



**ecre**

European Council  
on Refugees and Exiles

# **RELYING ON RELOCATION**

**ECRE'S PROPOSAL FOR A PREDICTABLE AND  
FAIR RELOCATION ARRANGEMENT FOLLOWING  
DISEMBARKATION**

**POLICY PAPER 6  
JANUARY 2019**

# CONTENTS

<b>INTRODUCTION</b> .....	<b>3</b>
<b>ANALYSIS</b> .....	<b>4</b>
The dangers of the “ship by ship” approach .....	4
Compliance with asylum standards .....	4
<b>RECOMMENDATION: A FAIR AND CLEAR MECHANISM FOR RELOCATION FOLLOWING DISEMBARKATION</b> .....	<b>6</b>
<b>ANNEX: FLOW CHART OF THE RELOCATION PROCEDURE</b> .....	<b>11</b>

# INTRODUCTION<sup>1</sup>

The persisting divisions between European Union (EU) Member States on the reform of the Common European Asylum System (CEAS), and the Dublin Regulation<sup>2</sup> in particular, have fuelled a “disembarkation crisis” unfolding in the Central Mediterranean in the course of 2018 and early 2019.<sup>3</sup> This has been triggered by repeated opposition on the part of Italy and other countries to disembarkation of NGO and other vessels conducting search and rescue (SAR) e.g. *Aquarius*, *Lifeline*, *Sea-Watch*, *Sea Eye*, *Diciotti* in their ports, coupled with legal action and various administrative barriers to prevent NGO ships from operating at sea.

In addition to successive standoffs between Member States following SAR operations carried out by NGOs in particular, the tense negotiations between interior ministries on the disembarkation of rescued persons have affected discussions on the renewal of the mandate of EU naval operations such as “EUNAVFOR MED Operation Sophia”. Following failed attempts to agree on disembarkation of persons rescued in the context of “Operation Sophia” in 2018, the Council postponed discussions and recently approved only a short extension of the mandate of the operation until the end of March 2019.<sup>4</sup>

The stark opposition to disembarkation on the part of some countries has led a group of Member States to resort to voluntary responsibility-sharing arrangements, an *ad hoc* multilateral response to port closures. Several countries have reportedly undertaken responsibility for disembarked persons in *ad hoc* schemes, including France, Spain, Portugal, Malta, Italy, Germany, Luxembourg, Belgium, the Netherlands, Ireland, Romania and Norway.<sup>5</sup>

These arrangements are welcome expressions of solidarity with countries of disembarkation from a “coalition of states” against the backdrop of stalemate in the reform of the Dublin system. It has become clear, however, that obstacles to prompt disembarkation of rescued persons, fair support to countries of first arrival, and compliance with asylum standards remain.

EU countries need to set up a relocation arrangement that guarantees predictability and certainty. The reinvigoration of discussions on responsibility-sharing in the Council presents a window of opportunity, with a French-German proposal calling for a solidarity mechanism “based on relocation as a rule”,<sup>6</sup> and a European Commission Communication suggesting that “temporary arrangements of genuine solidarity and responsibility could be put in place... as a bridge until the new Dublin Regulation becomes applicable”.<sup>7</sup>

In this policy paper, first, ECRE sets out its legal and political concerns with the current “ship by ship” approach to relocation of rescued persons, as well as questioning its compatibility with CEAS standards. The paper then elaborates on ECRE’s recommendation for a relocation mechanism for asylum seekers disembarked in EU ports based on fair and effective implementation of rules set out in the existing EU *acquis*.

The analysis presented in this paper does not cover rules on disembarkation and the determination of ports of safety, which fall within the realm of the Law of the Sea and must be complied with in all cases.

