



MUNLAWS 2023

FACULTY OF LAW, UNIVERSITY OF LJUBLJANA

STUDY GUIDE

EUROPEAN PARLIAMENT:
COMMITTEE ON FOREIGN AFFAIRS (AFET)

CHAIRS: ANŽE ČERTANEC, NIKA VERONIKA BELTRAM



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European Parliament's Committee on Foreign Affairs (EP - AFET)

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1 ABOUT THE AFET

The European Parliament's Committee on Foreign Affairs (AFET) is a committee that contributes and oversees the implementation of the EU's Common Foreign and Security Policy, and also monitors how external action funds from the EU are spent around the world. Additionally, it approves international agreements signed by the EU. Its aspiration is to ensure that democracy, the rule of law and human rights are guaranteed in agreements between the EU and non-EU countries. AFET aims to ensure multilateralism, a global rules-based international order, while supporting openness, fairness and the necessary reforms around the world.¹

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¹ David McAllister, *About*, <https://www.europarl.europa.eu/committees/en/afet/about> (accessed August 7, 2023).

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2 TOPIC ONE: REFORM OF THE DUBLIN SYSTEM

2.1 INTRODUCTION

1. »At the end of 2022, 108.4 million people worldwide were forcibly displaced as a result of persecution, conflict, violence, human rights violations and events, seriously disturbing public order.«² The issue at hand is complex, filled with moral and ethical dilemmas. Different opinions can be found about the topic.



Picture 1 - 2000 migrants crossing the fences separating the Spanish enclave of Melilla from Morocco (June 2022), many dead or missing.³

2. *“Everything which is now taking place before our eyes threatens to have explosive consequences for the whole of Europe,”* Orban wrote in the op-ed. *“We must acknowledge that the European Union's misguided immigration policy is responsible for this situation. We shouldn't forget that the people who are coming here, grew up in a different religion and represent a completely different culture. Most are not Christian, but Muslim... That is an important question because Europe and European culture have Christian roots.”*⁴ – Viktor Orbán (Hungarian Prime Minister).
3. As you can see , opinions differ: *“Europe, he says, is frightened that an influx of foreigners will erode European values. But what values will there be to uphold, if we abandon our*

² United Nations High Commissioner for Refugees, Statistics and Demographics Section,

UNHCR Global Data Service, *“Global trends Forces Displacement in 2022”* <https://www.unhcr.org/refugee-statistics> (accessed July 20th, 2023).

³ Arab News, *“Amnesty Accuses Spain and Morocco of cover-up over Melilla enclave migrant Deaths”*, Arab News, <https://www.arabnews.com/node/2326581/world>, (accessed July 20, 2023).

⁴ Rick Noack, *“Muslims threaten Europe’s Christian identity, Hungary’s leader says”* *The Washington Post*, <https://www.washingtonpost.com/news/worldviews/wp/2015/09/03/muslims-threaten-europes-christian-identity-hungarys-leader-says/> (accessed July 19, 2023).

duty to protect those less fortunate than ourselves? What incentive do we give to refugees to maintain the fabric of our society, if that fabric is so ragged in the first place? "If Europe is not able to show a better way of life to them, then they will think that their morality is better than ours." (Quoting Serbian priest Tibor Varga).⁵

4. Throughout the 21st century, the vast majority of refugees were hosted in developing world countries (the last UNHCR data shows that 76 % of the refugees were hosted in low and middle-income countries⁶). Those countries have limited national resources to respond to refugees' needs, consequently forming gaps between the host states and the help refugees receive. Those gaps threaten the freedoms and futures of the refugees, whose basic human rights are not protected and might even be violated.⁷
5. The inappropriate management of material and procedural asylum law not only endangers the people and violates their human rights, but also threatens the four freedoms that underline and govern the EU.⁸
6. Article 80 of the Treaty on the Functioning of the EU requires EU's policies on asylum and the implementation to be "governed by the principle of solidarity and fair sharing of responsibility".⁹ According to the Article, these provisions can be understood as requirements to the Member States to take positive action towards reducing imbalances and otherwise ensuring responsibility in order that refugee protection is not disproportionately borne only by a few Member states. Over time, various approaches to responsibility-sharing were analysed. The Article brings forward the three particular categories with different ways to reduce unequal distribution amongst Member States:

⁵ Patrick Kingsley, "The New Odyssey: The Story of Europe's Refugee Crisis", *Goodreads*, https://www.goodreads.com/author/quotes/6424516.Patrick_Kingsley (accessed on July 19, 2023).

⁶ United Nations High Commissioner for Refugees, Statistics and Demographics Section
UNHCR Global Data Service, "Global trends Forces Displacement in 2022" <https://www.unhcr.org/refugee-statistics>, Copenhagen, Denmark (accessed on July 19, 2023).

⁷ Madeline Garlick, "The Sharing of Responsibilities for the International Protection of Refugees", *The Oxford Handbook of International Refugee Law*, <https://doi.org/10.1093/law/9780198848639.003.0026> (accessed on July 13, 2023).

⁸ Lana Maani, "Refugees in the European Union: The Harsh Reality of the Dublin Regulation," (*Notre Dame Journal of International & Comparative Law*: 2018), 87-88.

⁹ European Parliament, Treaty on the Functioning of the European Union, Chapter 2, Policies on Border Checks, Asylum and Immigration, 2012 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT> (accessed on July 19, 2023).

1. **Harmonized norms or laws (“sharing norms”):**

- By harmonizing the standards, we diminish the incentive for people to seek protection in Member States with more promising provisions.

2. **Financial contributions (“sharing money”):**

- Providing financial or other resources to Member States hosting larger refugee populations;
- Problem: refugee populations are voluntary and difficult to predict, usually coinciding with the explicit aim of limiting refugee arrivals, and therefore limiting access to territory or asylum in donor countries.

3. **Physical responsibility-sharing (“sharing people”):**

- Resettlement and other forms of physical redistribution, undertaken with consent;
- Some arrangements however, might raise concerns about sustainability and respect for refugees' rights, if they do not take into account individuals' intentions, family ties;
- Most effective but also controversial;
- Relocation measures, enforced by the European Council in 2015 yet gained little success in practice;
- Another issue is deciding which criteria to choose as a basis for the measures: numerical and capacity-related criteria; gross-domestic product and current refugee population, individuals' preferences, and consent.
- What must be taken into account is peoples' age, gender, the fact they come from diverse backgrounds, cost and effectiveness.
- Although challenging in practice, the Article proposes involving people in the design process.¹⁰

¹⁰ Evangelia (Lilian) Tsourdi, “Regional Refugee Regimes: Europe”, *The Oxford Handbook of International Refugee Law*, Oxford Handbooks, <https://doi.org/10.1093/law/9780198848639.001.0001>, (accessed on July 19, 2023).

7. In the following chapters, we will take a closer look at migrant and asylum law, both in the past and present, as well as on the international and the EU level, focusing on the Dublin Regulation.

2.2 HISTORICAL BACKGROUND

8. It is clear that migrations have existed since the beginning of time, but the more decisive moment in history was the creation of the League of Nations in 1920. This is what the author calls the "modern" system of international refugee protection, apart from the personal cooperation of individuals. The early years were fruitful, recognising the basic principle of protection, nowadays known as non-refoulement, internationalising, and institutionalising the responsibilities within the community of nations, in matters of common concern. However, this principle faced challenges, especially in trying to agree on the definition of a refugee. Namely, nations faced various challenges and sometimes self-interested reasons. The work of the ICRC and The Red Cross movement at the time should also be mentioned.
9. At the end of the early years, the work of the UN General Assembly was notable for recognising the international dimensions of the refugee problem and for emphasising the principle that no refugee should be compelled to return back to the country of origin without a valid reason. Furthermore, it encouraged the Economic and Social Council (ESISC) to consider the problem wholly. It also drafted the Constitution for the International Refugee Organisation (IRO).¹¹
10. Over the next few decades, two key acts were formed: **The 1951 Refugee Convention** (also known as the Geneva Convention) and its **1967 Protocol**, which are the main legal documents that form the basis of the United Nations High Commissioner for Refugees (UNHCR) organisation that replaced the IRO.¹² The above-mentioned Convention and its Protocol were the cornerstones of refugee protection and are still the main acts that establish the basis of the UNHCR's work. The Geneva Convention provides the essential definition of a refugee, it also outlines the basic minimum standards of the treatment to be respected by the parties, it includes legal protection, guarantees for assistance to refugees, right to housing, work and education. It defines the obligations of the refugee to the host country, specifies certain categories of people, and defines who does not qualify for the status. In addition, some of the most notable fundamental principles of

¹¹ Guy S. Goodwin-Gill, "International Refugee Law in the Early Years", *The Oxford Handbook of International Refugee Law*, <https://doi.org/10.1093/law/9780198848639.003.0002> (accessed on July 13, 2023).

