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The EU Commission on 'Dublin IV': Sufficient Safeguards for Asylum Claimants?

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I. Introduction

The Syrian armed conflict brought a massive influx of asylum claimants into and across Europe, resulting in criticism that the European Union's (EU's) response has been slow and inadequate.[2] The United Nations High Commissioner for Refugees (UNHCR) has commented that this movement of asylum seekers into Europe is the largest such movement since World War II.[3] This humanitarian crisis has led to the displacement of an estimated 4.8 million people as of June 2016.[4]

In this commentary, I briefly explain the current EU asylum system (II) and then examine an EU proposal of May 4, 2016 to amend the asylum system, named Dublin IV, by highlighting two key changes relating to general principles and safeguards and the Corrective Allocation Mechanism (CAM) (III). On this occasion, this reflection expresses concern that these proposed changes will undermine international protection for asylum claimants and refugees. The paper ends with a few concluding observations (IV).

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[2] Human Rights Watch, 'Europe's Refugee Crisis: An Agenda for Action' <https://www.hrw.org/report/2015/11/16/europes-refugee-crisis/agenda-action> accessed 3 June 2016.

[3] United Nations High Commissioner for Refugees, 'World Refugee Day: Global Forced Displacement Tops 50 Million for First Time in Post-World War II Era' <http://www.unhcr.org/news/latest/2014/6/53a155bc6/world-refugee-day-global-forced-displacement-tops-50-million-first-time.html> accessed 3 June 2016.

[4] United Nations High Commissioner for Refugees, 'Syria Regional Refugee Response' <http://data.unhcr.org/syrianrefugees/regional.php> accessed 3 June 2016.

II. The Common European Asylum System (CEAS)

The EU has established the Common European Asylum System (CEAS), which aims to establish a harmonised, fair, and effective asylum procedure to process asylum claims across EU member states, while complying with international law obligations to protect asylum claimants fleeing from persecution.[5] Key instruments of the CEAS include: the Dublin Convention (1990), the Dublin II Regulation (2003), and the Dublin III Regulation (2013).[6] The Dublin III Regulation is important because it determines which EU member state is responsible for examining individual asylum applications.[7] For example, if an asylum claimant arrives in a member state, the asylum official first determines the category under which the applicant for international protection falls, such as, whether he or she is a minor and/or has family member(s) in another member state, in order to determine the member state responsible for processing the asylum application.[8] Next, the asylum official considers whether the applicant is in possession of a visa or residence permit in a member state, and whether the applicant has entered the EU irregularly or regularly.[9] In processing the asylum application, in certain countries, the asylum official would consider whether the criteria for transferring the applicant to a safe third country apply pursuant to the Asylum Procedures Directive (2013/32/EU).[10] If the criteria for safe third country do not apply, and the applicant for international protection does not qualify for refugee status, then the asylum official will consider granting subsidiary protection pursuant to the Qualification Directive (2011/95/EU).[11] The asylum official will also consider whether humanitarian and compassionate grounds apply, for example, in order to bring together family members, relatives or any other family relations.[12]

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[5] ibid; Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) art 1A; European Commission, 'Common European Asylum System' <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm> accessed 3 June 2016.

[6] Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (1997) OJ C254/1; 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 (2003) OJ L50/1; Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (2013) OJ L180/31 (Dublin III Regulation).

[7] European Commission, 'Country Responsible for Asylum Application (Dublin)' <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/index_en.htm> accessed 3 June 2016 (EC Country Responsible).

[8] Dublin III Regulation (n 6) art 8, 9, 10.

[9] EC Country Responsible (n 7); Only if no family members or, in the case of children, siblings and relatives, are present.

[10] Dublin III Regulation (n 6) art 3(3).

[11] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (2011) OJ L337/9 art 15 (Qualification Directive).

[12] Dublin III Regulation (n 6) recital 17.