1. ECRE would like to thank the members of its CEAS Working Group for comments to earlier drafts. All errors remain our own.
2. Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or stateless person (recast), *OJ* 2013 L180/31.
3. See also ECRE, Asylum at the European Council 2018: Outsourcing or reform? Policy Paper 4, August 2018, available at: <http://bit.ly/2nmhAR5>.
4. Council Decision (CFSP) 2018/2055 of 21 December 2018 amending Decision (CFSP) 2015/778 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR Med operation SOPHIA), *OJ* 2018 L327 I/9.
5. Malta Independent, ‘First group of Lifeline migrants leaves Malta for France’, 5 July 2018, available at: <http://bit.ly/2OnDzSN>; Al Jazeera, ‘Spain, Portugal to accept more rejected Aquarius refugees’, 14 August 2018, available at: <http://bit.ly/2JBg7QQ>; Irish Times, ‘Ireland to take up to 25 migrants who were stuck on boat off Italy’, 26 August 2018, available at: <http://bit.ly/2EYh2fj>; Reuters, ‘Portugal, Spain, France, Germany agree to take in Aquarius ship migrants’, 25 September 2018, available at: <http://reut.rs/2PIHb6B>; Portuguese Ministry of Internal Administration, ‘Comunicado conjunto da Ministra da Presidência e da Modernização Administrativa e do Ministro da Administração Interna sobre Acolhimento de Refugiados em Portugal’, 17 November 2018, available in Portuguese at: <http://bit.ly/2BfVdV8>; The Guardian, ‘Italy’s Salvini refuses to back EU deal on rescue ship migrants’, 9 January 2019, available at: <http://bit.ly/2H6g1TL>.
6. Permanent Representations of France and Germany to the EU, Proposal to the Justice and Home Affairs Council, 6 December 2018.
7. European Commission, Managing migration in all its aspects: Progress under the European Agenda on Migration, COM(2018) 798, 4 December 2018, 19-20.

# ANALYSIS

## THE DANGERS OF THE “SHIP BY SHIP” APPROACH

The “ship by ship” approach followed by European countries since the summer of 2018 is legally and politically unsustainable for at least four reasons:

- § **Exacerbating suffering:** Political standoffs between governments forbidding or delaying disembarkation in their ports plainly threaten human lives by leaving individuals at sea for prolonged periods and denying them urgently needed assistance and medical care.<sup>8</sup> Such disregard for life-threatening conditions facing rescued persons and ship crews, and ensuing crackdown on NGOs involved in SAR, is a clear dereliction of the legal and moral duty of states to ensure prompt disembarkation in a port of safety.<sup>9</sup>
- § **Exploitation of incidents:** The unnecessary performances put on by different EU leaders since the summer of 2018 have turned nearly every Central Mediterranean SAR operation into a widely mediated political incident. Current responsibility-sharing arrangements are confined to disembarkation following SAR in the Central Mediterranean and therefore directly connected to the “closed ports” policy initially declared by Italy. The status quo thus permits certain governments to capitalise on such incidents in order to sustain the perception of a “migration crisis” for domestic political gain. Other Member States (Spain, Greece) continue to allow disembarkation following SAR in the Western and Eastern Mediterranean in line with their legal obligations and have received far more people in the past year (55,756 and 32,497 respectively) compared to Italy (23,371) according to UNHCR figures.<sup>10</sup> Maintaining unequal treatment with regard to responsibility-sharing runs the risk of incentivising more Mediterranean countries to use port closures as leverage to obtain relocation.
- § **Administrative burden and costs:** The *ad hoc* approach to relocation has proven to be costly for administrations. The coordination needed to identify a port of safety following successive refusals from coastal states, to receive pledges from Member States interested in taking a share of rescued persons prior to organising disembarkation, and to arrange transfers to those countries subjects SAR operations to a cumbersome bureaucracy that has to be repeated with every operation. The inefficiency surrounding the entire process should be of concern to the EU since EU funding covers the often unnecessary financial costs incurred by states in these standoffs, such as the 200,000 € spent by Italy for its coast guard to escort the *Aquarius* to Valencia last summer.<sup>11</sup>
- § **Reputational damage:** Persistent, if feeble, efforts on the part of certain Member States to shift all responsibility for refugees to North African countries has a severe damaging effect on the EU’s credibility in external relations and dialogue with Africa, by undermining foreign policy objectives beyond the field of migration.<sup>12</sup>

## COMPLIANCE WITH ASYLUM STANDARDS

Even where disembarkation has safely taken place, the manner in which individuals are currently received and distributed under *ad hoc* arrangements on relocation raises questions of compliance with the EU asylum *acquis* on the part of both sending and receiving countries.