¹² Ibid.

the Convention are non-discrimination, non-penalisation, and non-refoulement. As the protection under the 1951 Convention was initially limited to only European refugees, in the aftermath of the Second World War, in 1967, the Protocol broadened the protection and removed geographic and temporal limitations.¹³

11. The 1951 Convention and the Protocol have been signed by all the EU Member States and are thus binding on all.¹⁴The EU has committed to uphold the rights from both in its primary law.

2.3 THE EUROPEAN ASYLUM SYSTEM

12. The crucial moment in the development of the EU in terms of migrations was the Schengen Agreement signed in 1985, which removed any obstacles to free movement at the common borders of the EU Member States. In other words, it very positively regulated EU-internal migration but not migrations from non-EU countries. That was regulated by another act namely the Dublin Convention in 1990 (first version), which managed applications from migrants, seeking protection under the Geneva Convention.¹⁵ Foundations for the formation of the EU asylum law are the 1951 Convention and 1967 Protocol, international human rights law, and its major treaties (the TEU and TFEU). Besides the mentioned Dublin Convention (current Dublin Regulation III), important EU asylum acts are the Asylum Procedures Directive and Qualification Directive. For mitigation of the refugee crisis, the EU has also initiated and is updating the so-called Common European Asylum System (CEAS).¹⁶

13. **The Asylum Procedures Directive** “aims at setting out conditions for fair, quick and better quality asylum decisions.”¹⁷ It ensures necessary support for asylum seekers with special needs to explain their claims and greater protection for unaccompanied minors and victims of torture. It also dictates the applications to be processed within 6 months.

¹³ UNHCR, “The 1951 Refugee Convention”, *United Nations High Commissioner for Refugees*, <https://www.unhcr.org/about-unhcr/who-we-are/1951-refugee-convention> (accessed on July 18th, 2023).

¹⁴ Ibid.

¹⁵ Kimara Davis, "The European Union's Dublin Regulation and the Migrant Crisis" (Washington: *Washington University Global Studies Law Review*, 2020), 267-268.

¹⁶ Maani, "Refugees in the European Union: The Harsh Reality of the Dublin Regulation," 95.

¹⁷ European Commission, “Common European Asylum System” *European Commission*, https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en (accessed on August 20, 2023).

14. **The Qualification Directive** sets minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

15. Lastly, the Dublin Regulation is an act, aimed at enforcing a harmonised system for those seeking asylum in the EU. The Dublin Regulation provides basic rules for EU Member States' assessment of asylum applications. As mentioned, the first Dublin was signed in 1990, but has since then undergone some reconstruction with the Dublin II and then III Regulation.¹⁸ The interesting noticeable change in thinking can be seen in the Dublin Convention preamble in comparison to the Dublin II preamble. This can be seen below:

16. **Dublin Convention:** *“CONSIDERING the joint objective of an area without internal frontiers in which the free movement of persons shall, in particular, be ensured, in accordance with the provisions of the Treaty establishing the European Economic Community, as amended by the Single European Act:*

*AWARE of the need, in pursuit of this objective, to take measures to avoid any situations arising, with the result that applicants for asylum are left in doubt for too long as regards the likely outcome of their applications and concerned to provide all applicants for asylum with a guarantee that their applications will be examined by one of the Member States and to ensure that applicants for asylum are not referred successively from one Member State to another without any of these States acknowledging itself to be competent to examine the application for asylum.*¹⁹

17. **The preamble of Dublin II:** *“The progressive creation of an area without internal frontiers in which free movement of persons is guaranteed in accordance with the Treaty establishing the European Community and the establishment of Community policies regarding the conditions of entry and stay of third-country nationals, including common efforts towards the management of external borders, makes it necessary to strike a balance between responsibility criteria in a spirit of solidarity.”*²⁰

¹⁸ Lana Maani, "Refugees in the European Union: The Harsh Reality of the Dublin Regulation" 93-97.

¹⁹ European Parliament, Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (Dublin Convention), Preamble, Official journal of the European Union, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:en:PDF> (accessed on July 19, 2023).

²⁰ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, Preamble.

18. The purpose of the Dublin Regulation is to determine which Member State is responsible for processing the asylum seeker's application. In theory, there are several criteria, including family unity, possession of residence documents or visas, irregular entry or stay, and visa-waived entry. Reality differs as in practice the Member State responsible for registering the application will be the EU state where the asylum seeker first enters (also known as irregular entry).²¹ Although initially, Dublin aims to ease tensions regarding the refugees coming into the Member States, the regulation oftentimes creates the opposite – a chaotic and time-consuming reality.

19. These are the main elements of the current Dublin III Regulation that are said to ensure the protection of the applicants and improve the efficiency of the system:

- Early warning, preparedness, and crisis management mechanism, geared to addressing the root dysfunctional causes of national asylum systems or problems stemming from particular pressures;
- A series of provisions for the protection of applicants, such as compulsory personal interview, guarantees for minors (including a detailed description of the factors that should lay at the basis of assessing a child's best interests), and extended possibilities of reunifying them with their relatives;
- The possibility for appeals to suspend the execution of the transfer, for the period when the appeal is pending, together with the guarantee of the right for a person to remain on the territory, pending the decision of a court on the suspension of the transfer pending the appeal,
- An obligation to ensure legal assistance free of charge, upon request;
- A single ground for detention in case of a risk of absconding; strict limitation of the duration of detention;
- The possibility for asylum seekers that could in some cases be considered irregular migrants and returned under the Return Directive to be treated under the Dublin procedure - thus giving these persons more protection than the Return Directive;

²¹ Amnesty International, "A leadership test for the EU", *Amnesty International*, <https://www.amnesty.org/en/latest/news/2018/05/eu-dublin-iii-regulation-asylum-system-reform/> (accessed on July 19, 2023).

- An obligation to guarantee the right to appeal a transfer decision before a court or tribunal;
- Greater legal clarity regarding procedures between Member States - e.g. exhaustive and clearer deadlines. The entire Dublin procedure cannot last longer than 11 months to take charge of a person, or 9 months to take him/her back (except for absconding, or where the person is imprisoned).²²

20. As mentioned before, the Convention and Protocol set minimal standards. EU asylum law is not completely in line with the Geneva Convention and Protocol. In some aspects, it expands the protection (for example with the definition of a refugee in the Qualification Directive), but on the other end, it also infringes on rights assured by the Convention and Protocol, especially in practice.

2.4 THE GOOD, THE BAD, AND THE UGLY - REFLECTION ON THE CURRENT DUBLIN III REGULATION

21. In short, the principle objectives of the Dublin Regulation that are found on the European Commission website are:

- to ensure effective quick access to the asylum procedures,
- prevention of exploitation of the asylum system by attempting to make multiple claims in different Member States,²³
- to identify and establish the Member State responsible for the examination of the asylum application.²⁴

22. The allocation of responsibility to Member States ensures that migrants are not "orbit", as they might be if no Member State took responsibility for the asylum application. Secondly, its goal is to prevent "asylum shopping" that occurs when asylum seekers submit applications to states with more attractive benefits, or those more likely

²²European Commission, "Country responsible for asylum application (Dublin Regulation)" *European Commission*, https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/country-responsible-asylum-application-dublin-regulation_en (accessed on July 19, 2023).