The Dublin III Regulation has not lived up to its promise, as emphasised by various commentators, such as Minos Mouzourakis of the Refugee Studies Centre at the University of Oxford in his article entitled *'We Need to Talk about Dublin'*.[13] Mouzourakis points out that the Dublin III system failed to 'deflect asylum claims by creating incentives for defection from the allocation criteria' and 'the efficiency objectives of rapid processing of asylum claims and prevention of multiple applications and 'asylum shopping' are also not appropriately met'.[14]

On May 4, 2016, the European Commission introduced a proposal to reform the current Dublin III Regulation (No 604/2013), dubbed 'Dublin IV'.[15] The Dublin IV proposal suggested that the Dublin III Regulation has failed to achieve its goals of providing efficient access to asylum procedures, preventing forum-shopping (where asylum claimants apply to multiple member states to 'increase' their chances of success), and enhancing the harmonisation of member states in their compliance with EU laws.[16] The Dublin IV proposal aims to reform the Dublin III Regulation by improving the system's capacity to determine, in an efficient and effective manner, the member state responsible for processing an asylum claim; to ensure fair sharing of responsibilities between member states through the establishment of the CAM (discussed below); and to discourage abuses and prevent secondary movements, such as smuggling, of applicants within the EU.[17]

I highlight and critically discuss two key changes to the Dublin III Regulation recommended in this Dublin IV proposal: first, the general principles and safeguards (Chapter II) and second the CAM (Chapter VII). Chapter II introduces procedural safeguards for member states in their compliance with international and EU law obligations to protect asylum claimants and refugees. Chapter VII describes how the CAM works by establishing a reference key based on the size of the member states' population (50% weighting) and the Gross Domestic Product of the member state (50% weighting).[18] I submit that these proposed changes undermine international protection

[13] Refugee Studies Centre, 'We Need to Talk about Dublin', 9 <https://www.rsc.ox.ac.uk/files/publications/working-paper-series/wp105-we-need-to-talk-about-dublin.pdf> accessed 7 July 2016.
[14] ibid.
[15] European Commission, 'Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)' COM(2016) 270 final, Brussels, 4 May 2016 <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/dublin_reform_proposal_en.pdf > accessed 29 May 2016 (Proposal).
[16] European Council on Refugees and Exiles, 'What is the Dublin System?' <http://www.ecre.org/topics/areas-of-work/protection-in-europe/10-dublin-regulation.html> accessed 29 May 2016.
[17] Proposal (n 15) 3-4.
[18] Ibid; The CAM is triggered once the number of applications for international protection for which a member state is responsible exceeds 150% of the figure identified in the reference key. Once the threshold of 150% is exceeded according to the reference key, the CAM will activate and reallocate the asylum claimants in question to other member states that have not yet exceeded the 150% threshold or where the number of applications in those member states is below the number identified in the reference

for asylum claimants and refugees.

III. Proposed Key Changes to the Dublin III Regulation

General Principles and Safeguards (Chapter II)

The problems with this Chapter are twofold: first, clauses that enable member states to exercise a certain level of discretion allow too much room for member state interpretation, and second, the proposed procedural mechanisms place additional burdens upon asylum claimants legitimately fleeing from a 'well-founded fear of persecution'.

First, most of the recital clauses proposed are discretionary in nature, giving a wide 'margin of appreciation', which is the deference shown to member states to allow them to exercise their sovereign prerogative in deciding a matter in question.[19] In these recital clauses and corresponding articles, discretion is bestowed upon the member state where the word 'should' is used instead of 'shall'.[20] Where the word 'should' is used instead of the word 'shall', it may result in the implementation by member states of only bare minimum procedural guarantees, or less, of required refugee status determination processes under international law.[21] For example, one key recital states that there *should* be personal interviews for the asylum claimants (recital 23); while another recital states that there *should* be legal safeguards and the right to effective remedy (recital 24).[22] Clauses that bestow a certain level of discretion upon member states may leave too much room for member states to interpret the clauses as they wish, basing their

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key.

[19] Yuval Shany, 'Toward a General Margin of Appreciation Doctrine in International Law?' 16:5 (2006) EJIL 907-940, 909.

[20] See, for example: The corresponding article 7(1) in the Dublin IV proposal, which requires the member state to provide an individual interview for the asylum claimant, but allows the member state to interpret when the information provided is 'sufficient' to waive the interview requirement. In essence, the member state's interpretation of what constitutes 'sufficient' will determine the individual asylum claimant's entitlement to an interview.

[21] For example, a wide margin of appreciation may permit the violation of international law; See: Jenny Poon, 'Emerging Voices: Is the Margin of Appreciation Accorded to European Union Member States Too Wide, Permitting Violations of International Law?' (2016) *Opinio Juris* <http://opiniojuris.org/2016/08/16/emerging-voices-is-the-margin-of-appreciation-accorded-to-european-union-member-states-too-wide-permitting-violation-of-international-law> accessed 29 September 2016 (Poon).

