



ASK THE EXPERT  
POLICY BRIEF

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## SAR and Dublin: ad hoc responses to refusals to disembarkation

ASYLUM





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Ask the Expert Policy Brief

# SAR and Dublin: ad hoc responses to refusals to disembarkation

By Marina D'Odorico & Erika Colombo

One of the main concerns under the attention of stakeholders and scholars is the disparity between national approaches towards asylum, together with the need for cooperation and sharing solidarity inside the CEAS.

Some experts are focusing their analyses on the issue of Search and Rescue (SAR) operations, a humanitarian response that aims to prevent loss of human lives at sea. Specifically, scholars deal with the identification of the cooperating actors who handle these rescue activities (including the European Union), arguing about how to allocate responsibility between them (above all where allegations of human rights violations arise).

Differently, other studies point out a different response to this concern, related to the reform of the Dublin System. Commentators argue over the effective relevance of the European Commission's "Dublin IV Proposal", based on a corrective allocation mechanism automatically triggered when a country must handle a disproportionate number of asylum applications. The most part of them underline its weakness and highlight the obstacles in its concrete application.

However, it is also essential to be aware of the existence of other pressing concerns. One of these is the need to find a solution for the actual "Schengen crisis", to ensure that States meet their existing obligations and to build a support mechanism for Member States that face larger numbers of arriving asylum seekers.

The following brief is a summary of our interview and written exchange with two key experts: Dr. Eugenio Cusumano, Assistant Professor in International Relations and European Union studies at the University of Leiden; and Prof. Alessia Di Pascale, Associate Professor in Migration and Asylum Law at the University of Milan and Deputy Member for Italy of the Odysseus Network.

In the light of recent developments in this field, underlined in the first brief, and in the light of their own research, we asked the experts to comment specifically on the different approaches to disembarkations, focusing on the project for the creation of platforms outside the EU in supporting SAR operations and on the introduction of specific solidarity mechanisms to address the arrival of asylum seekers within the Dublin system.



## **Would “regional disembarkation platforms” (potentially outside of the EU), and “controlled centres” (within the EU) be effective tools supporting SAR operations and disembarkation in line with States’ obligations under EU, international refugee and maritime law?**

As underlined by the interviewed experts, the creation of “regional disembarkation platforms” represents an idea that, despite its theoretical ratio, has never been concretized by the European Union. Thus, even if these instruments might give help in eliminating existing disincentives in conducting SAR operations, the Commission has specified neither which might be the characteristics of these structures, nor where these platforms should be created. For example, it is not clear if they might be located within the European Union or outside its territory.

Furthermore, Di Pascale pointed out how the decision to set these platforms in a third country, outside the European Union, could raise some relevant legal questions. In that case, the European Commission would need to make sure that the neighborhood countries in which these platforms would be set up, would be willing to collaborate assuring the appreciation of the rights guaranteed by the European Law. Indeed, considering that the European Union is bound in its actions to the fundamental rights enshrined in the ECHR, the establishment of agreements with third countries that do not respect these rights and guarantees might pose an issue of incompatibility with the EU Law.

Moreover, it is not clear what would happen to asylum seekers, at the same time as they would arrive on disembarkation

platforms. In particular, it should be established which body should be responsible for examining and deciding on the merits of being eligible for entrance in the EU territory and it should be defined which would be its composition and its tasks.

In sum, the experts remarked how there is no knowledge of how these tools should be structured and how would therefore be useful to ask the Commission to submit concrete proposals, which could then be the subject of a study.

## **Should a reform of the Dublin Regulation include specific solidarity mechanisms to address the arrival of asylum seekers and beneficiaries of international protection rescued at sea and why (not)? If so, what should the key features of such a system and in which circumstances should it be triggered?**

Both the experts considered that the main problem to be dealt with in this historical moment concerns the fact that the Dublin Regulation and its consequent inadequate burden-sharing mechanism are causing a disincentive to not conduct save and rescue operations at sea. From this humanitarian perspective, thus, a Dublin reform is essential, and the creation of a mechanism to assure an equal redistribution of all protection applications among Member States should be a priority.

However, according to the experts, the above-mentioned disincentive did not exist before the implementation of the Dublin regulation by the States. For example, at the time of *Mare Nostrum*, in 2013, Italy did not have great difficulty to allow a great number of arrivals, rescuing all those



people at sea, since there was the awareness that a part of them would move to other European countries and would not remain an Italian problem.

Nevertheless, after the closure of the EU States' borders, the situation has radically changed and people who arrived in the EU-border countries are forced to remain there, causing problems in the efficient functioning of reception systems of those Member States.

Therefore, according to the interviewed experts, the European Union needs to design a comprehensive plan, aimed at setting criteria for an adequate redistribution mechanism that would realize a "fairer" sharing of responsibilities among Member States. In particular, this mechanism should be implemented immediately upon the arrival of asylum seekers on European territory, without the need to reach certain numerical thresholds of migrants.

Moreover, according to Cusumano, an alternative to the Dublin reform could be a system that would reallocate structural funds from States which do not accept the redistribution to ones that are more burdened by the migratory pressure. From the same perspective, it would be also possible to block the distribution of structural funds for those countries that do not participate in the redistribution mechanism (a sort of sanction).

**What are the major issues on this topic that need further research to contribute to the policy field? On which issues is further feedback needed from which national stakeholders active in this field: national authorities, local authorities, NGOs, including refugee-led organisations, academic experts and (legal) practitioners, EU Agencies, shipping industry?**

- First, it would be necessary to encourage the European Commission to formulate more defined proposals about "regional disembarkation platforms", indicating both the characteristics and the possible localization of these structures. Thus, academics would have the chance to further analyse these projects, above all in a legal perspective, focusing on their compatibility with fundamental rights and with the respect of the procedural dispositions provided by the European Law.
- Additional thinking on the issue of SAR operations is absolutely needed. Specifically, further analysis could help to investigate and define better the concept of "safe harbor". According to the Maritime Law, indeed, a "safe harbor" must be individuated as a destination for people rescued at sea.
- From the same perspective, it would be essential to establish criteria in order to individuate the actor responsible for SAR activities, specifying which duties and which tasks might adjoin each State.
- In the specific context of the Dublin Regulation, creative research is required to find adequate criteria to realize a fairer redistribution of asylum seekers among different Member



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States. Indeed, the only way to eliminate the disincentives in conduction SAR operations is to find a way in order to lighten the migratory pressure on first entry countries. Instead, it seems that Member States are moving forward in a very different direction, preferring externalizing the problem, rather than reforming the system in compliance with principles of solidarity and sharing of responsibility.

In sum, the points that are highlighted by the experts are the need to define a structural project for the establishment of regional disembarkation platforms, willing to create an efficient instrument to manage arrivals in respect of fundamental and human rights; about the Dublin reform, the urgency to design an allocation mechanism that might realize a fair distribution of

responsibilities in examining asylum applications, together with a system of sanctions as deterrence for those Member States which does not comply with their obligations within this responsibility allocation system. Indeed, a functional application of the Dublin Regulation would lead to eliminate those disincentives in conducting SAR activities, which represents an essential response to prevent loss of human lives.

# ReSOMA

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## ReSOMA - Research Social Platform on Migration and Asylum

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