²³Lana Maani, "Refugees in the European Union: The Harsh Reality of the Dublin Regulation" 98.

²⁴European Commission, "Country responsible for asylum application (Dublin Regulation)", *European Commission* https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/country-responsible-asylum-application-dublin-regulation_en (accessed on July 19, 2023).

to accept them, which would in turn, at some point overwhelm those exact Member States, as they would likely not be able to sustain the number of applications, leading to failing facilities and scarce funds. That would lead to having been processed in a system the migrant has initially tried to avoid.

23. Thirdly, another objective was to prevent asylum seekers from submitting multiple applications to several Member States in hope of increasing their chances of receiving asylum or even being able to choose from multiple. The duplicate applications would then slow down the system even further. Additionally, it causes confusion between Member States regarding who is in fact responsible for an asylum applicant.

24. Furthermore, its objective is to prevent Member States from denying protection and pushing responsibilities from one to another. The Dublin Regulation precludes a Dublin Transfer from happening on condition that “substantial grounds show that an asylum seeker faces an actual risk of torture or inhumane treatment in the receiving state. Non-refoulement protects asylum seekers from being sent to another Member State arbitrarily”.²⁵An important verdict that influenced the EU’s responsibility-allocation system is *M.S.S. v. Belgium and Greece* (2011)²⁶ of the European Court of Human Rights (the ECtHR).

25. In reality however, the Dublin Regulation is widely criticized, and often blamed for the migration crisis, which has undoubtedly had a strong impact on both migrants and the EU Member States, especially the so-called “hotspots”. The Regulation has been denounced as inequitable in the distribution of responsibility for asylum protection and lacking in solidarity, faltering to protect migrants seeking asylum in the EU.. It lacks success when taking into account the costs of running it; both the direct and indirect costs, such as administrative and procedural costs of staff, IT systems, transfers, court fees, accommodation, healthcare, return fees for denied asylum applications, and similar. Furthermore, it falls short of the objective of "rapid processing of applications for international protection", as the Regulation norms in fact slow down the asylum process. This is because the first step is to determine which Member State is responsible and whether a Dublin transfer is necessary.. In addition, Member States examine certain asylum application groups differently. The author Kimara Davis provides an example with Syrian asylum seekers, filling an application in Italy/Germany (where the protection was granted in over 90 % of cases) or Hungary (which granted protection to only about

²⁵ Kimara Davis, *"The European Union's Dublin Regulation and the Migrant Crisis,"* 267-270.

²⁶ *M.S.S. v. Greece*, no. 30696/09, 21 January 2011, available at: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-103050%22%5D%7D>.

60 % of Syrian seekers). That is concerning as the asylum seeker has little to no say where they must file the application (usually the country of first entry). As can be seen in the examples below, the Dublin Regulation overburdens the hotspot countries that cannot financially sustain and provide adequate facilities and healthcare, resulting in human rights violations. That is a situation asylum seekers try to avoid by travelling to another Member State or not going through the asylum process at all which leaves them unprotected from human trafficking and other exploitation.²⁷

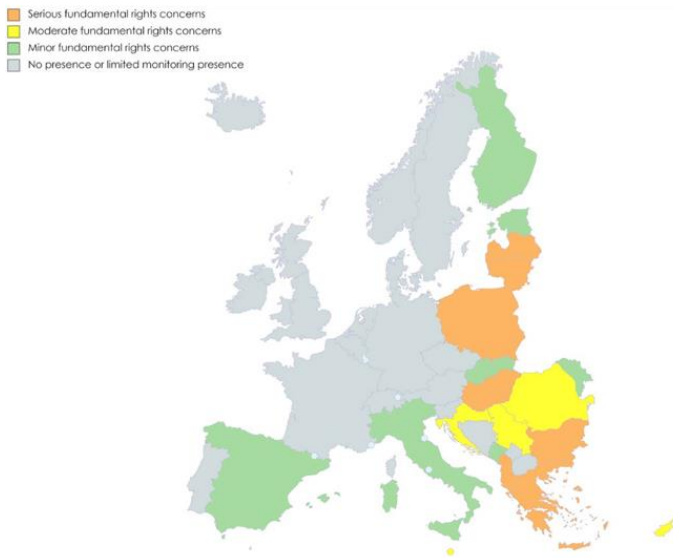


Figure 1 - Fundamental rights situation in European countries assessed by fundamental rights officers within integrated border management 2022²⁸

26. Since the spike in 2015, tensions between the most burdened Member States have increased dramatically.

27. **Italy**, which is common for the first entry for migrants and has been forced to accept disproportionately higher numbers of migrants, compared to other Member States, has taken its own measures most of which are not in line with the Dublin Regulation. For example, in 2018 Italian Interior Minister Matteo Salvini promised Italians a drastic decrease in the number of migrants entering the state, and an increase in the number of deportations of illegal migrants; his actions included banning ships with rescued migrants from docking in Italian ports. Italy’s deputy Prime Minister Luigi Di Maio threatened to withhold funds Italy was supposed to pay to the EU, if the other Member States would not share the responsibility for migrants, expressing that Italy can barely provide for its own citizens, let alone hundreds of thousands of migrants. A similar

²⁷ Ibid.

²⁸ European Border and coast guard Agency, “The Fundamental Rights Officer ANNUAL REPORT 2022”, *European Border and Coast Guard Agency (FRONTEX)*, https://frontex.europa.eu/assets/fundamental/FRO_annual_report_2022.pdf (accessed on July 20, 2023).

response, followed by other Member States, resulted in an Anti-Immigration Axis whose goal was to reverse the EU's open-door migration policies.²⁹ In the Human Rights Watch Report 2023 for Italy, the election of the hard-right nationalist, Brothers of Italy coalition, governed by Giorgia Meloni, raised concerns about more abusive migration policies. It has been reported that Italy continues to assist Libya in intercepting boats and returning migrants and asylum-seekers to Libya where their rights may be abused, as well as often delaying disembarkation in Italy. Migrants also reported the use of methods of torture and force in the migration centres to obtain fingerprints mandated by the Dublin Regulation.³⁰

28. Another 'hotspot' was, and remains, Greece, which was at the time of the major crisis in 2015 still recovering from its financial crisis, while dealing with a 750% increase in migrants from the previous year. With an increasing number of migrants, the resources dwindled, causing the care to be below standard – camps were described as filthy, falling apart, with many refugees without the roof over their heads and bad hygiene. Children were reportedly at a high risk of being exploited and catching diseases because of the inadequate facilities. The reaction to the situation of other Member States was far from solidarity; closing down their own borders, leaving many migrants stranded in Greece.³¹ As seen in the Human Rights Watch Report 2022, Greece is still failing to protect the rights of asylum seekers by heavy-handed and oftentimes abusive immigration controls, including violent and illegal pushbacks to Türkiye.³²

29. For many migrants, the country of first entry is also **Hungary**, when crossing the border with Serbia. Hungary's reaction to the 2015 migrant flows was building a four-meter-high fence on the border with Serbia and Croatia. Hungary was not the only country that sought a solution to the migrant issue by building a fence – according to the EP Briefing: *Walls and fences at EU borders*, the length of fences at the EU's external borders and within the EU or Schengen area, from the year 2014 to 2022, grew from 315 km to 2048 km. Although fences are not explicitly prohibited under EU law, their construction must be in accordance with the fundamental rights, including the right to seek international

²⁹ Kimara Davis, "The European Union's Dublin Regulation and the Migrant Crisis" 261-267.

³⁰ Human Rights Watch, Italy Events 2022, *Human Rights Watch* <https://www.hrw.org/world-report/2023/country-chapters/italy>, (accessed July 19, 2023).

³¹ Ibid.

³² Human Rights Watch, Greece Events of 2021, *Human Rights Watch*, <https://www.hrw.org/world-report/2022/country-chapters/greece> (accessed July 20, 2023).

protection and other rights and safeguards, ensured by EU immigration law.³³ You can assess the lawfulness yourselves.

