



PAPER
January 2018

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A simulation of the effect of mandatory relocation

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Abstract

The Dublin regime is about to change for the fourth time. Whilst all three previous versions proved incapable of organising burden-sharing, Dublin IV introduces what looks like a true game-changer: a mandatory relocation mechanism to correct the unbalanced distribution of asylum seekers in the European Union. This paper aims at shedding some light on the stakes and content of this reform. It also provides a simulation of its effect on member states' burden by tackling the question: what would have happened, had Dublin IV been in place during the refugee crisis? Amongst other things, I find that Italy and Greece, beneficiaries of the temporary relocation mechanisms, would have had to take more asylum seekers under Dublin IV. I conclude this paper with a broader reflection on the means and ends of the Regulation.

1. Introduction

Speaking of the Dublin regime, system or regulation, has become European common parlance over the past few years. The rise of protection seeker influxes and the lack of a coordinated and orderly response on the part of EU member states have granted the Dublin regime permanent coverage in the press. After the Commission's proposal for a refugee quota system failed in 2016 (Zaun, 2017), a new reform proposal was put on the table. Whilst retaining the core features of prior Dublin Regulations, it provides for the establishment of a corrective mechanism which enforces burden sharing between member states. This paper looks into the operational changes that the proposal for Dublin IV brings about and answer the question: what would have happened for member states, had the corrective mechanism been in place in 2014?

Try and ask people at random if they heard of the Dublin system, one in three will answer in the positive. Of course, the issue of asylum being more salient in some member states than others, the positive response rate will likely vary from one place to another. Few people know, however, that the Dublin regime is closing 30 years of existence. It has first been adopted in 1990 as the Convention Determining the State Responsible for Examining the Applications for Asylum. Adopted under international law (as opposed to EU – or, back then, community – law), the Convention required to be signed at first and then ratified to enter in force. It was signed by the twelve member states of the European Communities in 1991 but only entered into force some six years later when, at last, it appeared in the Official Journal of the European Communities in August 1997.

A bit like nowadays' Regulation, which happens to be called Dublin III, the original Convention (that would therefore be Dublin I) pursued two main purposes. Firstly, it was

supposed to avoid the refugee-in-orbit problem; e.g. refugees failing to have a state responsible for examining their asylum applications. Secondly, it was thought to avoid the asylum-shopping issue; that is, asylum seekers lodging their claims in several member states to increase their chances of success. The adoption of such a Convention was a big leap forward, for that no common immigration policy was in place at the time, and the Schengen Convention had only been adopted some 5 years beforehand. Yet, this was by no means comparable with the Common European Asylum System as we know it today insofar as the Convention merely was a way to determine the member state responsible, and no harmonization whatsoever was provided for the recognition of the status¹.

The Dublin II Regulation, a recast of the former Convention, under EU law this time, was adopted in 2003. By then, the treaty of Amsterdam had been adopted (1997) and had entered in effect (1999) and so there existed a common policy on immigration. Institutionally, it fell under the first pillar, so-called “Community Pillar”, the most integrated one, ruled by the co-decision procedure and qualified majority voting in the Council. In spite of that, a subterfuge allowed the Council to retain unanimity as the voting rule for five years: the treaty of Amsterdam included a transition period during which first-pillar rules would be withheld until the Council, by way of a unanimous vote, decided the period was over (see article 61 TEU). This occurred in December 2004 (with Decision 2004/927/EC): It means that Dublin II was adopted by unanimity. One may think: and so what? Unanimity voting is not without consequences on a text, as it is well documented in politics literature (Buchanan and Tullock, 1958; Franchino, 2004; 2007; Kassim and Menon, 2003). Decision by unanimity may entail less delegation from member states to EU institutions, which amounts to higher discretion for national administrations, but it may also entail decreasing the content of a piece of law to make it more acceptable to all parties. The thing is, under unanimity, each and every member state, irrespective of its bargaining capacity, has the possibility (in theory at least) to block the passage of a bill. In order for a bill to be adopted, it has to satisfy all parties’ expectations to an acceptable extent (Tsebelis, 2001). No wonder then that Dublin II was not a ground-breaking reform. What is more surprising is that Dublin III was not more ambitious. Adopted in 2013, the third recast occurred in a more favourable institutional setting, albeit the political context had not budged much, if not deteriorated. In a post-9/11 era, terrorist attacks in major European cities, increased influxes towards Spain and Greece in the mid-2000s, the Arab Spring in the 2010s along with the ongoing war in Syria, had already stirred up member states’ security concerns (Heidbreder, 2014; but see also Huysmans, 2000). In addition to that, as Bauböck (2017: 11) explains, the fact that there already existed an agreement in place, whereby responsibility for asylum determination would be assigned to the EU state of first entry, made any change in the status quo more difficult: “the Dublin principles were difficult to modify because of the vested interests of a majority of states whom they relieved from the burden of admitting asylum seekers who had already passed through another member state”.

¹ This incongruence was then to be the basis of the qualification Directive; in order to create an area of asylum with equal chances (in theory) of being granted asylum throughout the Union. That being said, there remains significant differences in member states’ practices, which show very different recognition rates from one member state to another for the same nationalities (see ESI, 2015).

Dublin IV, however, may be more of a game-changer. Put forth by the European Commission in May 2016, after the large(r) influxes of the years 2014-2016 and the complete failure of emergency relocation mechanisms, it is likely to shove old distribution rules, provided the bill makes it through the ordinary legislative procedure. This, however, seems less likely as voices are already raising concerns, before the process even starts². One shall also recall here the strong opposition of so called Visegrád countries for the refugee quotas (Zaun, 2017) as much as for the present proposal (Politico, 2017).

The objective of this paper is to bring some light on the reform to whom wishes to understand its stakes and, should it end up this way, the reasons for its failure³. This article is structured in 5 sections. The next section, section 2, brushes the state of affairs with wide strokes: what Dublin III is and why it is being recast a fourth time. The third section proposes to look into the Dublin IV proposal, highlights its main features and the extent of the changes it brings about. The fourth section computes different simulations and answers the question: what would have happened, had Dublin IV been in place from 2014 on? I compute three simulations: one is the hypothetical ideal distribution that considers the application of Commission's reference key over ten years; another one considers the triggering of the corrective mechanism with the allocation rules as per Commission proposal; and the last one simulates the modified rules as in European Parliament's amended version. The fifth section concludes this paper by building upon the design of the Regulation and the results presented in the fourth section. It provides a broader reflection on the reform presented to the Council.

2. Dublin Regulation: why it is being recast

As it stands, the Dublin III regime (Regulation 604/2013/EU) provides for a hierarchy of criteria which govern the determination of the member state responsible for examining asylum applications. These are provided for in chapter III of the Regulation. The first criterion to apply is family. If the applicant has family members who are refugees or asylum seekers in a given country, this country is responsible for examining the applicant's claim (art. 8 to 11). The second criterion to apply is the issuance of residence documents or visas on the part of a member state (art. 12). Where the applicant holds a valid residence permit, it is the member state that issued it which is responsible. Then comes the criterion of first entry (art. 13) which provides for the member state that has had its border irregularly crossed to be responsible for the examination of the asylum claim.

Reading these provisions together, it becomes clear how, in case of sudden influxes, member states located at the outer ends of the common area are to be responsible for the greater share of protection seekers. Depending on where a crisis is located and migration routes, one or several member states are going to have to protect their national, hence European, borders. In other words, they are to bear the burden for the Union as a whole. This should be considered along with two important points. Firstly, influxes are seldom

² A number of national parliament and/or chambers have emitted reasoned opinions in accordance with the protocol on subsidiarity and proportionality; see below.

³ On the difficulties to put in place burden sharing between member states despite their moral duty to receive refugees, see Bauböck, 2017.

monolithic; on the contrary, scholars and experts⁴ oftentimes refer to “mixed flows” or “mixed migration” to express the complexity of inflows which comprise both protection seekers and economic migrants. Secondly, asylum is an individual right; every person is entitled to claim asylum, and member states have the duty to examine their claims individually. Here is the glitch: member states at the edges of the Union have to control the Union’s borders whilst at the same time proceed to a fair examination of asylum claims, for which they are going to be responsible (in most cases) where such a claim is declared admissible. To be more specific, states at the border of the Union are to admit asylum seekers, process their claims, deport rejected applicants (where possible⁵), and host them in a permanent manner when they are granted protection. Beyond practical considerations, which are not negligible, these member states are little incentivised to either protect the Union’s borders or take charge of asylum applications. The question that naturally arises is, can Dublin III meet its objectives in such conditions? Can asylum be justly granted where a member state faces a disproportionate burden (compared to its counterparts⁶), which likely strains its administration?

