Norway	40	417
Austria	6	316
Poland	224	1,811
Portugal	25	299
Romania	80	331
Sweden	38	659
Switzerland	34	369
Slovakia	7	31
Slovenia	9	45
Spain	23	515
Czech Republic	41	475
Hungary	433	206
Cyprus	0	2

Source: AIDA, Country Report Germany, 35.

Annex I – Outgoing Dublin requests and transfers by receiving country: 2017

	Outgoing requests							Outgoing transfers						
	Total	First country		Second country		Third country		Total	First country		Second country		Third country	
AT	10,490	IT	3,347	DE	1,763	BG	1,490	3,760	:	:	:	:	:	:
BG	162	DE	91	UK	17	SE	8	86	DE	72	SE	4	UK	2
CY	118	:	:	:	:	:	:	12	:	:	:	:	:	:
DE	64,267	IT	22,607	FR	4,417	HU	3,304	7,102	IT	2,110	PL	939	FR	530
ES	11	FR	4	DE	3	NL	2	2	DE	2	-	-	-	-
FR	41,500	:	:	:	:	:	:	:	:	:	:	:	:	:
GR	9,784	DE	5,902	UK	909	SE	701	4,268	DE	2,802	:	:	:	:
HR	123	BG	76	GR	16	CY	6	8	DE	6	AT	1	IT	1
HU	896	BG	689	DE	109	AT	37	220	BG	93	DE	76	RO	14
MT	430	:	:	:	:	:	:	17	:	:	:	:	:	:
NL	7,450	:	:	:	:	:	:	1,890	:	:	:	:	:	:
PL	165	DE	60	BG	12	LT	11	16	DE	8	LT	2	:	:
PT	250	DE	48	IT	44	NO	17	45	IT	10	DE	9	:	:
RO	1,272	BG	1,113	DE	37	CY	9	98	BG	71	DE	19	SE	2
SE	3,654	IT	690	DE	584	FR	399	4,201	DE	1,661	IT	561	FR	441
SI	742	BG	339	HR	224	DE	37	40	DE	17	HR	17	IT	3
UK	5,712	IT	2,162	DE	882	FR	513	314	DE	168	IT	55	IE	24
CH	8,370	IT	4,231	DE	1,380	FR	581	2,297	IT	981	DE	631	FR	168

Annex II – Incoming Dublin requests and transfers by sending country: 2017

	Incoming requests							Incoming transfers						
	Total	First country		Second country		Third country		Total	First country		Second country		Third country	
AT	5,521	DE	2,117	FR	1,465	GR	446	:	:	:	:	:	:	:
BG	7,934	DE	2,164	FR	1,707	AT	1,359	446	DE	100	HU	90	AT	75
CY	95	:	:	:	:	:	:	5	:	:	:	:	:	:
DE	26,931	FR	9,939	GR	5,692	NL	2,964	8,754	GR	3,164	NL	1,141	FR	1,016
ES	5,953	DE	2,196	FR	1,780	BE	585	425	DE	122	FR	83	CH	58
GR	1,998	DE	1,754	CH	77	BE	46	1	CH	1	-	-	-	-
HR	890	DE	253	SI	233	FR	110	249	DE	128	AT	68	SI	18
HU	:	:	:	:	:	:	:	129	AT	78	DE	30	CH	11
MT	786	:	:	:	:	:	:	63	:	:	:	:	:	:
NL	4,630	:	:	:	:	:	:	810	:	:	:	:	:	:
PL	5,723	DE	3,176	FR	1,246	AT	343	1,433	DE	973	AT	195	FR	53
PT	1,603	DE	617	FR	229	BE	98	234	FR	84	DE	72	:	:
RO	2,403	DE	1,373	AT	497	FR	115	89	DE	23	AT	20	HU	13
SE	7,609	DE	2,860	FR	1,615	DK	383	1,625	DE	331	DK	259	FR	57
SI	657	FR	283	DE	207	AT	47	51	AT	21	DE	20	CH	4
UK	2,137	GR	934	FR	584	IE	137	461	GR	187	FR	91	IE	22
CH	6,113	DE	2,932	FR	1,429	GR	338	885	DE	417	GR	101	NL	81