30. It is unlikely that the tensions between the protection of refugees and the States' urgency to protect its sovereign borders will disappear, but "it will be for the next interactions of international refugee law to show how to mediate that conflict, consistently with human dignity and security from harm".³⁴

2.5 THE DUBLIN REGULATION IN NUMBERS

31. "By the end of 2022, Europe, including Türkiye, hosted more than one-third (36 percent) of all refugees globally. The number of refugees in European countries rose from 7 million at the end of 2021 to 12.4 million at the end of 2022, as millions of refugees from Ukraine sought refuge in nearby countries. Türkiye remained the largest refugee-hosting country in the world, with 3.6 million refugees at the end of 2022, representing over 10 percent of all refugees. Germany hosted nearly 2.1 million, 6 percent of all refugees globally."³⁵

³³ Costica Dumbrava, "Walls and fences at EU borders" *European Parliament* [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733692/EPRS_BRI\(2022\)733692_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733692/EPRS_BRI(2022)733692_EN.pdf) (accessed on July 20, 2023).

³⁴ Guy S. Goodwin-Gill, "International Refugee Law in the Early Years", *The Oxford Handbook of International Refugee Law* <https://doi.org/10.1093/law/9780198848639.003.0002> (accessed on July 25, 2023).

³⁵ United Nations High Commissioner for Refugees, "Refugee Data Finder", *UNHCR* <https://www.unhcr.org/refugee-statistics> (accessed on July 25, 2023).

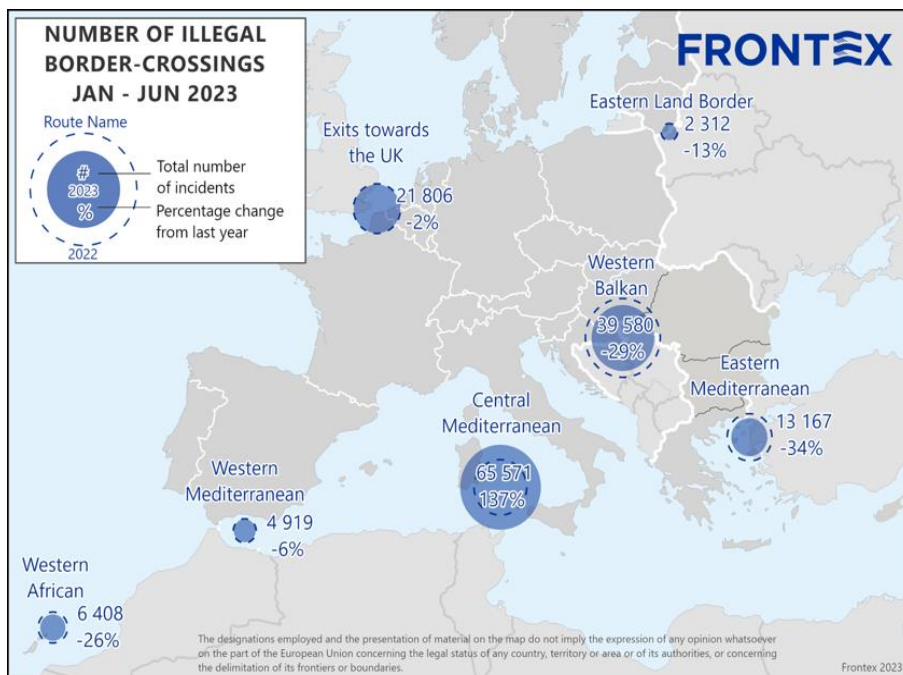
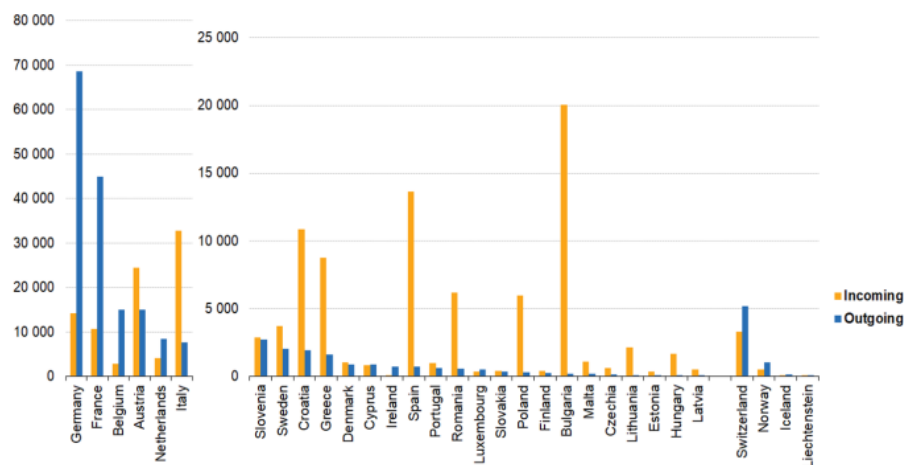


Figure 2- Number of illegal border-crossing JAN-JUN 2023 FRONTEX, more information click the link (Source: „Central Mediterranean top migratory route into the EU in the first half of 2023“, Frontex, 2023, <https://frontex.europa.eu/media-centre/news/news-release/central-mediterranean-top-migratory-route-into-the-eu-in-first-half-of-2023-XtMpdL> (Accessed July 20th, 2023).

Number of requests, 2022
(number)



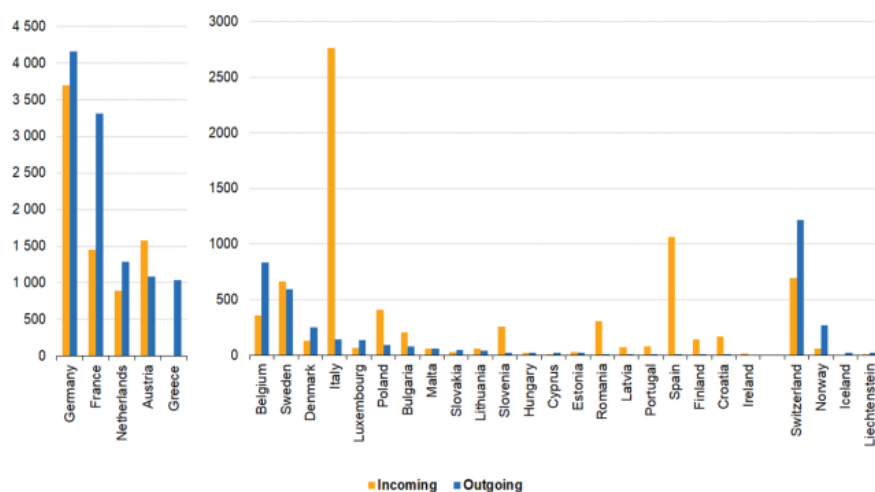
Note: the y-axis scale in the left part of the figure is around three times greater than that in the right part.
Note: ranked on outgoing.

Source: Eurostat (online data codes: migr_dubri and migr_dubro)

eurostat

Table 1 - Number of Dublin requests, 2022 (source: „Statistics on countries responsible for asylum applications (Dublin Regulation)“ Eurostat, 2022, [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Statistics on countries responsible for asylum applications \(Dublin Regulation\)#Implemented transfers](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Statistics_on_countries_responsible_for_asylum_applications_(Dublin_Regulation)#Implemented_transfers) (Accessed August 7th, 2023).

Implemented transfers, 2022 (number)



Note: no incoming and outgoing transfers for Czechia reported in 2022.
Note: the y-axis scale in the left part of the figure is greater than that in the right part.
Ranked on outgoing.
Source: Eurostat (online data codes: migr_dubti and migr_dubto)

eurostat

Table 2 - Number of implemented transfers, 2022. Note the difference in the number of requests and actual transfers (source: »Statistics on countries responsible for asylum applications (Dublin Regulation)« Eurostat, 2022 [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Statistics on countries responsible for asylum applications \(Dublin Regulation\)#Implemented transfers](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Statistics_on_countries_responsible_for_asylum_applications_(Dublin_Regulation)#Implemented_transfers) (Accessed August 7th, 2023).