There is no straightforward answer to those questions but let us consider what the ex-post evaluation of Dublin III has to say about it (European Commission, 2015; 2016). It says, in general terms, that Dublin III has a number of shortcomings regarding both its internal and external validity. Its internal validity is undermined by the fact that it does not account for member states’ capacity to handle big numbers of asylum claims. Nor does it for the efforts actually made. That is, the criteria for determining the member state responsible of a given asylum claim does not consider whether the member state has the capacity to handle claims or how many claims it is already trying to process. Resultantly, claims might not be granted all the attention they deserve and their evaluation may be delayed. In one way or another, this entails dire consequences on asylum seekers’ life conditions. From the external validity standpoint, massive flows have shown how Dublin III was not designed to deal with disproportionate pressure: be they a couple of asylum seekers or a million of them, the procedure remains the same. The evaluation lists some more issues and in greater detail, see European Commission, 2015 and 2016.

3. Dublin IV: what the changes are

As of now, referring to Dublin IV means two things: the Commission proposal for a recast; and the European Parliament’s amended version. In order to delineate the scope of this paper, I will examine the two versions on a number of issues limited to those presented in the previous section. I will therefore not consider some of the improvements brought about by the reform under discussion, such as the greater role given to family ties in the determination of the member state responsible.

⁴ See for example the UN High Commissioner for Refugees; <http://www.unhcr.org/mixed-migration.html>.

⁵ Often, those who are denied protection cannot be deported and are constrained to remain in the member state without legal status. Germany even has adopted a specific status for them, that of “tolerated”.

⁶ Let us recall that the influxes which reached Europe are fairly limited if we consider those that reached, say, Lebanon or Iraq, or if one considers the numbers of internally displaced persons in Syria. For more detail on this, consult the UNHCR data and maps at: http://popstats.unhcr.org/en/overview#_ga=1.195352110.389826905.1481119275.

First of all, the logic underlying the Dublin scheme, from Dublin I to III, is not being changed. The criteria for determining the member state responsible remain the same. The Commission proposal, for instance, reads:

“The Commission came to the conclusion that the current criteria in the Dublin system should be preserved” (COM(2016)270 final: 4)

Or else:

“The current criteria for the allocation of responsibility are essentially preserved, but targeted changes are proposed, notably to strengthen family unity under Dublin by extending the family definition.” (ibid: 14).

As before, the hierarchy of criteria implies that, in most cases, an applicant will have to apply in the member state either of first irregular entry or in the member state where she/he legally resided. The version amended by the European Parliament is no different in this respect⁷.

What changes with Dublin IV though, is the provision of a corrective mechanism to share the burden of disproportionate influxes. This is a way to respond to both internal (however, to a limited extent) and external validity issues. In concrete terms, each member state is attributed a hypothetical fair share of asylum claims calculated on its relative GDP and population. On this basis, a threshold (let us call it T1) is determined which, once exceeded, triggers a relocation mechanism. Member states below a certain other threshold (that we will call T2) will become responsible of a share of asylum seekers. The question then rightly becomes: what are those thresholds? And the answer depends on the version we consider. The Commission’s proposal puts forth a T1 at 150% and a T2 at a 100%. With regard to T1, it means that the relocation mechanism will be triggered once a member state *has exceeded* its fair share of half the maximum it was given. For example, if, according to its GDP and population, it is determined that Malta should be responsible of 0.1% of all the asylum claims lodged in the EU, which in a hypothetical year correspond to, say, 1’000 asylum seekers, the mechanism will be triggered once Malta exceeds 1’500 asylum claims. In such a situation, Malta’s extra applicants (those beyond the 1’500) are going to be relocated to other member states. Not to whatever member states though; only to those which are below T2, below their fair share (as calculated on the basis of their GDP and population) of applications compared to the total of applications lodged in the EU⁸.

The European Parliament’s version upholds the logic detailed by the Commission but, whilst it retains T2 at a 100%, it proposes to lower T1 from 150% to 100% (so, in the example above with Malta, the mechanism would be triggered once Malta reaches a thousand applications, instead of 1’500). As EP’s version comments:

⁷ Even though some more guarantees are provided for with respect to minors and family rights; see European Parliament, LIBE Committee, 2017.

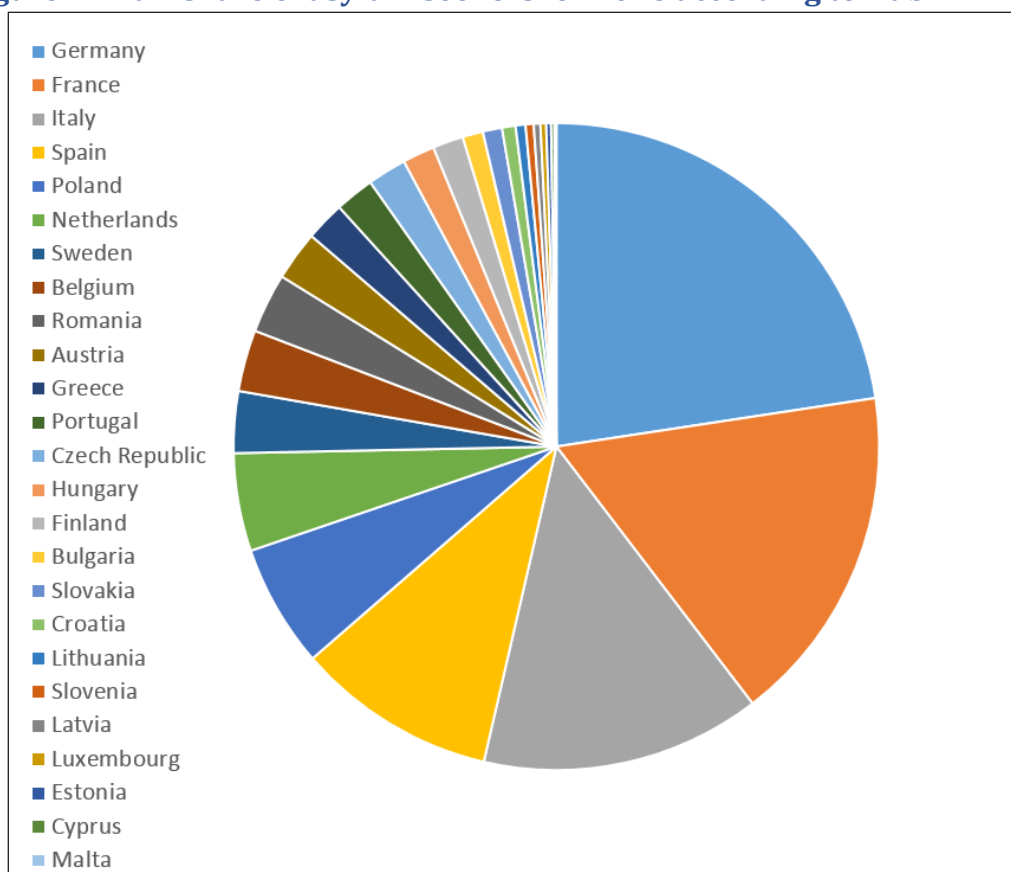
⁸ This may seem clearer with some examples to be found in the next section.

“The corrective allocation system should be triggered before the benefitting Member State is overwhelmed by the inflow of asylum seekers. Therefore the triggering percentage has been lowered from 150% to 100% of the reference key.” (European Parliament, LIBE Committee, 2017: 67).

In order to see things a bit clearer, let us shed some light on how this fair share of asylum applications is calculated; e.g., on the reference key to be applied. According to the Commission’s proposal (upheld by EP’s; see art. 35, COM(2016)270 final), the fair share of asylum seekers should be determined on the following criteria:

- The size of the population (50% weighting);
- The total GDP (50% weighting).