Firstly, some countries of disembarkation have arbitrarily deprived rescued persons of their liberty and obstructed the right to seek asylum. This has notably been the case in Malta, where several ships have disembarked since the summer of 2018 following negotiations with other coastal states. Disembarked persons are *de facto* detained in the Marsa Initial Reception Centre without being allowed to lodge an asylum application. People remain *de facto* detained in the facility without holding asylum seeker status until their

8. On the latest incident, involving people stranded for 13 days on Sea-Watch 3, see EU Observer, ‘NGO Mediterranean rescue standoff exposes EU rift’, 4 January 2019, available at: <http://bit.ly/2LRyoLd>; Le Monde, ‘La France prête à accueillir des migrants bloqués au large de Malte’, 3 January 2019, available in French at: <http://lemde.fr/2F7K76N>.

9. See also ECRE, ‘Editorial: CEAS Reform: Stranded at the European shores?’ 12 October 2018, available at: <http://bit.ly/2s8dSN9>.

10. UNHCR, Operational Portal Mediterranean, available at: <http://bit.ly/2q47UKZ>.

11. EU Observer, ‘EU paid Italy at least €200,000 for migrant stunt’, 22 August 2018, available at: <http://bit.ly/2o0Za8G>.

12. See inter alia ECRE, Debunking the “safe third country” myth, Policy Note 8, November 2017, available at: <http://bit.ly/2iUuuqu>, 4.

transfer to other countries, for periods reaching two months in some cases.<sup>13</sup> Similarly, persons disembarked in Spanish ports have only been given the opportunity to indicate whether or not they wish to be transferred to France, without the possibility of prior access to the asylum procedure or of receiving sufficient information on the process.<sup>14</sup> Member States of disembarkation have therefore not complied with their obligation to register asylum claims and provide reception conditions in line with the recast Asylum Directives in the context of relocation arrangements following disembarkation. In addition, insofar as rescued persons are not recognised as asylum seekers, transfer procedures are not carried out in accordance with the Dublin Regulation as should have been the case for asylum seekers.

Current policy debates and continued efforts by the Commission and the French-German proposal to weave the “controlled centres” concept – emanating from the June 2018 European Council conclusions – into relocation arrangements are liable to exacerbate non-compliance with standards. Six months on, the EU is still unable to clarify whether or not “controlled centres” are akin to “hotspots” already set up in Italy and Greece and to specify what regime (liberty, restricted movement, detention) they would entail for persons hosted therein.<sup>15</sup> Legal certainty therefore militates against linking disembarkation and “controlled centres” as a condition for sharing responsibility for rescued persons. The prohibition on using Asylum, Migration and Integration Fund (AMIF) money earmarked from unused relocation funds for transfers of asylum seekers for detention measures also signals resistance to such a link from the EU legislature.

More importantly, it is not necessary for disembarkation to be conditioned upon the establishment of “controlled centres” or other “new” concepts. The existing EU *acquis* is clear on national authorities’ duty to register and process asylum applications and to offer adequate reception conditions to individuals seeking protection. These obligations stem from legally binding EU instruments and must be complied with. As argued elsewhere by ECRE, arrangements that bypass states’ existing obligations undermine the credibility of the CEAS and are thereby counter-productive rather than helpful for implementation of standards and discussions on future reform.<sup>16</sup>

Secondly, the discretionary practice of countries receiving asylum seekers in the context of *ad hoc* arrangements undermines legal certainty and may contravene the asylum *acquis*. For the persons it has received from Malta and Spain, for example, France has set up similar arrangements to those used for relocation from Italy and Greece under the 2015 Relocation Decisions.<sup>17</sup> The Office of Protection of Refugees and Stateless Persons (OFPRA) has conducted missions with a view to selecting persons “relating to asylum” (*relevant du droit d’asile*), i.e. in need of international protection, who would be eligible for transfer to France. This assessment appears to consist of fully-fledged refugee status determination or a nationality-based screening, given that France has received nationals of Eritrea and Somalia, but not others. Following the transfer to France, using a *laissez-passer* or a visa, relocated persons swiftly register an application with the Prefecture and are provided with accommodation by the Office of Immigration and Integration (OFII).<sup>18</sup> Portugal has also screened persons through interviews with its Aliens and Borders Service (SEF) prior to their transfer,<sup>19</sup> even though it did not do so in the framework of the relocation scheme established under the Relocation Decisions.<sup>20</sup>

Under these arrangements, the selection of persons eligible for relocation does not follow objective criteria and is driven by potentially arbitrary preferences of receiving Member States. In many cases key steps of the asylum procedure are being conducted on another country’s territory before persons are transferred or even considered or registered as asylum seekers. This also means that the persons concerned may be unable to access the rights and benefits they are entitled to under the EU asylum *acquis* for a considerable period of time. France appears to select for relocation only those individuals who qualify for international protection according to OFPRA, even though they do not hold asylum seeker status at the moment of their interview on

13. AIDA, Access to protection in Europe: The registration of asylum applications, October 2018, available at: <http://bit.ly/2Dj1zp2>, 24-25.