Table 3 - Summary of the impacts of the gaps/barriers and their estimated costs (Source: «The Cost of Non- Europe in Asylum Policy« European Parliamentary Research Service, 2018, pg 8 [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/627117/EPRS_STU\(2018\)627117_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/627117/EPRS_STU(2018)627117_EN.pdf) (Accessed August 7th, 2023).

Table 1: Summary of the impacts of the gaps/barriers and their estimated costs

Impact	Description	Estimated annual costs
Impacts on irregular migration	Costs related to control of irregular migration and cost of human trafficking	€19.7 - 33.2 billion
Impacts on external action and development cooperation	Costs associated with the attempt to limit departures from countries of origin and transit via external action tools	€1.7 billion
Impacts on employment and integration	Costs of limited labour market integration of refugees and tax loss due to shadow economy	€2.1-2.7 billion
Impacts on living and health conditions of asylum-seekers	'Value of life losses', costs related to detention and poor reception facilities, healthcare costs	€11.8-17.7 billion
Impacts on the efficiency of procedures	Costs of inefficiencies in Dublin transfers, at the application stage and in case of returns	€2.5-4.9 billion
Total		€37.8-60.2 billion

Source: EPRS, authors' development, based on MILIEU

2.5 CONCLUSION – A GLIMPSE INTO THE FUTURE

32. Recent changes in EU asylum law include an important adaptation of the New Pact on Migration and Asylum. In 2020, the European Commission adopted the mentioned act, following consultations with the European Parliament, Member States and various stakeholders. Most importantly, the new pact recognises that no Member State should shoulder a disproportionate responsibility, and all Member States should contribute to solidarity on a constant basis.³⁶
33. The new asylum procedure regulation (APR)³⁷ establishes a common procedure. In some cases it introduces new mandatory border procedures to quickly assess persons not authorised to enter the Member State. The Commission suggests replacing the Dublin III Regulation with a new **Regulation on Asylum and Migration Management**³⁸. Rules for determining the Member State, responsible for the application, will be streamlined with the new AMMR. Furthermore, the time limits will be shorter. The transfer procedure is set to be replaced by a simple take-back notification. A very important aspect is the new mandatory solidarity mechanism where Member States have full discretion of the type of solidarity, another important proposal is that no Member State shall ever be obliged to carry out relocations.³⁹
34. In the beginning of June 2023, the Council agreed on a negotiating position on the asylum procedure regulation and the asylum and migration management regulation.⁴⁰ The mentioned position will form the basis for negotiations by the Spanish presidency of the Council of the EU with the European Parliament.

³⁶ European Commission, “Country responsible for asylum application (Dublin Regulation)”, *European Commission - Migration and Home Affairs*

https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/country-responsible-asylum-application-dublin-regulation_en (accessed on July 20, 2023).

³⁷ Council of the European Union, “Migration policy: Council reaches agreement on key asylum and migration laws”, *European Council* <https://www.consilium.europa.eu/en/press/press-releases/2023/06/08/migration-policy-council-reaches-agreement-on-key-asylum-and-migration-laws/> (accessed on July 19, 2023).

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

2.6 ISSUES TO ADDRESS

- What should be the EU's approach to asylum law while considering the competences of the EU? Is it even sensible to have the Dublin Regulation or should each Member State be left to its own devices,? Is the solution for the EU to have complete jurisdiction? What is your opinion of the proposition of the new Migration Policy?
- What should in your opinion be the aim of the reformed Dublin Regulation/AMMR? We saw how the Preambles changed through time. Should the aim of the new regulation be to reduce the number of migrants, or should it be inter-Member State solidarity, protection of the refugees, or something else?
- The new proposition has put the main emphasis on solidarity and proportionate responsibility. Today's regulation and its »first entry« clause are visibly not in line with the »principle of solidarity and fair sharing of responsibilities«. What is your position about the importance of solidarity - should it be mandatory or just a moral commitment?
- What are your opinions of the alternative solidarity measures – do you agree with the proposal of the Member States having full discretion on the type of solidarity? What are the positive and negative outcomes that may occur if Member States have full discretion? Keep in mind the pros and cons of different categories of responsibility sharing.
- As can be seen, asylum aid and the execution of the Dublin Regulation are quite expensive, with the annual costs exceeding 37 billion euros, and with the inefficiencies in Dublin transfers exceeding 2,5 billion euros annually in 2018. What is your position on this?? How would you make the system more financially efficient?
- As seen from various articles by non-governmental organisations, there is a gap between theory and what is happening in practice, especially in the "hotspot countries", regarding violations of human rights and non-refoulement. Where do you see possible solutions to the problem?
- How and to what extent should the Member States consider the wishes of the asylum seeker as to which country should be responsible for the person's application? What circumstances should be taken into account when allocating responsibility between Member States?

2.7 FURTHER READING

- Check the statistics for your country (especially “Procedures“ - “Dublin”), available at: <https://asylumineurope.org/reports/> .
- The country responsible for asylum application (Dublin Regulation), European Commission, available at: https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/country-responsible-asylum-application-dublin-regulation_en.
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3 TOPIC TWO: THE RELATIONSHIP BETWEEN THE EU AND NATO

3.1 GENERAL INTRODUCTION

35. The marching of troops past well-established Ukrainian borders in 2022 has reminded many that war in Europe is indeed still a possibility, even after decades of relative peace. This has once again ignited discussion regarding EU relations with NATO and highlighted their roles as key pillars of European defence. The two have been closely tied together by strategic partnerships for almost three decades now. However, by its very nature, the relationship between two international organisations is complex and subject to many political, logistical and other issues, plaguing cooperation. In an ever-increasingly tense and unstable geopolitical environment, the two organisations must continually adapt to ensure a bright future for their member states and, by extension, their people.

36. The European Union is an international organisation of 27 European countries, created by the Maastricht Treaty in November of 1993.⁴¹ The organisation oversees common economic, social and security policies of its member states.⁴² The EU's main priorities to be addressed until 2024, are protecting citizens and freedoms, developing a strong economic base, building a climate-neutral, green, fair and social Europe and promoting European interests and values on the global stage.⁴³

⁴¹ Side note: It is true that the name European Union already exists in the Maastricht Treaty, but with the Treaty of Lisbon we are talking about the European Union in the full sense.

⁴² Gabel, Matthew J., "European Union", Encyclopedia Britannica, 13 July 2023, <https://www.britannica.com/topic/European-Union> (accessed 16 July 2023).

⁴³ European Union, Setting the EU's political agenda, 16 June 2023, <https://www.consilium.europa.eu/en/european-council/role-setting-eu-political-agenda/> (accessed 16 July 2023).

37. In addition, the organisation also provides security to member states in the form of article 42(7) of the Treaty on European Union, introduced by the Treaty of Lisbon in 2009. The article states: "*If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States. Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation.*"⁴⁴

38. The European Union has further defined its security goals to be achieved by 2030 in its Strategic Compass.⁴⁵ The document calls for changes in four main areas, allowing the EU to "Act more quickly and decisively when facing crises, secure their citizens against fast-changing threats, invest in the needed capabilities and technologies and partner with others to achieve common goals."⁴⁶

39. In the Strategic Compass, the EU directly calls for "Reinforcing multilateral partnerships, in particular with NATO and the UN, through more structured political dialogues as well as operational cooperation"⁴⁷. Furthermore, the document outlines the aim to intensify political dialogue through enhanced information exchange and joint high-level meetings, statements and visits. Moreover, it aims to expand previously established

⁴⁴ European Union, *Article 42(7) TEU - The EU's mutual assistance clause*, EU, June 10, 2022, https://www.eeas.europa.eu/eeas/article-427-teu-eus-mutual-assistance-clause_en (accessed 28 July 2023).

⁴⁵ European Union, *A STRATEGIC COMPASS FOR THE EU*, March 20, 2023, https://www.eeas.europa.eu/eeas/strategic-compass-eu-0_en (accessed 19 August 2023).

⁴⁶ European Union, *Questions and answers: a background for the Strategic*, EU, 21 May 2022, https://www.eeas.europa.eu/eeas/questions-and-answers-background-strategic-compass_en (accessed 12 July 2023).