Figure 1 – Fair share of asylum seekers for 2016 according to Dublin IV (%)

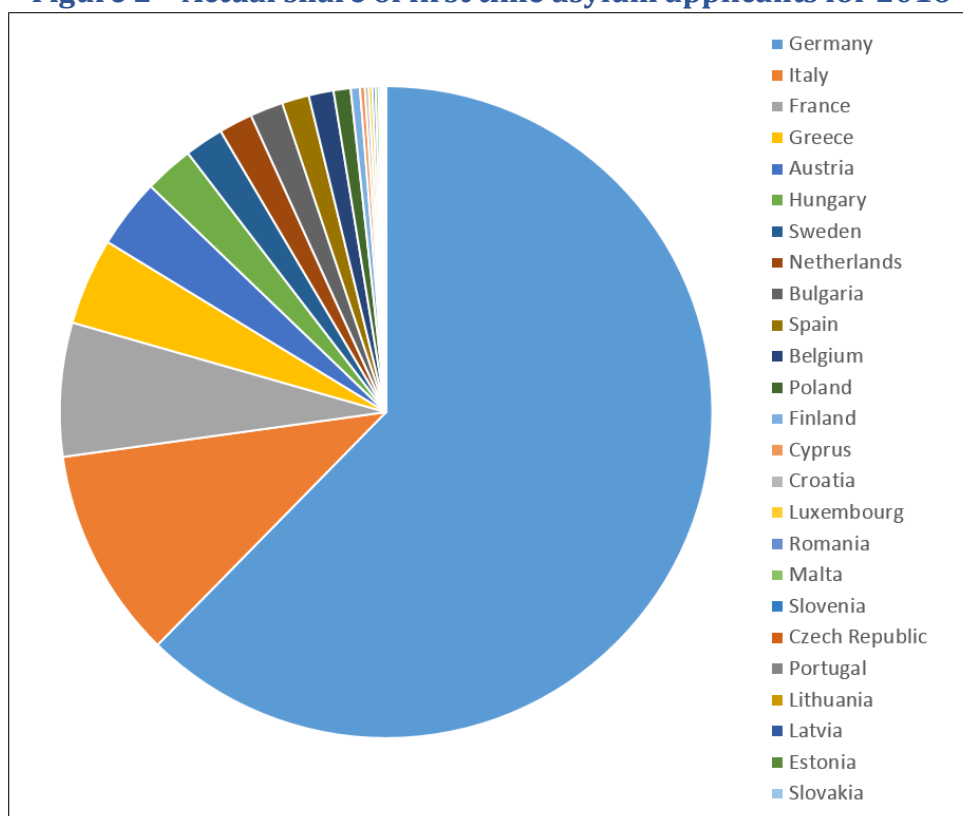


Source: Own elaboration on Eurostat data

Considering member states' hypothetical share in a European Union counting 25 member states⁹, Germany would ideally be responsible of 22.6% of the total number of asylum seekers in the EU in a year (in this example, 2016) whereas Malta would be responsible of less than 0.1% of them. Figure 1 displays member states' share as per Commission's proposal, ordered from the greatest to the smallest. In accordance with such a formula, Italy would receive ca. 14% of all applications.

Figure 2 then displays the actual number of new applications in the same year for the 25 EU countries concerned. Note that the figure for Germany is extremely large for this specific year, a figure that reflects the country's attractiveness but that remains exceptional nonetheless. Such figure is also due to Merkel so-called "open-door" policy and ensuing arrivals in autumn 2015 that were processed later on in 2016¹⁰. Notwithstanding, Germany received about 62% of the applications compared to the EU25 total. Italy ranks second with 10.5%, followed by France, 6.6%.

Figure 2 – Actual share of first time asylum applicants for 2016



Source: Own elaboration on Eurostat data [migr_asyappctza]

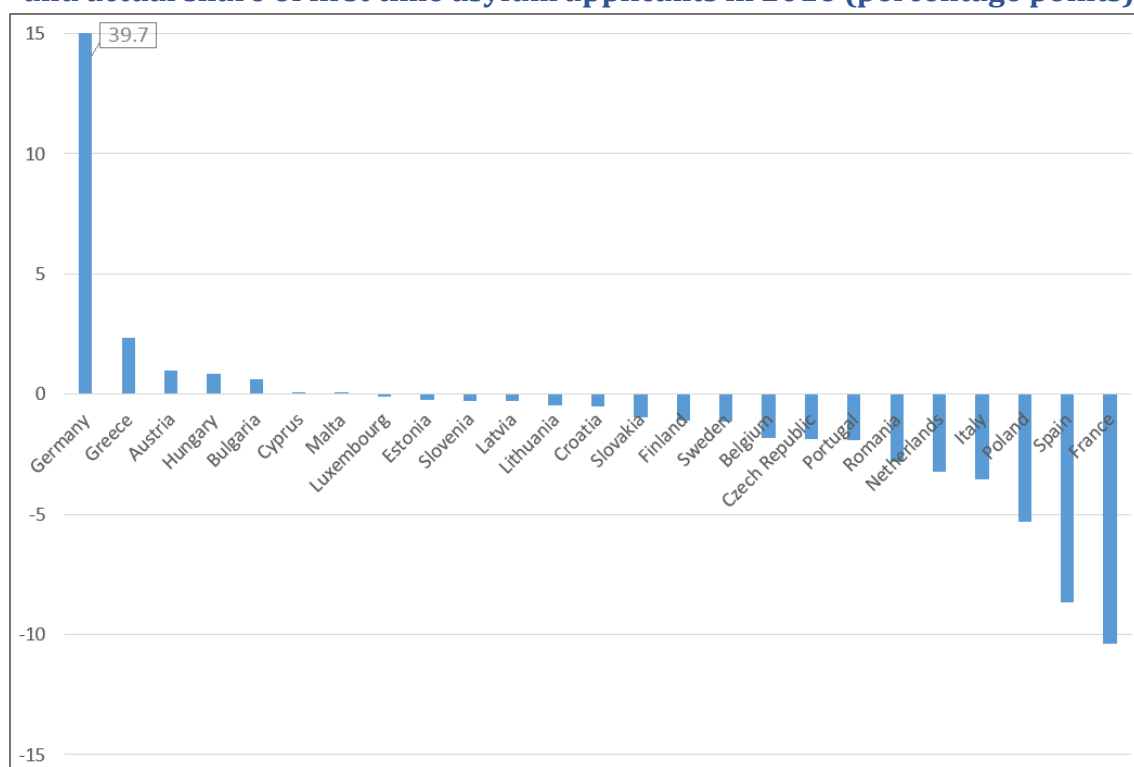
Looking now at the difference between a fair distribution as provided for by the new Dublin Regulation-to-be and the actual percentages of the year 2016 (figure 3), there appears to be a wide disparity between those that received more applications than their fair share (on

⁹ Since the UK is about to exit the EU, and since Ireland has an opt-out clause and Denmark an opt-in clause, I consider, like the Commission's proposal, the minimum configuration for the application of Dublin IV; e.g. EU25.

¹⁰ See Politico at: <https://www.politico.eu/article/germany-1-1-million-refugee-arrivals-in-2015/>.

the left-hand side) and those that received less applications than their fair share (right-hand side). Germany, for instance, received almost 40 percentage points more applications than it would have under Dublin IV. France is located at the other end of the spectrum with 10 percentage points less than under Dublin IV. Italy, too, would have received more as it displays a figure 3.5 points below its fair share. Of course, these figures should be corrected as Germany took upon itself to welcome asylum seekers it was not originally responsible for.

Figure 3 – Difference between fair share asylum seekers as in Dublin IV Regulation and actual share of first time asylum applicants in 2016 (percentage points)



Source: Own elaboration on Eurostat data

Those are comparisons between fair shares and actual shares in a given year. As such, they do not consider other years or the triggering of the relocation mechanism. The next section proposes to look at the effect of the Dublin IV Regulation, should it have been in place in 2014.

4. A simulation of the effect of Dublin IV

This section aims at estimating the effect of a relocation mechanism on member states' burden, had Dublin IV been in place (and fully implemented) in the period 2014-2016, which allegedly corresponds to the period of increased influxes.