14. Information provided by Accem and CEAR, November 2018.

15. ECRE, ‘Editorial: CEAS Reform: Stranded at the European shores?’ 12 October 2018, available at: <http://bit.ly/2s8dSN9>.

16. ECRE, Bilateral agreements: Implementing or bypassing the Dublin Regulation?, Policy Paper 5, December 2018, available at: <http://bit.ly/2rvGNur>, 7.

17. Council Decisions (EU) 2015/1523 of 14 September 2015 and 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ 2015 L239/146 and L248/80.

18. Information provided by Forum réfugiés – Cosi and France terre d’asile, October 2018.

19. Portuguese Ministry of Internal Administration, ‘Comunicado conjunto da Ministra da Presidência e da Modernização Administrativa e do Ministro da Administração Interna’, 9 November 2018, available in Portuguese at: <http://bit.ly/2FwuRCf>.

20. ECRE, Relocation of asylum seekers in Europe: A view from receiving countries, May 2018, available at: <http://bit.ly/2GMACXM>, 3.

Maltese or Spanish soil. Organising a personal interview with a Member State’s asylum authority engages that Member State’s jurisdiction,<sup>21</sup> and is therefore in clear contradiction with its legal obligations if conducted prior to having an asylum application lodged and without offering the guarantees laid down in the recast Asylum Procedures Directive.<sup>22</sup>

Finally, there is no systematic oversight or centralised information collection on the number of people transferred out of Member States of disembarkation or on the countries to which they are directed under the *ad hoc* arrangements. Limited information is only made available in national debates. For example, Portugal announced in early November 2018 that it had relocated 86 people in the context of disembarkation operations since the beginning of the year.<sup>23</sup> According to a parliamentary question answered by the German Federal Ministry of Interior in December 2018, on the other hand, the distribution of known disembarkation arrivals across Member States as of early October 2018 was as follows:

Ship	Date	Port	DE	BE	ES	FR	IE	LU	NL	NO	PT
Aquarius	17/06/18	Valencia, ES	-	-	-	78	-	-	-	-	-
Lifeline	27/06/18	Valletta, MT	-	6	-	52	26	15	20	7	-
Open Arms	09/08/18	Algeciras, ES	-	-	-	20	-	-	-	-	-
Aquarius	15/08/18	Valletta, MT	50	-	60	60	17	5	-	-	30
Aquarius	01/10/18	Valletta, MT	15	-	15	18	-	-	-	-	10
<b>Total</b>	-	-	<b>65</b>	<b>6</b>	<b>75</b>	<b>228</b>	<b>43</b>	<b>20</b>	<b>20</b>	<b>7</b>	<b>40</b>

Source: German Federal Ministry of Interior, Reply to parliamentary question by AfD, 19/6235, 3 December 2018: <http://bit.ly/2R64RTD>, 7.

The lack of comprehensive and reliable figures on the distribution of disembarked persons does not allow appropriate oversight of Member States’ commitments to relocation in practice, as countries may often receive less people than originally pledged.<sup>24</sup> It also prevents the Commission from effectively monitoring states’ compliance with the *acquis* during and following the distribution process.

## RECOMMENDATION: A FAIR AND CLEAR MECHANISM FOR RELOCATION FOLLOWING DISEMBARKATION

ECRE maintains its position that the Dublin system requires deeper reform *inter alia* to ensure fair sharing of responsibility for refugee protection across the EU and to foster protection and trust between asylum seekers and state authorities.<sup>25</sup>

In the meantime, ECRE urges Member States to set up a fair and clear relocation mechanism to share responsibility for persons disembarked on EU ports, and welcomes the initiatives already taken by some Member States to that end. The primary aim of such an arrangement should be rapid allocation of responsibility to ensure that persons arriving by sea are quickly disembarked, identified, given access to the relevant procedures and directed to the respective participating countries. The relocation mechanism is a response

21. Jurisdiction and a “State’s responsibility may... be engaged on account of acts which have sufficiently proximate repercussion of rights guaranteed by the Convention, even if those repercussions occur outside its jurisdiction”: European Court of Human Rights, *Ilaşcu v. Moldova and Russia*, Application No 48787/99, Judgment of 8 July 2004, para 317.

22. Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (“recast Asylum Procedures Directive”), OJ 2013 L180/60.

23. Portuguese Ministry of Internal Administration, ‘Comunicado conjunto da Ministra da Presidência e da Modernização Administrativa e do Ministro da Administração Interna’, 9 November 2018, available in Portuguese at: <http://bit.ly/2FwuRCf>.

24. This seems to have been the case with disembarkation from *Diciotti*, where Italy had reportedly agreed to transfer 20 persons to Ireland and 20 to non-EU country Albania. It remains unclear whether these transfers materialised: ANSA, ‘17 missing *Diciotti* migrants “found”’, 7 September 2018, available at: <http://bit.ly/2CKgh6l>.

25. See e.g. ECRE, Principles for fair and sustainable refugee protection in Europe, Policy Paper 2, February 2017, available at: <http://bit.ly/2LQhuwp>; To Dublin or not to Dublin? Policy Note 16, November 2018, available at: <https://bit.ly/2EbDosN>.

to but does not affect arrivals in the EU, and is therefore unrelated to any perceived risks of “pull factor” for participating countries. It only concerns the distribution of responsibility among participating countries once persons have arrived in an EU Member State port and have sought international protection in line with the EU *acquis*.

The mechanism should operate within the existing legal framework of the CEAS so as to be feasible and sustainable. The approach suggested by ECRE **can be implemented based on provisions of the EU asylum *acquis* without adding new obligations for Member States**. The following elements should be taken into consideration as its building blocks:

## Participating countries

Given the pressing need for measures on responsibility-sharing and the obstacles to an EU-wide solution, the relocation mechanism should be set up now since enough countries have already expressed interest. (ECRE believes that a critical mass has been reached, as demonstrated by the resolution of recent incidents.) While countries should be able to choose whether or not to opt into the relocation mechanism, **the EU Member States and Schengen Associated States participating in the mechanism should be defined from the outset** and should not be negotiated on a “ship by ship” basis. Countries should be free to join the mechanism at a later stage, however.

The arrangement should **apply to disembarkations following SAR and other forms of sea arrivals in all coastal EU Member States** to guarantee fairness and to support the efforts of all countries receiving disembarked people. The arrangement shall not absolve participating countries, including coastal states, of their existing obligations under the asylum *acquis*, as all countries will be required to examine at least some asylum applications of disembarked persons.

## Pre-defined reference share

The mechanism should be clear and rapid. To avoid unpredictable, time-consuming, risky and at times inhumane processes of pledging during individual SAR operations, a **reference share should be agreed from the outset between participating Member States and Schengen Associated States based on objective criteria** e.g. GDP and population size. The respective share of each participating country, including the Member State of disembarkation, should be set out in the arrangement and specify a percentage (%) per participating country, including countries of disembarkation, to apply to all situations of disembarkation. The reference share is without prejudice to countries’ existing obligations to assume responsibility under the Dublin Regulation, in particular those stemming from its family provisions.

## Specified duration

The relocation mechanism could either have an indefinite validity period, or enter in force for a specified (renewable) time period.<sup>26</sup>

## Eligible persons

Relocation should apply to **persons who have lodged an application for international protection in the Member State of disembarkation and for whom that Member State would otherwise be responsible under the Dublin Regulation**. Upon disembarkation, individuals are immediately informed of the possibility to apply for international protection and applications are quickly and effectively lodged after persons express the intention to seek asylum.

26. European Commission, Managing migration in all its aspects: Progress under the European Agenda on Migration, COM(2018) 798, 4 December 2018, 20.

This provides necessary safeguards as it ensures that individuals who wish to apply for international protection are promptly granted access to an asylum procedure, undergo vulnerability and best interests assessments,<sup>27</sup> and benefit from the right to remain on the territory, as well as the right to reception conditions such as accommodation and health care.<sup>28</sup> It also enables authorities to identify disembarked persons, to promptly conduct fingerprinting and security checks and to identify solutions for specific groups such as unaccompanied children or victims of torture or trafficking.