[22] Proposal (n 15) 25-27. In these examples, the word 'should' is used instead of 'shall', which permits the member state discretion in decision-making. It is important to note also, that, while the Dublin III Regulation determines which EU member state is responsible for examining individual asylum applications, in some member states such as Germany, the Dublin procedure does not refer to a separate procedure in domestic German law. Rather, in the German context, the Dublin procedure refers to the shifting of responsibility for an asylum application within the administration, for instance, the assumption of responsibility by the 'Dublin units' of the Federal Office for Migration and Refugees (BAMF) of Germany; See, for example: Asylum Information Database, 'Dublin: Germany' <http://www.asylumineurope.org/reports/country/germany/asylum-procedure/procedures/dublin> accessed 1 November 2016 (AIDA).

discretion on state-interested agendas.[23] Often times, this wide 'margin of appreciation' translates into a more difficult time for the asylum claimant to have their applications properly processed for their merits, resulting in a higher likelihood of rejection, and an increased possibility of subsequent *refoulement* back to persecution.[24] Under international law, as reiterated by the UNHCR in its handbook on refugee status determination, an individual interview is *required* for the asylum officer to properly assess the applicant's eligibility for refugee status.[25] For example, the Dublin IV proposal does not require national authorities to question about or provide the asylum claimants with an opportunity to indicate the presence of relatives or family members in other member states to properly determine the member state responsible for processing the asylum application.[26] This is incompatible with the right to be heard as enshrined in the EU Charter and case law.[27] A right to be heard in relation to an expulsion order is also codified in Article 32(2) of the Refugee Convention.[28] Recital 23 therefore does not comply with relevant international law, since under the Dublin procedure, an interview should still take place to allow the asylum claimant to provide reasons for why a deportation to another Dublin State could be impeded.[29] For instance, it has been held in *Ghezelbash* that an asylum claimant should be allowed, under the Dublin procedure, to challenge a transfer decision on the basis of misapplication of the responsibility criteria.[30] Where the asylum claimant is not given an opportunity to be heard, the claimant may be prevented from challenging a transfer decision pursuant to established EU case law. Further, a right to effective remedy is also guaranteed to refugees under

[23] See, for example: *Institute for Human Rights and Development in Africa (on behalf of Sierra Leonean refuges in Guinea) v Guinea,* African Commission on Human and Peoples' Rights, Communication No 240/02, December 2004.

[24] Right of the asylum claimant or refugee not to be sent back to his or her country of origin to face persecution, cf: Refugee Convention (n 5) art 33; For a further discussion on wide margin of appreciation permitting violation of international law, see: Poon (n 21).

[25] United Nations High Commissioner for Refugees, 'Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees' (1992) UN Doc HCR/IP/4/Eng/REV.1 para 200, where "it may be mentioned, however, that basic information is frequently given, in the first instance, by completing a standard questionnaire. Such basic information will normally *not* be sufficient to enable the examiner to reach a decision, and *one or more personal interviews will be required*" (emphasis added).

[26] European Council on Refugees and Exiles, 'ECRE Comments on the Commission Proposal for a Dublin IV Regulation COM(2016) 270', October 2016, 26 <http://www.ecre.org/wp-content/uploads/2016/10/ECRE-Comments-Dublin-IV.pdf> accessed 8 November 2016.

[27] See also: *MM v Minister of Justice, Equality and Law Reform,* C-277/11, CJEU, 22 November 2012, paras 85-89, where CJEU held that preventing asylum claimants from the possibility of a personal interview where the administration deems the information available is sufficient to make a decision is incompatible with the right to be heard, as enshrined in Charter of Fundamental Rights of the European Union, OJ C326/391, 26 October 2012, art 41 (EU Charter).

[28] Refugee Convention (n 5) art 32(2), where "*each refugee shall be entitled*, in accordance with the established law and procedure of the country, *to submit evidence to clear himself and to be represented before the competent authority*" (emphasis added).

[29] For instance, the practice in some member states such as Germany is that, a 'personal conversation' takes place to allow the asylum claimant to explain to the asylum official any reasons why a deportation to another Dublin State could be impeded, such as the existence of relatives in Germany. See also: AIDA (n 22).