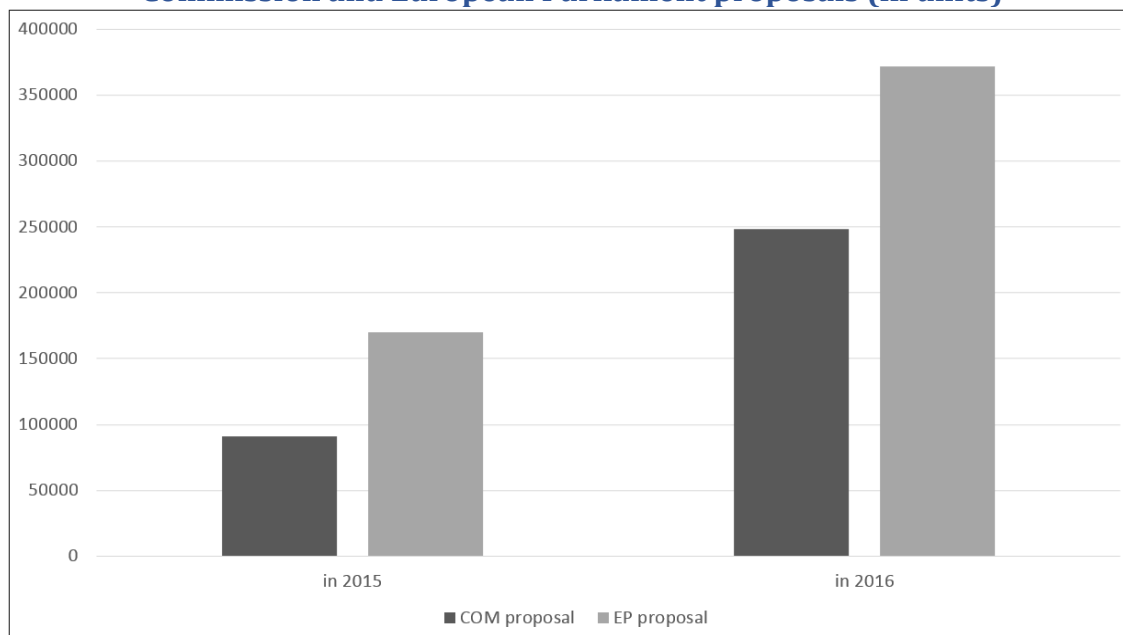
4.1 Institutional design

The most important change Dublin IV brings about is the corrective mechanism; a way to redistribute asylum seekers across Europe as a function of member states' respective burden and capacity. Burden is here understood as yearly arrivals; the mechanism only take account of the applications lodged in a given year and not of the total number of applications in course of evaluation in one country. Capacity refers to a member state's share of GDP and population out of the total EU GDP and population.

As of yet, there exist two versions of such mechanism: that put forth by the Commission and its amended version as adopted by the European Parliament (see previous section). The former establishes a relocation mechanism that triggers at 150% of the fair share, which corresponds to a situation of "disproportionate burden"; the latter brings this threshold down to a 100%. In the hypothesis the mechanism is triggered, asylum applicants to be relocated are attributed to EU member states that have not reached their fair share to the full. A last piece of information is worth knowing at this point: the corrective mechanism considers a rolling one-year basis for calculations. In practice, it means that the corrective mechanism, should it be triggered, gives rise to relocations the next year. This has non-negligible consequences as, in case of unforeseen and sudden increase, a member state will have to cope with present influxes and relocate asylum seekers the next year. This lack of flexibility (that makes a lot of sense from a practical standpoint) likely maintains the burden on countries of entry, albeit for a limited amount of time.

Figure 4 summarises the number of relocations that would have taken place in 2015 and 2016 (so based on arrivals that occurred respectively in 2014 and 2015).

Figure 4 – Total number of relocations to occur in 2015 and 2016 according to Commission and European Parliament proposals (in units)



Source: Own elaboration on UNHCR and Eurostat data

Whether one considers the threshold established by the Commission or by the EP changes the figures a great deal. According to the Commission's proposal, relocations in 2015 (on the basis of applications lodged in 2014) would have amounted to 90'837 whilst there would have been 170'117 of them according to the EP's proposal. Those figures would have been respectively 248'009 and 371'894 in 2016 (once again, on the basis of 2015 figures). But the delicate matter is not so much how many relocations there should be but rather where people should be relocated.

The figures below compute three simulations that are compared to the actual number of asylum applications received per year. The "ideal" curve represents the hypothetical distribution of claims per countries if they would be attributed to EU member states as a function of their respective share of GDP and population on EU totals (therefore, in application of the reference key referred to above). The "COM simulation" curve considers the figures as they would have been with the implementation of the corrective mechanism in 2014, Commission model. Finally, the "EP simulation" computes the same calculations as for COM simulation but with the rules established by the European Parliament version.

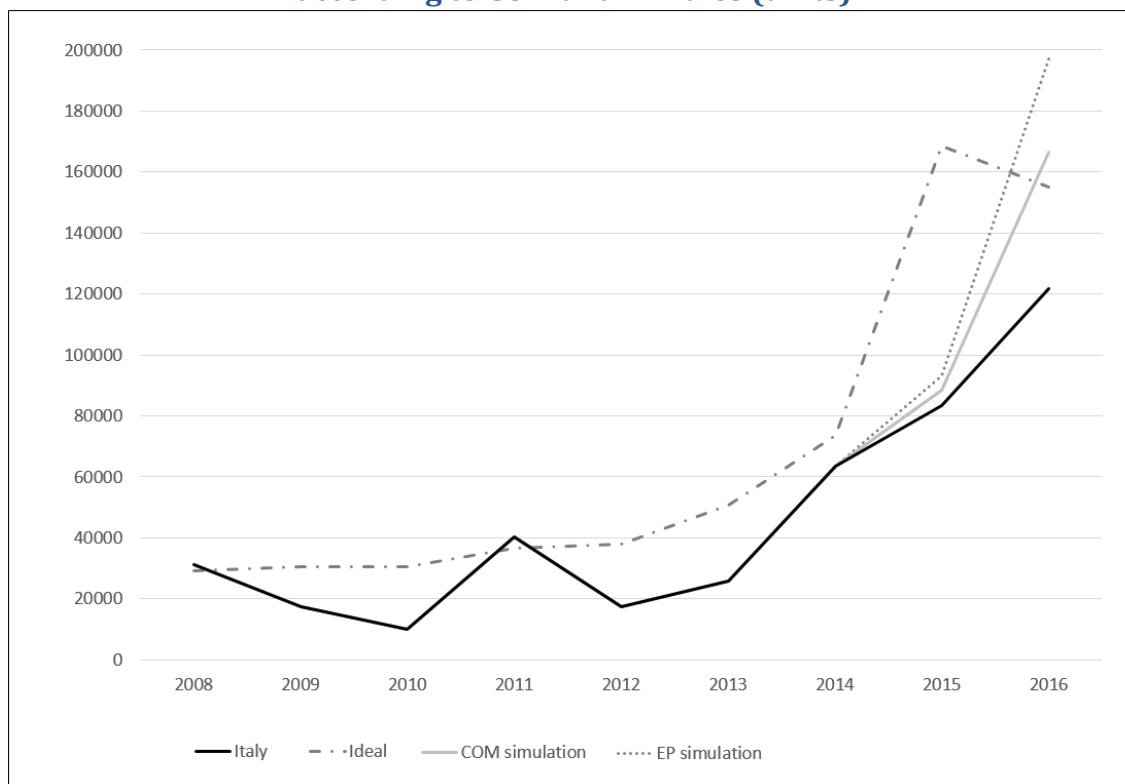
4.2 Italy, Greece and Hungary: (would-be) beneficiaries of temporary mechanisms

Initially, Italy, Greece and Hungary were to benefit from temporary relocation schemes. Whereas Hungary left the ranks, Italy and Greece participated in the operation that ended up being a relative failure with a sheer 28.2% of effective relocations (COM(2017)465final, Annex 3). Considering the volume of asylum claims EU-wide, it appears that Greece and Italy should have been responsible for a greater number of protection seekers whilst Hungary should have been relieved of most of them.