The primacy of family unity should be safeguarded and existing Member State obligations under the Dublin Regulation should be upheld. The Member State with which the application is lodged should conduct a Dublin procedure with a view to determining whether the applicant has family links in another country and is thus entitled to family reunification under the Dublin Regulation, is a dependent person,<sup>29</sup> or holds a residence document or visa from another Member State.<sup>30</sup>

**Persons for whom a “take charge” request has been submitted under Articles 8-11, 12 or 16 of the Dublin Regulation should not be counted in the pool of asylum seekers eligible for relocation** under the relocation arrangement. If their “take charge” request under the family provisions of the Regulation is rejected, however, these disembarked persons should be allowed to access the relocation mechanism by joining subsequent pools of eligible asylum seekers.

Eligibility of asylum seekers for relocation **should not be subject to additional criteria such as nationality or presumed manifest well-foundedness of their protection claim**, as was initially suggested in the June 2018 European Council conclusions,<sup>31</sup> or to other criteria such as **gender, age or religion**. Any “filter” in the mechanism that would require asylum applications to be processed before relocation would prove counter-productive in practice. It would impose undue administrative burden on the asylum authorities of Member States of disembarkation to conduct often complex and lengthy refugee status determination at points of arrival without sufficient capacity, which would be impractical and inefficient for both asylum seekers and states. It would also run counter to the principle of non-discrimination of refugees as laid down in international law.<sup>32</sup>

## Transfer of responsibility pursuant to the Dublin Regulation “humanitarian clause”

For each group of disembarked persons, once the number of asylum seekers eligible for relocation has been ascertained by the Member State of disembarkation, i.e. excluding persons who have not sought international protection and asylum seekers with family links in another Member State or to whom the other abovementioned responsibility criteria apply, the number of applicants to be relocated per participating country should be calculated. Under the mechanism, the calculation of persons to be distributed per country remains connected to individual sea arrivals to ensure that relocation is based on accurate figures, but occurs after disembarkation, identification, lodging of asylum applications, and the Dublin interview have taken place.

The calculation of persons should be done consistently to ensure transparency for all participating countries. EU actors such as the **European Asylum Support Office (EASO) could undertake the coordination of this step in the process**, in line with its responsibility to “promote, facilitate and coordinate exchanges of information and other activities related to relocation within the Union” under its mandate.<sup>33</sup> The Agency can also provide support to participating countries’ Dublin Units as necessary. This type of involvement simply

27. Article 6 Dublin III Regulation; Article 22 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) (“recast Reception Conditions Directive”), OJ L180/96.

28. Asylum seekers’ freedom may only be deprived as a measure of last resort in line with Articles 8 et seq. recast Reception Conditions Directive.

29. Article 16 Dublin III Regulation: Court of Justice of the European Union, Case C-245/11 *K v Bundesasylamt*, Judgment of 6 November 2012, para 31.

30. Article 12 Dublin III Regulation.

31. European Council, Conclusions, 28 June 2018, 421/18, para 6: “On EU territory, those who are saved, according to international law, should be taken charge of, on the basis of a shared effort, through the transfer in controlled centres set up in Member States, only on a voluntary basis, where rapid and secure processing would allow, with full EU support, to distinguish between irregular migrants, who will be returned, and those in need of international protection, for whom the principle of solidarity would apply.”

32. Article 3 Convention Relating to the Status of Refugees.

33. See e.g. Article 5 Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, OJ 2010 L132/11.



requires requests to EASO from the Member States in question.

The Dublin interview conducted with the asylum seeker pursuant to Article 5 of the Dublin Regulation should aid the Member State of disembarkation and EASO not only in ascertaining family links but also in collecting information on the applicant's potential meaningful links, such as language skills, previous education, with one or more of the countries participating in the mechanism. Without being binding on Member States, such meaningful links should be taken into consideration when selecting which countries should be requested to take responsibility with a view to promoting trust in and compliance with the system.<sup>34</sup>

The Member State of disembarkation should **submit a “take charge” request pursuant to Article 17(2) of the Dublin Regulation (“humanitarian clause”)**. The competent Dublin Unit can specify in the standard “take charge” request form that the request concerns relocation following disembarkation so to assist the Dublin Units of the respective destination countries in processing the request accordingly.