[30] *Mehrdad Ghezelbash v Staatssecretaris van Veiligheid en Justitie,* C-63/15, CJEU, 7 June 2016, paras 46 and 61 (Ghezelbash).

the Refugee Convention under Article 16(1): 'a refugee shall have free access to the courts on the territory of all Contracting States'.[31] Again, the proposed recital 24 is contrary to established international law, since some member states such as Germany has shown that in practice, the Dublin procedures have created obstacles to effective legal remedy.[32] Further, a right to effective remedy is guaranteed under the EU Charter of Fundamental Rights, therefore, any discretionary rendition of that right will be a direct breach of the Charter and EU case law.[33]

Second, an additional burden, other than the burden of proving a 'well-founded fear of persecution', is placed upon the asylum claimant to submit 'all the elements and information relevant for determining the member state responsible' by a pre-determined deadline.[34] While the procedural requirement of determining the member state responsible for processing asylum application takes place before substantive evaluation of refugee status by the member state responsible, the burden of having to adhere to strict deadlines is an additional procedural hurdle for the asylum claimant to meet. This requirement is a newly proposed addition on the Dublin III Regulation. An asylum claimant with a legitimate 'well-founded fear of persecution' may not have the proper documentation, let alone the resources or knowhow, or proper legal representation, to put together a package for the asylum official within the deadline.[35] Again, the requirement to have in place proper documentation is another procedural hurdle for the asylum claimant to meet, on top of the already heavy burden of having to prove a 'well-founded fear of persecution'. This additional burden not only exacerbates the situation of fleeing from a 'well-founded fear of persecution' for the asylum claimant but also permits member states to evade their responsibility to process asylum claims by rejecting the application or processing the application without sufficient information - based on the fact that the application was not submitted on time. In fact, strict deadlines for asylum claimants are not encouraged, as stated in the UNHCR Handbook, which noted that asylum officials, in their substantive evaluation of refugee status, should weigh the 'general credibility' of the claimant where the information (such as a passport) cannot be obtained within a reasonable time.[36] I suggest that the additional procedural burden will place the asylum claimant at a disadvantage and increase the likelihood that the application will be rejected on the grounds of failing to meet a deadline.

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[31] Refugee Convention (n 5) art 16(1).

[32] For example, under the Dublin procedure as applicable in the German context, access to legal remedy in 'Dublin cases' is difficult given that 'material requirements for a successful appeal are still difficult to fulfill [for the asylum claimant]' in AIDA (n 22).

[33] EU Charter (n 27) art 47; See also, CJEU cases: Ghezelbash (n 30) para 51; *George Karim v Migrationsverket,* C-155/15, CJEU, 7 June 2016, para 22.

[34] Proposal (n 15) art 4.

[35] Lack of documentary support as a result of fleeing from a 'well-founded fear of persecution' has been emphasised as a common characteristic of a refugee by the UNHCR: 'Due to the circumstances in which they are sometimes forced to leave their home country, refugees are perhaps more likely than other aliens to find themselves without identity documents' in United Nations High Commissioner for Refugees, 'Identity Documents for Refugees', 20 July 1984, UN Doc EC/SCP/33, para 3.

[36] United Nations High Commissioner for Refugees, 'Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees', December 2011, para 93 (UNHCR Handbook).

In the next section, I will examine the CAM, which proposes to equalise state responsibility-sharing in the processing of asylum claims based on a reference key.

Corrective Allocation Mechanism (Chapter VII)

I submit that there are several problems with the CAM: first, there is no special consideration for border member states (frontline host states); second, there is no specification as to what type of application the calculation includes; and finally, member states are permitted to opt out of the CAM by 'paying their way out'.

First, the CAM contains no special consideration for border member states – or frontline host states – taking in asylum claimants traveling from similar geographical locations, such as those traveling through Turkey from Syria. In doing so, the CAM fails to consider that frontline host states have a higher likelihood of exceeding the 150% figure identified in the reference key on a consistent basis more so than landlocked member states such as the Czech Republic or Hungary. Therefore, I suggest that frontline host states such as those in close proximity to the Syrian border will often be reaching or even exceeding the 150% threshold. Frontline host states consistently at 150% but not exceeding the 150% threshold will not, under the CAM, have their burdens reallocated to other member states with a lower percentile figure in the reference key. The CAM proposed, in my view, does little to alleviate the burden experienced by these frontline host states, if at all. The CAM's purpose to correct 'disproportionality in the share of asylum applications between Member States' looks good on paper, but does little to assist frontline host states in reality.[37] Further, the CAM does not resolve the problem of unequal burden-sharing created by the responsibility criteria as set out in the original Dublin III Regulation.[38]