Figure 5 below computes the three simulations listed above for Italy. In this example, actual numbers are below that of the simulations: considering the total number of first time application in the EU25, Italy should have been responsible for more asylum claims if Dublin IV were in force in 2014. In 2016, Italy received a total of 121'593 asylum claims which, compared to the 1'108'033 throughout the EU, is below its fair share. In application of Dublin IV, Italy should have received between 166'569 (Commission model) and 197'138 applications (EP model) considering the arrivals of the year 2016 plus the relocation towards Italy based on 2015 calculations. The ideal curve is interesting as it shows what would be the effect of an instantaneous relocation scheme; or, to put it differently, if all applications were allocated in accordance with the reference key on the spot.

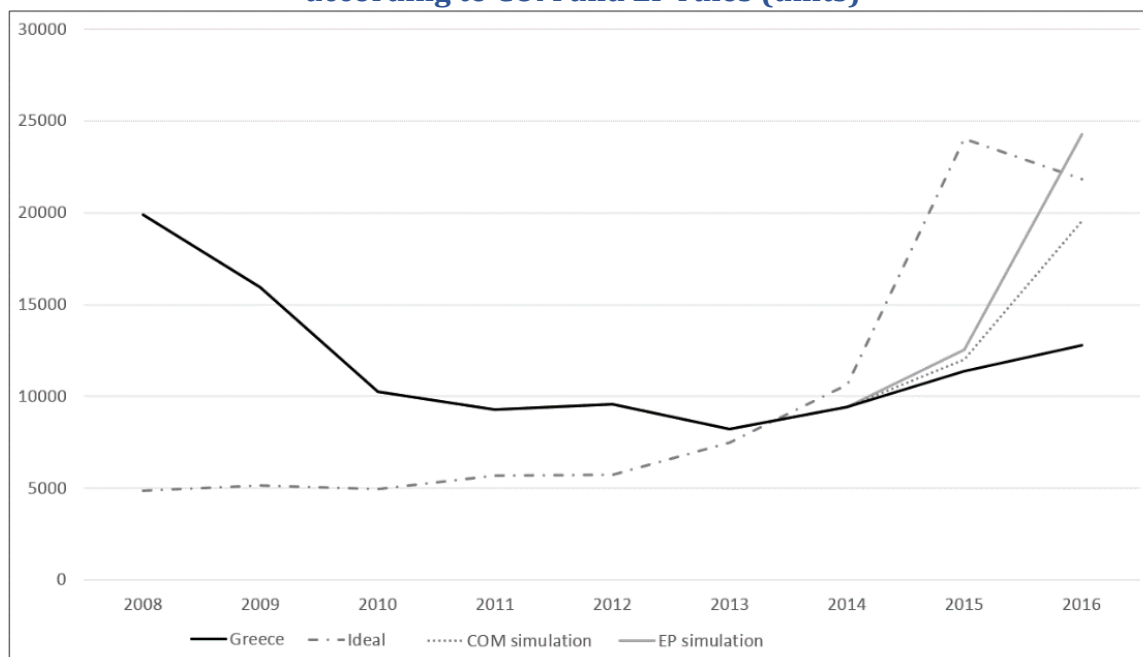
Turning to Greece (Figure 6), the bulk (so to speak) of asylum applications came earlier in the timespan under scrutiny. A glance at the area between the actual and ideal curves in the 2008-2012 period gives a fair idea of the burden borne by Greece. That said, the figures during the "refugee crisis" appear rather low compared to its European counterparts. Whereas it received 12'796 applications in 2016, its fair share, considering both its relative population and GDP compared to EU wide figures, would have been between 19'549 (Commission model) and 24'278 applicants (EP model). Once again, the number for 2016 counts both this year's arrivals and the previous year's relocation.

Figure 5 – First time asylum applicants in Italy: actual numbers and simulation according to COM and EP rules (units)



Source: Own elaboration

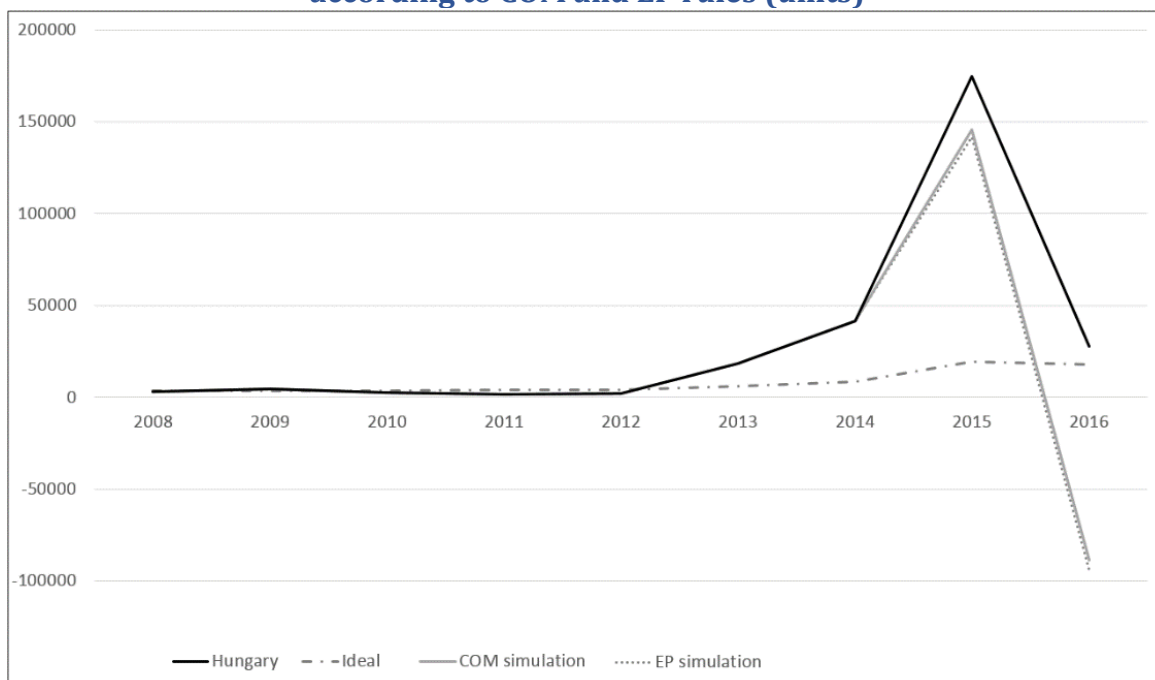
Figure 6 – First time asylum applicants in Greece: actual numbers and simulation according to COM and EP rules (units)



Source: Own elaboration

The situation is quite different if one looks at Hungary (Figure 7), deeply affected by the change in migration patterns and the increased use of the Balkan route. Hungary is a good example of what would happen in case of a sudden influx of asylum seekers using one specific route with a corrective mechanism based on a rolling one-year. Despite being triggered in 2014, the mechanism would have had corrective effects for the country under pressure in 2015 whilst new arrivals would keep flowing in. The high number of applications in 2014 would give rise to relocations in 2015 but new applications would keep coming in, potentially exceeding the number of relocations. Hungary would have borne a significant burden almost equal with or without the mechanism. The situation would have changed in 2016 though, with a high number of relocations, exceeding that of new arrivals. The negative figures for 2016 are hypothetical and regard the number of asylum applicants who still have their claim being assessed (potentially those arrived in earlier years) Hungary would send to other countries. The new Regulation does not provide anything in this respect so that relocations according to COM and EP simulations should actually stop at the 0 level. Note that the ideal distribution is way below the actual one over the last three years of the period.