⁴⁷ European Union, *A STRATEGIC COMPASS FOR SECURITY AND DEFENCE*, EU, 24 March 2022, page 13, https://www.eeas.europa.eu/sites/default/files/documents/strategic_compass_en3_web.pdf (accessed 12 July 2023).

areas of cooperation, consisting of situational awareness, military mobility, crisis management operations, maritime security, countering hybrid threats, cyber-attacks and disinformation, as well as the implementation of the Women, Peace and Security agenda, by including new areas, such as Emerging Disruptive Technologies, climate change, resilience and space.⁴⁸

40. The North Atlantic Treaty Organisation (NATO) is a political and military alliance of 31 countries, established in 1949 with the aim to provide collective security to its members. The heart of NATO's security guarantees is rooted in Article 5 of the Washington Treaty, which broadly states that an armed attack against one member state shall be considered as an attack against all.⁴⁹

41. Similarly to the EU, NATO has also defined its goals for the future in its Strategic concept. The document defines the three core tasks of the organisation as: "deterrence and defence; crisis prevention and management; and cooperative security". Furthermore, it emphasises the alliance's aim to "retain a global perspective and work closely with their partners, other countries and international organisations, such as the European Union". The document lists the EU as a strategic partner on several occasions and clarifies NATO's views, incising European defence as complementary to its cause. Moreover, the organisation defines issues of common interest for the two organisations as military mobility, resilience, the impact of climate change on security, emerging and disruptive technologies, human security, the Women, Peace and Security agenda, as well as countering cyber and hybrid threats. However, it also includes a common issue not

⁴⁸ European Union, *Questions and answers: a background for the Strategic*, EU, 21 May 2022, https://www.eeas.europa.eu/eeas/questions-and-answers-background-strategic-compass_en (accessed 12 July 2023).

⁴⁹ Haglund, David G., North Atlantic Treaty Organization, Encyclopedia Britannica, 15 July 2023, <https://www.britannica.com/topic/North-Atlantic-Treaty-Organization> (accessed 16 July 2023).

implemented in the EU's Strategic Compass, that being "addressing the systemic challenges posed by the PRC to Euro-Atlantic security".⁵⁰

42. Bolt organisations plan on deepening and expanding cooperation and have even signed a third joint declaration in January of 2023 defining the areas of cooperation and specific steps to take in the near future. Despite this, progress is hindered by several issues. Formal cooperation is often limited due to political disagreement between Turkey, a NATO member, and Cyprus, a member of the EU. In addition, 2018 highlighted the possibility of a divergence of interest between the EU's member states and the member states of NATO as Donald Trump, former US president, threatened to leave the NATO alliance. This issue led several EU member states like France to call for greater European strategic autonomy. This concept can be seen in the EU strategic compass, which references developing Rapid Deployment Capacity and fostering the development of joint capabilities and joint procurement. Furthermore, NATO's strategic concept clarifies the aim for NATO to become a more political actor in developing an agenda on resilience, on innovation, and energy security.⁵¹

43. Despite obstacles, the war in Ukraine has highlighted that the two organisations can be complementary to each other. The European Union provided Ukraine with lethal equipment and humanitarian assistance. Furthermore, it was able to burden Russia with economic sanctions, something NATO is unable to do. On the other hand, NATO provided strong defence and deterrence for eastern European nations like Finland who joined the organisation in 2023.⁵²

⁵⁰ North Atlantic Treaty Organisation, *NATO 2022 STRATEGIC CONCEPT*, 30 June 2022, <https://www.nato.int/strategic-concept/> (accessed 13 July 2023).

⁵¹ Urak Tangör, *NATO-EU Strategic Partnership: Where is it Heading*, PERCEPTIONS, Spring-Summer 2021 Volume XXVI Number 1, 73-99.

⁵² Mathieu Droin, *NATO and the European Union: The Burden of Sharing*, Centre for strategic and international studies, 17 January 2023, <https://www.csis.org/analysis/nato-and-european-union-burden-sharing> (accessed 16 July 2023).

3.2 HISTORICAL BACKGROUND

44. In order to understand the current relations between the EU and NATO, it is first important to examine the historical development of relations between the two organisations, as well as the framework that represents the foundation of their cooperation.
45. The EU has had informal relations with NATO since at least 1996, if not since the early 90s. In 1999, the two organisations first established formal institutional relations with each other, as the EU started taking on the tasks previously held by the WEU (Western European Union).⁵³
46. In 1998, the issue of European security was addressed in the French coastal resort Saint Marlo, when the French president and British prime minister signed a joint declaration, calling for the establishment of a Common European Defence policy with the aim for the Union to be able to perform "autonomous action, backed up by credible military forces"⁵⁴. One year later, in 1999, the declaration was followed up by the Helsinki Headline Goal. The agreement defined a clear goal of developing the capability to deploy 60.000 military personnel within a radius of 4000 km with 60-days notice by 2003.⁵⁵
47. The first milestone in EU-NATO relations was the joint Declaration on European Security and Defence, signed on December 16th 2002, which assured the EU access to NATO's planning capabilities regarding military operations and outlined the principles of

⁵³ Simon J. Smith, *The European Union and NATO Beyond Berlin Plus: the institutionalization of informal cooperation*, Loughborough University, 24 March 2014, page 13.

⁵⁴ Raik, Kristi; Järvenpää, Pauli, *A New Era of EU-NATO Cooperation: How to Make the Best of a Marriage of Necessity*, International Centre for Defence and Security, 12 May 2017, page 3, https://icds.ee/wp-content/uploads/2018/ICDS_Report_A_New_Era_of_EU-NATO.pdf (accessed 22 July 2023).

⁵⁵ Raik, Kristi; Järvenpää, Pauli, *A New Era of EU-NATO Cooperation: How to Make the Best of a Marriage of Necessity*, International Centre for Defence and Security, 12 May 2017, https://icds.ee/wp-content/uploads/2018/ICDS_Report_A_New_Era_of_EU-NATO.pdf (accessed 22 July 2023).

strategic partnership. In March of 2003, the framework for cooperation was expanded by the “Berlin Plus agreements” concerning crisis management. They allowed the EU to access NATO’s collective assets even in conflicts where NATO was not involved. The arrangements were first utilised in 2003 when NATO assets were made available to the EU for operation Concordia in the Former Yugoslav Republic of Macedonia.⁵⁶

48. The next major development of EU-NATO relations came on July 8th, 2016, when Donald Tusk, then president of the European council, Jean-Claude Juncker, then president of the European Commission, and Jens Stoltenberg, the Secretary General of NATO, signed a joint declaration, outlining the future of the EU-NATO strategic partnership. The document defined six areas where cooperation is to be improved: countering hybrid threats, enhancing resilience, defence capacity building, cyber defence, maritime security, and exercises. Areas of cooperation were further divided into common proposals, representing 42 actions the two organisations plan to take in the future.⁵⁷

49. These actions were expanded by an additional 32 proposals in July 2018, with a second joint declaration, signed in Brussels. The outlined actions mainly consisted of improving staff-to-staff contacts, information exchange, joint seminars, as well as workshops. To better track their progress, the two organisations began publishing progress reports “on the implementation of the 74 common proposals endorsed by the EU and NATO Councils on 6 December 2016 and 5 December 2017”.⁵⁸ As of 2023, seven progress reports have been published.⁵⁹

⁵⁶ North Atlantic treaty Organisation, *Relations with the European Union*, NATO, 4 April 2023, https://www.nato.int/cps/en/natohq/topics_49217.htm#footnotes (accessed 9 July 2023).

⁵⁷ European Union, *EU-NATO cooperation – Factsheets*, EU, 17 July 2020, https://www.eeas.europa.eu/eeas/eu-nato-cooperation-factsheets_en (accessed July 9, 2023).

⁵⁸ European Union, *EU- NATO cooperation: seventh progress report*, EU, 20 June 2022, <https://www.consilium.europa.eu/en/press/press-releases/2022/06/20/eu-nato-cooperation-seventh-progress-report/> (accessed 19 August 2023).