Since Article 17(2) is a discretionary clause, **all participating countries should commit in the arrangement to accepting “humanitarian clause” requests issued by the Member State of disembarkation**, within a period of two weeks,<sup>35</sup> unless a request does not meet the terms of the arrangement e.g. the number of persons requested for relocation exceeds the reference share of the receiving country or in case of a genuine and present threat to the national security of the requested Member State. If the “humanitarian clause” request is rejected by the first country requested, the Member State of disembarkation should submit a request to another participating country provided its share has not yet been reached, taking into account the preferences listed during the Dublin interview.

In accordance with Article 17(2) of the Dublin Regulation, “take charge” requests require the written consent of the individuals concerned. **Transfers of applicants will therefore not be forced.** Should an applicant refuse to be transferred to a participating country, he or she will continue the asylum procedure in the Member State of disembarkation.

## Funding, monitoring and stakeholder engagement

The financial cost of Dublin transfers rests upon the sending Member State as a rule.<sup>36</sup> The effects of this rule should be mitigated in the relocation arrangement to avoid undue financial burden on Member States of disembarkation.

EU funding, namely under AMIF,<sup>37</sup> should support countries of disembarkation and participating countries to cover transfer costs, as well as reception and procedural costs until the expiry of the current Multiannual Financial Framework (MFF).<sup>38</sup> The amended AMIF Regulation makes it clear that funding earmarked for such transfers shall not be used for measures related to detention.<sup>39</sup>

EU support should be accompanied by oversight, in particular reporting on the progress of the arrangement and monitoring of states' compliance with their legal obligations under the asylum *acquis*. The involvement

34. See ECRE, Principles for fair and sustainable refugee protection in Europe, Policy Paper 2, February 2017, available at: <http://bit.ly/2LQhuwp>, 18 on the merits of a “matching system” in Dublin reform. See also UNHCR, Better protecting refugees in the EU and globally, December 2016, available at: <http://bit.ly/2F3DfYU>. The consideration of an applicant's meaningful links with a Member State such as educational has also been incorporated in the European Parliament's report on the proposed Dublin IV Regulation: European Parliament, Report on the proposal for a Dublin IV Regulation, A8-0345/2017, 6 November 2017, Article 14a.

35. Note that the deadline for replies to “humanitarian clause” requests is two months under Article 17(2) Dublin III Regulation. Applying such deadline in the context of the relocation mechanism would make it unsuitable as a tool to bring rapid relief to the Member States of disembarkation. Article 17(2) does not prevent Member States from applying a shorter deadline in line with the Regulation's objective to “determine rapidly the Member State responsible”. See Recital 5 Dublin III Regulation.

36. Article 30(1) Dublin III Regulation.

37. Article 18 Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund (“AMIF Regulation”), OJ 2014 L150/168, as amended by Regulation (EU) 2018/2000 of the European Parliament and of the Council of 12 December 2018, OJ 2018 L328/78.

38. See by analogy Article 10(1) Relocation Decisions, providing Italy and Greece with 500 € per relocated applicant and Member States of relocation with 6,000 € per relocated applicant. Under Article 10(2) Relocation Decisions, financial support was implemented pursuant to the original Article 18 AMIF Regulation.

39. Article 18(3) AMIF Regulation, as amended by Article 1(c) Regulation 2018/2000.

of the European Commission and EASO in the implementation of the relocation mechanism is important to ensure consistency and transparency, even if not all EU Member States end up participating. The recent amendment of Article 18 of the AMIF Regulation with a view to re-committing relocation funding *inter alia* to transfers of asylum seekers echoes this need, as it requires the Commission to submit annual reports to the European Parliament (EP) and to the Council on the use of AMIF funding for transfers of applicants for and beneficiaries of international protection.<sup>40</sup> Other institutions, including the EP, should make use of accountability mechanisms monitor the implementation of the mechanism.