Figure 7 – First time asylum applicants in Hungary: actual numbers and simulation according to COM and EP rules (units)



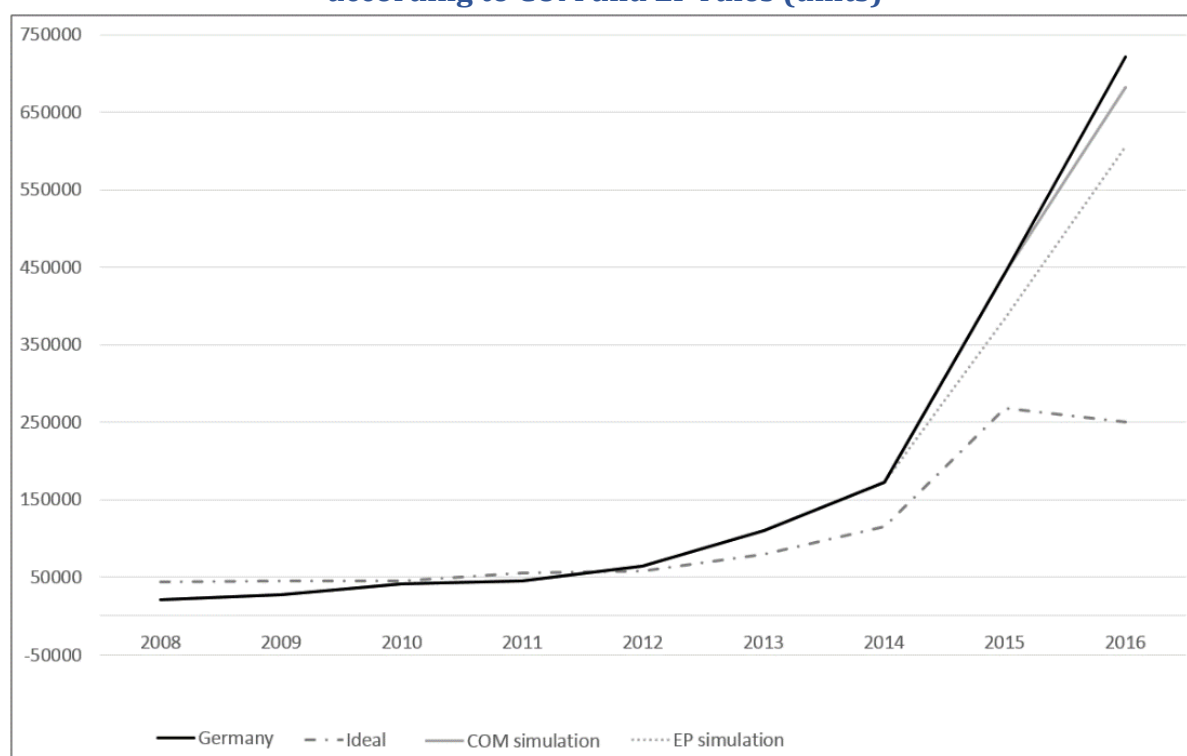
Source: Own elaboration

4.3 Germany and France: a give and take relationship

France and Germany were the ones to call for more solidarity in a 2017 summit in Rome. Whereas Germany, the most attractive destination, received a great deal of applications, France remained far behind.

Germany came out as the main receiver of the refugee crisis. From 2014 onwards, it receives a number of claims way higher than what we called the ideal number. As figure 8 shows, Germany would have had a good deal of its applicants relocated. Both Commission and EP scenarios show a significant decrease of the asylum seekers it is responsible for. In this case there is a clear distinction between Dublin IV as conceived by the Commission and Dublin IV as conceived by the European Parliament. In the latter instance, the corrective mechanism would have been triggered already in 2014 whilst it would have not under the Commission's version.

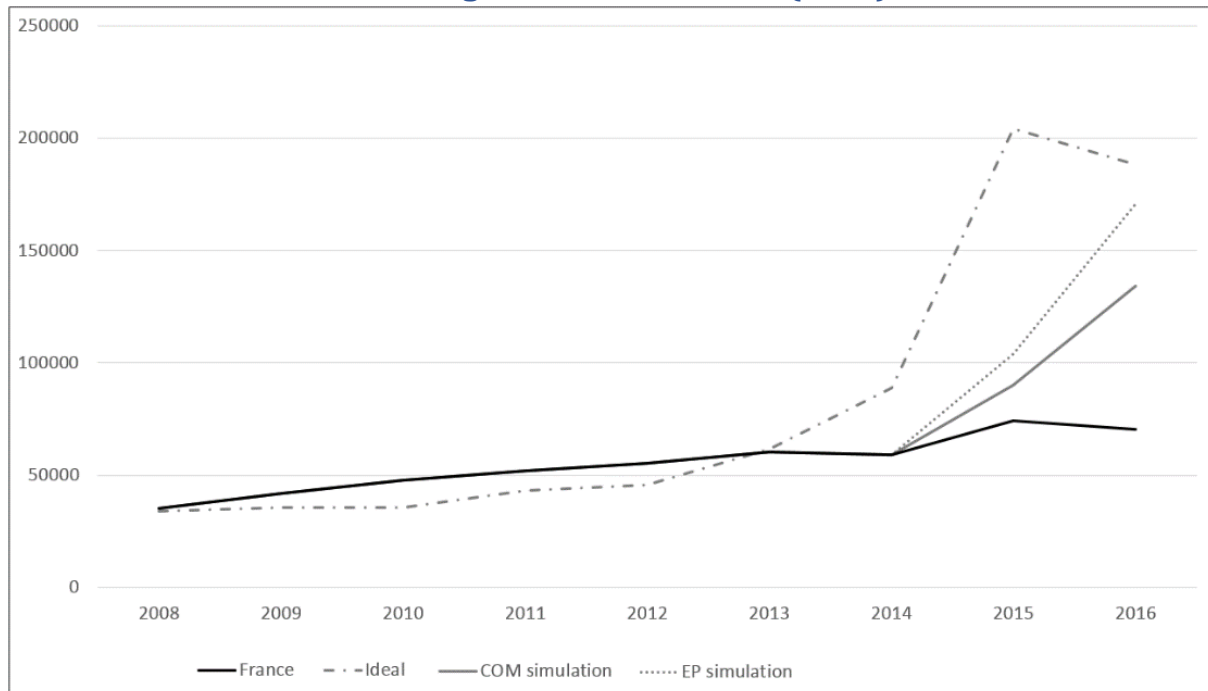
Figure 8 – First time asylum applicants in Germany: actual numbers and simulation according to COM and EP rules (units)



Source: Own elaboration

France (figure 9), instead, would have had to take responsibility for much many more asylum seekers, more than twice its actual figures. Whilst the number of asylum seekers in France remained rather stable, in spite of the increased influxes over the 2014-2016 period, under Dublin IV, it would have had to host twice as much asylum seekers in 2015 according to Commission's proposal, almost thrice as much with EP's amendments. As the second power of the EU25, both in terms of GDP and population, the EU's ideal figure for France would have implied almost three times as much asylum seekers when the crisis peaked in 2015.

Figure 9 – First time asylum applicants in France: actual numbers and simulation according to COM and EP rules (units)



Source: Own elaboration

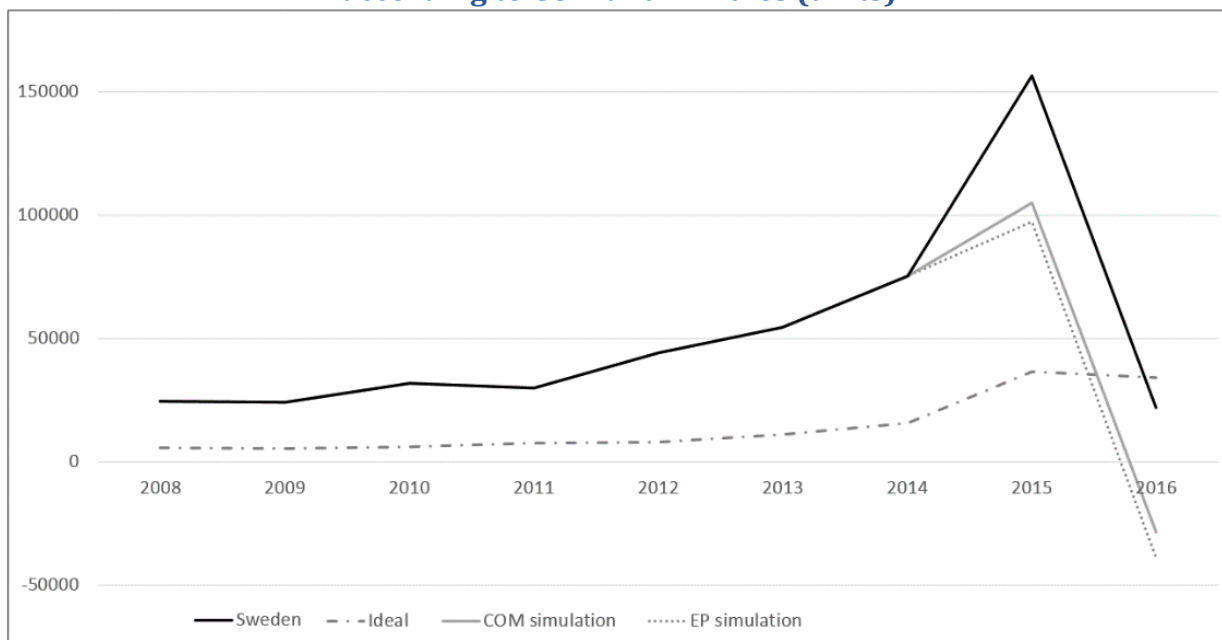
4.4 Sweden and Spain: amongst the main givers and main takers in the corrective mechanism

Cumulating the number of relocations during the period concerned, in accordance with COM and EP models, France should have been the main taker whilst Hungary should have been the main giver. In this section, I will therefore go for those ranking second: Sweden and Spain.