⁵⁹ Margriet Drent Kimberley Kruijver Dick Zandee, “Military Mobility and the EU-NATO Conundrum”, Clingendael Report, July 2019, page 6.

50. The reports aimed to establish norm and daily practice, based on key guiding principles: openness, transparency, inclusiveness and reciprocity, in full respect of the decision-making autonomy and procedures of both organisations without prejudice to the specific character of the security and defence policy of any Member State.⁶⁰

3.3 CURRENT RELATIONS

51. As conflict on European soil has refocused the world's attention on the EU and NATO, the two have found new motivation to become ever-closer partners. In the last two decades, they have shown a wider form of cooperation, despite somewhat limited formal relations. NATO often provides hard military power, which the EU lacks. In turn, the EU can provide soft power in the way of economic sanctions and other civilian based capabilities.⁶¹ A good example of this concept in practice was seen in Kosovo in 2008. There, the EU's mission EULEX provided security acting as second responders (after Kosovar police) in case of security incidents. NATO's military mission KFOR acted as a deterrent as well as third military respondents. Despite a lack of a formal agreement, outlining military strategy, the heads of the two missions managed to meet regularly and cooperate well on the field.⁶²

52. Moreover, NATO is a nuclear alliance that provides an undisclosed amount of B-61 nuclear weapons to certain locations in Europe, under its nuclear sharing arrangements. This can be an important factor to consider, as France is the only current EU member state with nuclear weaponry. Despite this, France currently holds 290 of the world's nuclear weapons. This is a small amount compared to NATO's main nuclear weapon

⁶⁰ European Union, *EU-NATO cooperation – Factsheets*, EU, 17 July 2020, https://www.eeas.europa.eu/eeas/eu-nato-cooperation-factsheets_en (accessed 9 July 2023).

⁶¹ Urak Tangör, *NATO-EU Strategic Partnership: Where is it Heading*, PERCEPTIONS, Spring-Summer 2021 Volume XXVI Number 1, 73-99.

⁶² Niuton Mulleti, *EU-NATO Cooperation in the Area of Crisis Management: Case of Kosovo*, European Journal of Economics, Law and Social Sciences, Volume 7 - Issue 2, June 2023.

provider, the US, that holds 5224 such weapons or over 40% of the world's total. The number of nuclear weapons certainly provides strong deterrence in conflicts with other nuclear powers.⁶³

53. Despite limited EU-NATO formal cooperation, the EU in particular possesses many tools to manage cooperation between EU member states in the areas of defence. These tools can and to some extent have been used to form a framework for EU-NATO cooperation.

54. One such tool is PESCO (Permanent Structured Cooperation)⁶⁴. It is an initiative in the context of the Common Security and Defence Policy adopted in 2017. The mechanism allows groups of EU member states to enhance cooperation through joint development of defence capabilities, conducting military operations, and promoting defence industry collaboration. In 2020, the European Council defined conditions under which third states could be invited to participate in individual PESCO projects in Decision 2020/1639/CFSP⁶⁵. Under this framework, non-EU states, such as the United States, Canada, and Norway have already been involved in PESCO's Military Mobility project.⁶⁶

55. When it comes to utilising economies of scale, the EU has got the European Defence Fund at its disposal⁶⁷. The fund is a tool for collaborative investments in defence

⁶³ North Atlantic Treaty Organization, NATO's Nuclear Sharing Arrangements, February 2022, https://www.nato.int/nato_static_fl2014/assets/pdf/2022/2/pdf/220204-factsheet-nuclear-sharing-arrange.pdf (accessed 28 July 2023).

⁶⁴ European Union, *Permanent Structured Cooperation (PESCO)*, EU, 19 August 2021, https://www.eeas.europa.eu/eeas/permanent-structured-cooperation-pesco_en (accessed 21 August 2023).

⁶⁵ European Union Council, *COUNCIL DECISION (CFSP) 2020/1639 of 5 November 2020*, Official Journal of the European Union L 371/3, 6 November 2020, <https://eur-lex.europa.eu/eli/dec/2020/1639/oj> (accessed 21 August 2023).

⁶⁶ Beatriz Cózar-Murillo, *PESCO as a Game-Changer for Differentiated Integration in CSDP after Brexit*, *European Papers*, Vol. 7, 2022, No 3, 15 March 2023,

⁶⁷ European commission, *THE EUROPEAN DEFENCE FUND*, EU, 30 June 2021, <https://defence-industry-space.ec.europa.eu/system/files/2022-05/Factsheet%20-%20European%20Defence%20Fund.pdf> (accessed 21 August 2023).

innovation and capability, prototyping granted access to €8 billion until 2027.⁶⁸ Similarly, NATO also hosts its own venture fund in the form of the NATO Innovation Fund. The fund's aim is to invest up to 1 billion euros in start-ups developing technologies for defence and security.⁶⁹

56. Another tool for cooperation is the centre of Excellence for Countering Hybrid Threats.⁷⁰

The autonomous network-based organization has a goal of strengthening its members' security by providing expertise and training for countering hybrid threats. It states: "The Centre is unique in the sense that it is the only actor having both the EU and NATO work and conduct exercises together, with activities covering a wide range of domains from civil to military, and from hostile influencing to hybrid warfare."⁷¹

57. Furthermore, NATO and the EU have intensified dialogue and contacts between officials and leaders, as well as coordinated efforts, when operating in the same country or region (Afghanistan, Iraq, and in the Horn of Africa). Each of the organisation's leaders attended ministerial level meetings held by the other. Despite the progress, cooperation is still largely limited to staff-to-staff contact. The two organisations are yet to develop a means of sharing classified information.⁷²

3.4 OBSTACLES TO COOPERATION

58. Another obstacle faced by both organisations is a divergence of political will. Despite sharing over 70% of member states, the two organisations often require unanimous decisions. This type of voting gives individual member states the power to veto

⁶⁸ Fiott, Daniel, *The Fog of War: Russia's War on Ukraine, European Defence Spending and Military Capabilities*, Intereconomics, ISSN 1613-964X, Springer, Heidelberg, Vol. 57, Iss. 3, pp. 152-156.

⁶⁹ North Atlantic Treaty Organisation, NATO Allies appoint investment team to manage billion euro deep tech fund, 10 July 2023, https://www.nato.int/cps/en/natohq/news_217106.htm (accessed 31 July 2023).

⁷⁰ Hybrid CoE, *Establishment*, <https://www.hybridcoe.fi/establishment/> (accessed 30 August 2023).

⁷¹ Hybrid CoE, *What is Hybrid CoE*, <https://www.hybridcoe.fi/who-what-and-how/> (accessed 30 July 2023).

⁷² Ian Bond, Luigi Scazzieri *The EU, NATO and European security in a time of war*, Centre for European reform, 5 August 2022, <https://www.cer.eu/publications/archive/policy-brief/2022/eu-nato-and-european-security-time-war> (accessed 25 July 2023).

important decisions and block cooperation. This became an issue in 2004 when Cyprus joined the EU. The country had and continues to have territorial disputes with Turkey, a NATO member. As a result, Turkey used the power of veto to block the participation of Cyprus in NATO-EU cooperation and its conclusion of a security agreement with NATO. On the other hand, Cyprus has also utilised its voting power to block the signing of the EU-Turkey Security agreements, as well as Turkey's participation in the European Defence Agency. The dispute effectively blocked formal meetings between NATO and the EU and is one of the main reasons the Berlin Plus agreements have not been used since 2004.⁷³

59. The issue of political divergence and unanimous decisions is not limited only to past examples. In the light of Russia's invasion of Ukraine, Finland and Sweden have both applied for NATO membership in May of 2022. Their applications were quickly ratified by most member states, except for Turkey, who announced its intention to block Finland and Sweden from joining.⁷⁴ Since then, Finland managed to join NATO in April of 2023. However, Sweden is still yet to join.⁷⁵ The blockade is reportedly due to Sweden's expansive freedom of speech laws, allegedly allowing the sparing of what could be considered propaganda by certain groups like the Kurdistan Workers' Party, which is considered a terrorist group by the EU, as well as by the followers of Fetullah Gülen, considered as terrorist exclusively by Turkey. Furthermore, some have even interpreted the blockade as an attempt to persuade the U.S. into allowing Turkey to re-join the f-35

⁷³ Münevver Cebeci, *NATO-EU COOPERATION AND TURKEY; TURKISH POLICY QUARTERLY*, VOLUME 10 NUMBER 3, October 2011, <http://turkishpolicy.com/files/articlepdf/nato-eu-cooperation-and-turkey-fall-2011-en.pdf> (accessed 17 July 2023).