Second, the CAM does not specify whether the calculation includes only considerations for international refugee protection under the Refugee Convention threshold for 'well-founded fear of persecution', or also considerations for subsidiary protection (for those not meeting the refugee definition), which protects applicants who face 'serious harm'.[39] Applications for international protection under the threshold of 'well-founded fear of persecution' and subsidiary protection are considered together by the vast majority of EU member states. However, some member states such as Ireland has separate procedures for determination of refugee status and subsidiary protection, and requires that refugee status to be determined before an examination of suitability for subsidiary

[37] Constantin Hruschka, 'Dublin is dead! Long live Dublin! The 4 May 2016 proposal of the European Commission', 17 May 2016 <http://eumigrationlawblog.eu/dublin-is-dead-long-live-dublin-the-4-may-2016-proposal-of-the-european-commission> accessed 2 October 2016.

[38] ibid: It has been further suggested that the CAM is 'administratively unworkable and politically illusory [based on] on-going discussions since the first attempt to establish such a mechanism as part of the Dublin III proposal'.

[39] Qualification Directive (n 11) art 15; while some may consider this a non-issue, in my view, to ensure greater compliance with the Qualification Directive, it is an issue that warrants discussion, since a Directive is a legislative act that is contingent upon member state implementation into domestic laws. See, for example: Europa, 'Regulations, Directives, and Other Acts', 8 November 2016 <https://europa.eu/european-union/law/legal-acts_en> accessed 8 November 2016.

protection.[40] Where the calculation includes both considerations for international protection and subsidiary protection, the results of the calculation do not accurately reflect the number of refugees accepted so that it will appear that the member state in question is taking in more refugees when in fact it is not. I suggest that this method of calculating member state responsibility-sharing will be detrimental to the asylum claimant because member states that are over-capacity have fewer resources to allocate, which may undermine international protection for the asylum claimant, such as having a reduced ability to conduct individualised interviews with asylum claimants.[41] While some may argue that considering both international protection and subsidiary protection together can potentially result in more protection for more people, if clarity is not laid down in the Dublin IV proposal on whether the CAM involves calculating both asylum applications for international protection and subsidiary protection or just one, there is the possibility that member states may interpret this ambiguity to their advantage, while not considering the interests of the asylum claimants.[42] Further, member states may diverge in their interpretation of the CAM leading to inconsistency and unpredictability in the asylum application process, increasing the likelihood that asylum claimants may 'forum shop' by submitting multiple applications to different member states in hopes of 'increasing' their chances of success.[43]

Finally, the CAM permits EU member states to opt out by paying 250,000 Euros per applicant to the member state responsible for processing asylum applications as determined by the reference key.[44] Pursuant to the Dublin IV proposal, once a member state exceeds the 150% threshold, the CAM activates and will relocate asylum claimants to other member states that have not yet exceeded the 150% threshold.[45] The reallocation is then shared proportionately between the member states that have not exceeded the 150% threshold based on the number identified in the reference key.[46] Following the reallocation, the member state which benefits from the CAM will transfer the applicant to the member state of allocation, where the member state of allocation will perform the Dublin check and verify whether the applicant has family member(s) in

[40] See, for example: Steve Peers, 'Procedural Rights and Subsidiary Protection', 8 May 2014 <http://eulawanalysis.blogspot.ca/2014/05/procedural-rights-and-subsidiary.html> accessed 1 November 2016; See also: *HN v Minister for Justice, Equality and Law Reform, Ireland, Attorney General,* C-604/12, CJEU, 8 May 2014, paras 25-26.

[41] An individualised right to be heard is required under international refugee law pursuant to the Refugee Convention (n 5) art 32(2) in the context of expulsion.

[42] For an example where member states interpret their international law obligations based on their political agenda at the time, see: *Ireland v United Kingdom,* App No 5310/71 (ECHR, 18 January 1978), paras 207, 215-224, where the United Kingdom applied to the court to derogate from its human rights obligations under the European Convention on Human Rights because of the political need to curtail terrorist activities.