Sweden (figure 10) may have a relatively high GDP, it is not a very densely populated country. Therefore, taking account of the reference key as provided by Dublin IV gives ideal figures way below actual ones. In total, over the period considered, Sweden would have relocated 101'732 (COM model) and 119'974 (EP model) asylum seekers towards other EU member states.

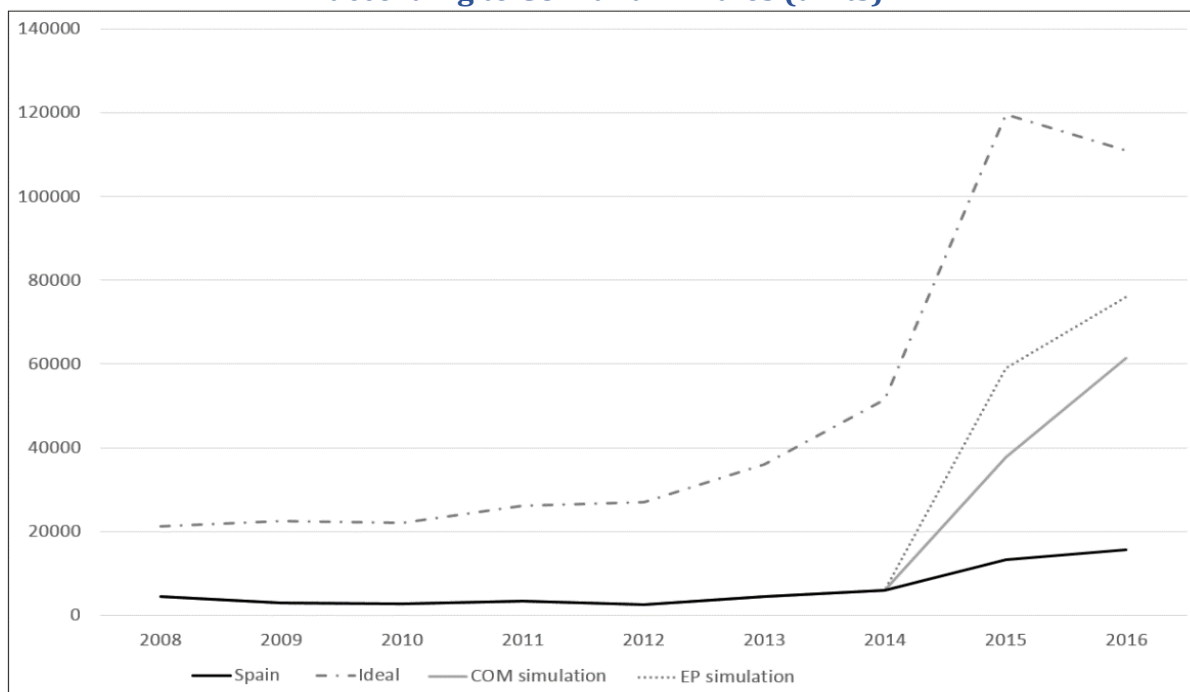
One of the main taker with Dublin IV would have been Spain (figure 11), with a cumulated total of between 70'276 (COM model) and 106'141 (EP model) asylum seekers relocated to its territory. Spain, a bit like France, has been widely sparred by the refugee crisis. A glimpse at the actual and hypothetical ideal figures reveals a high discrepancy in the entire period.

Figure 10 – First time asylum applicants in Sweden: actual numbers and simulation according to COM and EP rules (units)



Source: Own elaboration

Figure 11 – First time asylum applicants in Spain: actual numbers and simulation according to COM and EP rules (units)



Source: Own elaboration

4.5 Data and method

In order to produce estimates, I resort to different data sources. Firstly, I consider UNHCR monthly data on asylum applications in Europe. UNHCR figures are very close to Eurostat's but present fewer missing values. Secondly, I use Eurostat data as to population and GDP in order to compute the reference key for a fair share of applications in accordance with article 35 and Annex I of the Commission's proposal. Note that I consider here the EU25 as the UK is exiting the EU and Denmark and Ireland will have to pronounce themselves as to their participation in the renewed Dublin Regulation (see above). Asylum seekers are relocated to member states whose actual number of asylum claims is below their fair share, in accordance with the distance between member states' fair share and the actual number of asylum claims.

Considering that the exercise is a simulation, there are a series of assumptions behind the figures presented which need to be stated to help the reader assess the soundness of the estimates. Firstly, I posit that there is equivalence between the number of asylum claims in a country and the number of asylum claims a country is actually responsible for after the application of Dublin rules. I consider such assumption valid for several reasons: i) so-called "take back" requests, in and out, are limited in number; ii) in many cases, tend to cancel themselves out (Garcés-Mascreñas, 2015); iii) the corrective mechanism considers the number of new applications after their admissibility claim but *before* Dublin check (COM(2016) 270 final: 8); iv) in many cases, Dublin take-back and take-charge request do not give rise to effective transfer or may be carried out in subsequent years (EMN, 2017: 30).

Secondly, for the sake of simplicity, I assume the full implementation of the Regulation; namely, that all relocations planned are actually carried out. It is important because the calculations in one year for the relocations the next year consider the number of arrivals together with the actual number of relocations. The actual number of relocations (in the event a country relocates protection seekers in its territory) may therefore impact the relocations to occur the year after.

Thirdly, I assume Germany has not implemented its so-called "open-door policy", therefore considering that Germany could have relocated a high number of asylum seekers to other countries. This has, however, little effect on the estimates presented here, for at least two reasons: i) Merkel's policy was decided in late 2015 and had mostly consequences for the year 2016; ii) given the period under scrutiny and taking account of the rolling calculation year, figures to be considered in 2016 will have relocation impacts in 2017, so beyond the period at issue. Similarly, I assume that, had Germany not taken responsibility of a number of protection seekers, they would have got stuck in Hungary (Hall and Lichfield, 2015; Blume et al., 2016) and so could have been subject to relocation all the same.

Lastly, I assume the EU-Turkey declaration has never been made. It surely has affected the number of asylum claims in the EU but since the agreement was passed in March 2016, it does not need to be heeded of in this simulation.

5. What to think of Dublin IV

Changing the Dublin regime is a laudable objective. Almost 30 years after its adoption, the scheme has shown blatant shortages. Whilst it did meet some of its objectives, such as, for instance, limiting asylum-shopping, its third recast in 2013 failed to implement the principle of solidarity in the management of external borders as provided for by article 80 TFEU.