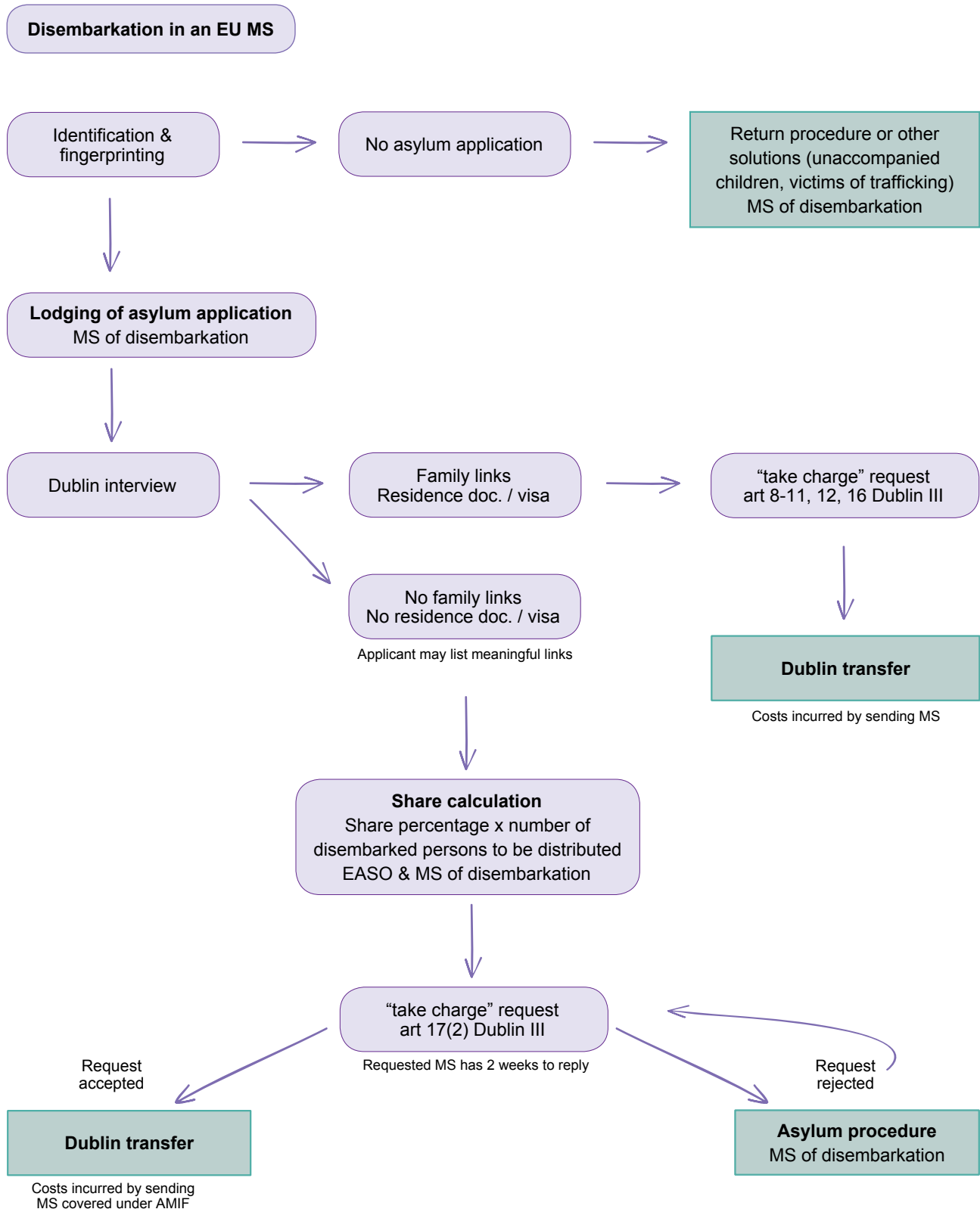
### Information, legal assistance and stakeholder engagement

Finally, the role of other stakeholders in countries of disembarkation and countries of relocation should be part of the mechanism. Adequate information provision and support from local authorities and civil society organisations prior to and following reducing is crucial to facilitating asylum seekers' understanding of and trust in the process, and mitigating secondary movements. In addition, frontloading quality legal assistance from the outset of the procedure and particularly during the Dublin interview is indispensable to ensure effective implementation of the Regulation and to safeguard asylum seekers' rights and trust in the relocation process. The stakeholders concerned should be provided with the necessary resources to perform these additional tasks.

---

40. Article 18(3c) AMIF Regulation, as inserted by Article 1(d) Regulation 2018/2000.

# ANNEX: FLOW CHART OF THE RELOCATION PROCEDURE





**European Council on Refugees and Exiles**

Rue Royale 146  
Brussels 1000  
Belgium

T. +32 2 234 38 00

F. +32 2 514 59 22

[ecre@ecre.org](mailto:ecre@ecre.org)

[www.ecre.org](http://www.ecre.org)