⁷⁴ Paul Levin, *The Turkish Veto: Why Erdogan Is Blocking Finland and Sweden's Path to NATO*, Foreign Policy Research Institute, 8 March 2023, <https://www.fpri.org/article/2023/03/the-turkish-veto-why-erdogan-is-blocking-finland-and-swedens-path-to-nato/> (accessed 18 July 2023).

⁷⁵ North Atlantic Treaty Organisation, *Finland joins NATO as 31st Ally*, NATO, 4 April 2023, https://www.nato.int/cps/en/natohq/news_213448.htm (accessed 17 July 2023).

program they have been excluded from in response to purchasing the Russian S-400 anti-aircraft missile system.⁷⁶

60. Given the political divergence between EU member states, in addition to a divergence of interests between the NATO and EU member states, there is also a debate between EU member states themselves.. In general, EU member states are divided into two main groups. The first being the Transatlantics, who were led by the United Kingdom until Brexit. They believe NATO should be the primary security provider in Europe and argue that increasing the autonomous European defence capability comes at the expense of the NATO alliance and leads toward duplicating capabilities, therefore being a wasteful use of resources. On the other hand, the so-called Europeanists, led by France, doubt the U.S. would provide security to Europe in case of conflict. Therefore, they call for greater European strategic autonomy, especially regarding issues of military capability. This issue came to light in November 2015 when France chose to invoke Article 42(7) of the Treaty on the EU in response to a terrorist attack. The decision was unexpected as NATO's Article 5 was seen as the primary defence provider in the EU.⁷⁷ Moreover, in 2018, French president Emanuel Macron called for the creation of a "True European Army". In November of the same year, Angela Merkel also implied greater support towards EU strategic autonomy claiming:»The times where we can rely on others for our security are over."⁷⁸ However, it is important to note that political support for the EU's strategic autonomy has moved away from calling for military independence and is now focusing more on energy independence in response to Russia's invasion.

⁷⁶ Paul Levin, *The Turkish Veto: Why Erdogan Is Blocking Finland and Sweden's Path to NATO*, Foreign Policy Research Institute, 8 March 2023, <https://www.fpri.org/article/2023/03/the-turkish-veto-why-erdogan-is-blocking-finland-and-swedens-path-to-nato/> (accessed 18 July 2023).

⁷⁷ Sven Biscop, *EU- NATO Relations : A Long - Term Perspective*, instituto da Defesa Nacional, November 2018, <https://www.egmontinstitute.be/app/uploads/2018/11/NeD150.pdf> (accessed 27 July 2023).

⁷⁸ Urak Tangör, *NATO-EU Strategic Partnership: Where is it Heading* , PERCEPTIONS, Spring-Summer 2021 Volume XXVI Number 1, 73-99

61. Another topic of debate, often included when discussing NATO, is the problem of "burden sharing". It describes the discrepancy of spending in percentage of GDP between member states, frequently brought up by U.S. representatives. After the annexation of Crimea in 2014, EU members states of NATO agreed to increase their defence spending to 2% of their GDP by 2024⁷⁹. Despite this, only seven out of the total 31 member states managed to reach this goal. In response to Russia's invasion of Ukraine, 16 NATO member states pledged to increase their defence spending. Some even went as far as to suggest that the 2% GDP mark should instead be a bare minimum.. The problem of burden sharing for the EU arose in 2018 when then U.S. president Donald trump threatened to leave the alliance if spending was not increased. This incident highlighted the level of influence the U.S. elections can have on NATO, in turn making NATO a more unpredictable partner for the EU. In addition, NATO membership is undoubtedly going to become more expensive for most EU member states as the 2024 deadline is fast approaching.⁸⁰

62. Another issue to consider is industrial capability. A sudden surge in demand for military equipment and an increase in collective bargaining from member states could leave Europe's industry unable to produce an adequate amount of products. In the long run, European suppliers may lose to foreign competitors with a wider range of industrial capabilities.⁸¹

3.5 CONCLUSION

⁷⁹ Anna Dolya, *The annexation of Crimea: Lessons for European security*, European issues n°382, 23 February 2016, <https://www.robert-schuman.eu/en/european-issues/0382-the-annexation-of-crimea-lessons-for-european-security> (accessed 23 August 2023).

⁸⁰ Kathleen McInnis, Daniel Fata, *From Burden Sharing to Responsibility Sharing*, Centre for Strategic and International Studies, 7 June 2023, <https://www.csis.org/analysis/burden-sharing-responsibility-sharing> (accessed 23 July 2023).

⁸¹ Fiott, Daniel, *The Fog of War: Russia's War on Ukraine, European Defence Spending and Military Capabilities*, Intereconomics, ISSN 1613-964X, Springer, Heidelberg, Vol. 57, Iss. 3, pp. 152-156.

63. In an ever changing global environment, NATO and the EU continue to strive towards a greater level of cooperation. The two global actors share most of their members and aim to uphold similar values. Each has got their own strengths and shortcomings that should be carefully considered when drafting a division of labour. The EU holds vast economic and political power, in addition to a well-developed framework for cooperation between member states. On the other hand, NATO possesses military assets and strong deterrence capabilities, including a vast supply of nuclear weapons. In this way, it is possible for the two organisations to occupy complementary rather than rival roles, contributing towards greater European security.

64. However, every union has got a cost and the EU-NATO relationship is no different. By definition, a division of labour would mean some defence tasks fall out of the competence of the EU and into the competence of NATO. In this way, increased cooperation can negatively affect EU strategic autonomy as third party actors in NATO gain more political power regarding aspects of European security. Furthermore, NATO has long called for an increase in European defence spending which can represent a heavy burden for EU member states. In addition to higher defence spending, formal cooperation will also require a framework, which can be plagued by a high cost of long bureaucratic processes.

65. While the above-mentioned hurdles to cooperation remain a fact of reality, the invasion of Ukraine has once again shown that Europe is not devoid of war. Therefore, European security and, in turn, EU-NATO relations, must be (re)considered. As members of the European Parliament in the Committee on Foreign Affairs, this challenge now rests on your shoulders, dear delegates.

3.6 FURTHER READING

- Relations with the European Union
https://www.nato.int/cps/en/natohq/topics_49217.htm
- Operation Althea and the virtues of the Berlin Plus Agreement
<https://www.ndc.nato.int/news/news.php?icode=1521>
- Beyond the Third Declaration: scenarios for EU-NATO cooperation
<https://www.atlantic-forum.com/our-views/beyond-the-third-declaration-scenarios-for-eu-nato-cooperation-1>
- EU-NATO cooperation – Factsheets https://www.eeas.europa.eu/eeas/eu-nato-cooperation-factsheets_en
- The EU, NATO and European security in a time of war
<https://www.cer.eu/publications/archive/policy-brief/2022/eu-nato-and-european-security-time-war>
- NATO and the European Union: The Burden of Sharing
<https://www.csis.org/analysis/nato-and-european-union-burden-sharing>

3.7 ISSUES TO ADDRESS

1. How should the EU balance strategic autonomy with deeper cooperation with NATO?
2. Is NATO a reliable and equal partner to the EU?
3. What role should each organisation fulfil and what task should be assigned to each actor?
4. How would an EU-NATO framework for cooperation look in practice?
5. Should the EU address NATO's problem of burden sharing?

6. Should the EU strive to mitigate issues of political divergence between EU and NATO member states?
7. How should the EU best utilise its resources to ensure a bright future for its citizens?

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