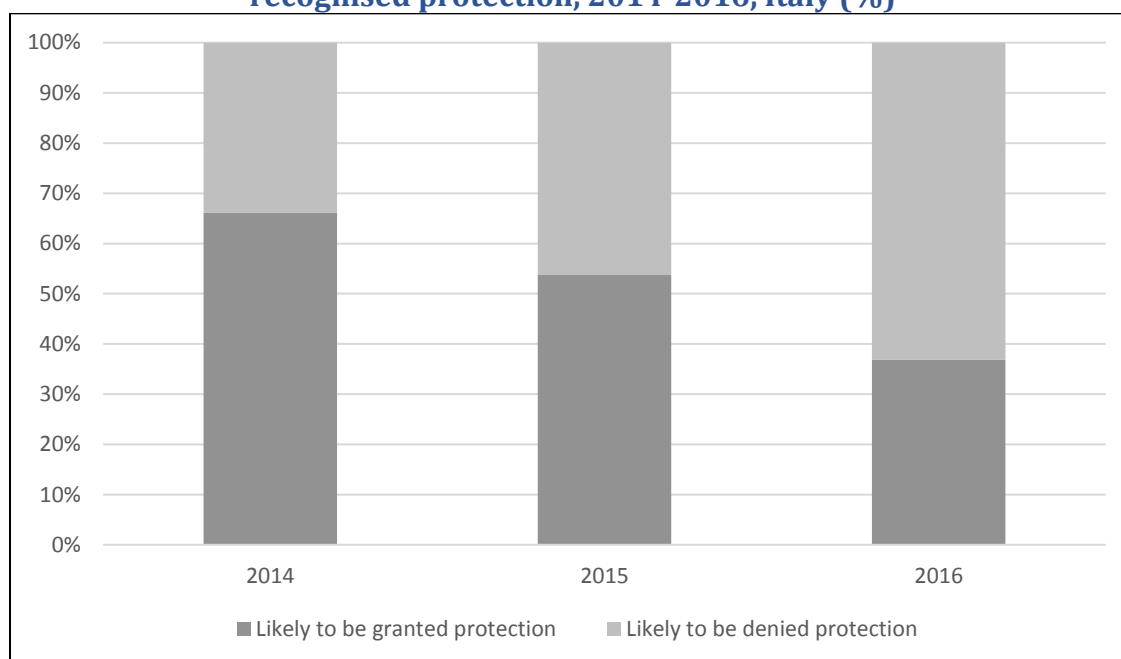
The introduction of a compulsory and automatic corrective mechanism constitutes a step towards more solidarity. However, Dublin IV somehow reflects the segmented approach to migration the EU has put forth since the entry into force of the Area of Freedom Security and Justice. A good example of such an approach was the General Programme Solidarity and Management of Migration Flows, implemented in the period 2007-2014. Even though this programme took place before the Treaty of Lisbon – and thus before the article 80 TFEU¹¹ – was adopted, it aimed at implementing a sort of solidarity between member states that would, however, place asylum, migrant integration, border management and returns into four distinct and hermetic policies. Yet, it has become obvious that those four policies are intertwined: integration concerns both economic migrants and refugees (whilst the target groups of the ERF and EIF were mutually exclusive) and migrants come in mixed fluxes (but asylum, border controls and returns were separated), to take but a few examples. The new organisation of European migration-related funds has proven able to create a more flexible framework, able to suit the reality of the phenomenon, by creating macro-funds. The Asylum, Migration and Integration Fund is the example *par excellence* as it merges three themes together and allows member states to treat them in a linked manner¹².

The reform of the Dublin Regulation, however, reproduces the EU's segmented approach to migration as it limits its application to asylum seekers. One would object by arguing that relocating migrants that do not claim asylum makes no sense; and they would be right. It remains though, that incoming flows are mixed and that member states at the EU's gates will continue to receive disproportionate numbers of people crossing their borders whilst only part of them are likely to be eligible to asylum and thus fall under the scope of European solidarity. In this respect, figure 11 gives an idea of the number of people arrived by sea to Italian shores who are likely to be granted or denied international protection. Considering EU-wide recognition rates by nationalities, 66.1% of those arrived by sea in 2014 were likely to be recognised some sort of protection; they were 53.7% in 2015 and 36.8% in 2016 (see figure 12 and relating footnote for more on that). Accordingly, a good deal of people arriving by sea is unlikely to receive protection.

¹¹ The principle of solidarity in this domain was first established in the Constitutional treaty, article III-268, but was never adopted.

¹² For instance, the integration fund would exclude refugees from its scope of application to concentrate on third country nationals. Refugees would have a fund dedicated to them, excluding by the same token third country nationals. This would pose problems regarding the implementation of projects aiming at, say, integrating newcomers; both refugees and third country nationals.

Figure 12 – Arrivals by sea (20 main nationalities) and their likelihood¹³ of being recognised protection, 2014-2016, Italy (%)



Source: Own elaboration on UNHCR and Eurostat data

It remains that, in the same period, Greece and Italy would have had to manage the EU's borders and receive more asylum seekers as a result of the corrective mechanism provided for by Dublin IV, had it been in place in 2014. Dublin IV does not account for such a situation. One would argue here that there exists the Internal Security Fund for borders as a means to enforce solidarity in this domain; and the AMIF also covers returns and, more generally, migration policies, so that there exists a set of instruments to support member states. But does this suffice to face the so-called "disproportionate burden" in case of mass influx?

I showed that, in the midst of the refugee crisis, Italy and Greece should have relocated asylum seekers in their territory. Yet, this is in order to alleviate the burden they bore that temporary mechanisms were put in place; to relieve their supposedly exhausted reception systems by relocating applicants from their reception structures towards their counterparts'. Does that mean that Dublin IV's permanent relocation mechanism will need to be supplemented with temporary relocation mechanisms? If the answer is yes, then the reform, as it stands, may be flawed.

The truth is, it is hard to devise a reform to the Regulation that shares the burden and that does not defeat its purposes at the same time. For instance, one of the problems with

¹³ The likelihood is here calculated on the basis of the 20 main nationalities of people arriving by sea to Italian shores (representing about 90% of all arrivals by sea). For each of these nationalities, a recognition rate is calculated considering all the protection claims lodged and granted (any protection) throughout the EU. This recognition rate is then applied to sea arrivals to Italy and aggregated to obtain a yearly likelihood. Such an elaboration should, however, be considered with caution for several reasons: i) it considers the recognition rates for the same year as the arrivals by sea in spite of sometimes long (more than a year) recognition procedures; ii) it only considers first instance decisions, which may be challenged in appeal but considering final decisions would increase decisions timespan and further reduce their applicability to the year of sea arrival. Note though that introducing a year gap do not change much the likelihood to receive some sort of protection.

Dublin II, or III, was that, by giving precedence to the criterion of first country of irregular entry in the definition of the responsible member state, it provided member states with incentives not to register irregular entry (e.g. not taking fingerprints for instance), which gave rise to waive-through practices. Dublin IV is undermined by similar trade-offs: organising burden-sharing without self-defeating its purposes. Two examples may be cited. First, relocation calculations are not based on the total of asylum claims a member state must proceed, in spite of the fact that it would make a lot of sense. To be more precise, the true definition of the burden borne by a member state is not so much the number of asylum claims it receives *in a year* but rather the number of asylum claims that pile up from a year to another¹⁴. Instead of such a definition of burden, calculations are based on the number of new applications lodged in the previous year; so that member states are not encouraged to slow down the examination of the asylum claims they are responsible of. This would defeat one of the purposes of the Regulation; that is, ensuring applicants' claims swifter examination. Second example, the automatic relocation mechanism is a good way to encourage member states at the EU's gates to register irregular entries as, in this way, they may reach the relocation threshold sooner. However, the mechanism does not take account of member states' reception capacity. It does consider their GDP and population as capacity indicators. But as we saw, both Italy and Greece should have received more asylum applicants and yet they were the beneficiaries of temporary relocation schemes to alleviate their reception system.

Scholarship has looked into possible distribution keys, taking into account various economic, demographic and asylum-related variables, with different weights for each of them (see Fernández-Huertas Moraga and Rapoport, 2015, for a summary). Each method yields very different outcomes; and deciding which is better or fairer is not so much a matter of acceptability but rather a matter of acceptance. The distribution key that would win the Council's approval is the one that would enable a qualified majority to vote the bill; and not the fairest one. The failure of the Commission's proposal for a permanent quota system in 2016 (Zaun, 2017), notably due to the opposition of some 15 member states, heralds a bleak future for the text under inter-institutional scrutiny.

¹⁴ According to the recast procedure Directive, the maximum time established to provide a decision on asylum application in first instance is 21 months. This time frame may be extended in case of appeal.

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