[43] United Nations High Commissioner for Refugees, 'Note on the Mandate of the High Commissioner for Refugees and His Office', October 2013: Where UNHCR emphasised the importance of a predictable asylum framework: 'The rationale behind [UNHCR's role] is that strengthened supervision by an international organization is indispensable for a predictable framework of international cooperation and to ensure the proper functioning of such a system'.

[44] Proposal (n 15) 19.

[45] ibid (n 15) 18.

[46] ibid.

another member state.[47] If member states can 'pay their way out', it creates a situation where the asylum claimant, whose application is supposed to be processed by the member state responsible, will be left stranded. This 'opt out' feature is especially problematic because the member state responsible can also opt out without any advanced notice, for instance, by simply notifying other member states, and without first conferring with the individual asylum claimant, who has no opportunity for input in the decision-making process.[48] The problems with allowing individual EU member states to 'pay their way out' have been highlighted recently in an article by IRIN, an independent, non-profit media venture that reports from the frontlines of crises.[49] Steve Peers, a Professor of EU law, has also highlighted other problems with this proposed change.[50] The CAM may also separate asylum claimants from their family members, which constitutes a violation of the EU Charter.[51]

The paragraphs above demonstrate the problems with just two parts of the Dublin IV proposal, namely Chapters II and VII. I suggest that the Dublin IV proposal as it is will undermine the international protection of asylum claimants and much more needs to be done to properly safeguard the rights and protections for asylum claimants.

IV. Conclusion

While the Dublin IV proposal seeks to reform the Dublin III Regulation, there is still room for improvement. The current proposal violates international refugee law, in that the discretion bestowed upon member states contravene the basic rights of asylum claimants and refugees, including the right to an effective remedy and the right to be heard.[52] Rejecting an application based on an asylum claimant not being able to submit information by a deadline is also contrary to established guidelines as set out by the UNHCR.[53] Finally, the proposed reallocation of CAM increases the likelihood of separation of families, which is a violation of the right to family life as set out in the EU Charter.[54]

In seeking to ensure that a fair and efficient asylum system is in place to allocate responsibility-sharing for member states to examine asylum claims, it is also important

[47] ibid (n 15) 19.
[48] For the requirement to have an individualised right to be heard in the context of expulsion, see: Refugee Convention (n 5) art 32(2).
[49] IRIN, 'Europe tries to buy its way out of the migration crisis' <http://us12.campaign-archive2.com/?u=31c0c755a8105c17c23d89842&id=969439ff2f&e=a725076242> accessed 8 July 2016.
[50] For instance, Peers suggested that 'Member States have already shown that they are unwilling to apply the relocation Decisions of last September, or to adopt the proposal to amend the Dublin rules […] The idea of financial contributions in place of accepting individuals, whatever its merits, is perceived to be a 'fine' and was already rejected by Member States last year' in Steve Peers, 'The Orbanisation of EU asylum law: the latest EU asylum proposals', 6 May 2016 <http://eulawanalysis.blogspot.ca/2016/05/the-orbanisation-of-eu-asylum-law.html> accessed 1 October 2016.
[51] For right to family life, see: EU Charter (n 27) art 7.
[52] Refugee Convention (n 5) art 16(1) and 32(2) respectively.
[53] UNHCR Handbook (n 36) para 93.
[54] EU Charter (n 27) art 7.

to keep in mind the needs of individual asylum claimants and the circumstances they face. Often times, those experiencing legitimate 'well-founded fear of persecution' are fleeing without proper documentation, and may have no resort but to travel through illegal means to arrive at a member state. The personal circumstances of each individual asylum claimant are unique and should not be undermined when assessing asylum claims. Procedural safeguards must therefore be in place to ensure that member states are not accorded an overly wide 'margin of appreciation', thus endangering international law protections for asylum claimants, including potentially violating the principle of *non-refoulement*.[55] They must be granted access to territory and to fair and efficient asylum procedures, and be given an opportunity to have the merits of their applications examined with an opportunity for both an oral and written right to be heard.[56] In other words, the Dublin IV proposal must be amended to ensure that asylum claimants' rights are not eroded by member states' own interests.

[55] Refugee Convention (n 5) art 33.
[56] United Nations High Commissioner for Refugees, 'Asylum Processes (Fair and Efficient Asylum Procedures)' (2001) UN Doc EC/GC/01/12, paras 4-5.