



## Prospects for Compromise on Reform of the Common European Asylum System

Jolanta Szymańska

*Supporters and opponents of the automatic redistribution of asylum-seekers have been unable to find compromise on changes to the Common European Asylum System for several months. Many Member States are against transferring the competences they hold on migration to the EU level. Thus, it's worth working toward a solution that would enable relocation while maintaining Member State control over the influx of refugees to their territory.*

The Common European Asylum System (CEAS) has structural deficits that became visible during the mass-migration crisis of 2015. One of the CEAS pillars, the Dublin Regulation (No. 604/2013), puts the main responsibility for processing asylum applications on frontline (namely external border) EU Member States. When confronted with a massive influx of refugees, however, these states' asylum systems proved inefficient. They did not properly register immigrants and sometimes even encouraged them to travel to other states in the EU to avoid the responsibility for processing the applications. This has led to conflict between Member States and the reintroduction of border controls within the Schengen area.

In response to the disproportionate responsibility on certain Member States' asylum systems and the challenges related to the secondary movement of migrants in the EU, in September 2015, the JHA Council adopted two decisions to relocate asylum-seekers from Italy and Greece to other Member States. The first relocation programme involving 40,000 asylum-seekers was based on voluntary acceptance by Member States. The second programme applied to 120,000 asylum-seekers. In its first phase, about 66,000 people in clear need of international protection would be relocated automatically according to a distribution key based on certain criteria (representing 100% of the total): the size of the population (40%), GDP (40%), average number of past asylum applications (10%), the unemployment rate (10%). In the second phase, the Council made 54,000 additional places available to legally admit Syrians from Turkey to the EU as part of a deal between the country and the bloc.

The implementation of the relocation decisions has proceeded slowly, with southern European countries constantly calling for a systemic solution to the matter, including a permanent system of relocation that can be triggered in a crisis. The Visegrad Group (V4) countries as a group have proposed alternative solutions to deal with the crisis, rejecting the EU's quota system.

**EC Proposal: "Dublin+."** In 2016, the European Commission presented proposals for comprehensive reform of CEAS. The most controversial element of the Commission's reform package was revision of the Dublin Regulation. It would introduce automatic relocation when a Member State is handling a disproportionate number of asylum applications. Determining when an asylum system has been overloaded would be estimated based on a country's size and wealth. If a Member State exceeds the reference number by 150%, all new applicants in that country should (regardless of nationality) be relocated to other Member States. This corrective allocation mechanism would remain in place until the number of applications falls below 150% of the reference point. If another Member State will not take in its requisite number of asylum-seekers, it would have to make a "solidarity contribution" of €250,000 per person to the Member State that does.

The European Commission's proposals also would revise the Reception Conditions Directive (No. 33/2013) and replace the existing Asylum Procedures Directive (No. 32/2013) and Qualification Directive (No. 95/2011) with new regulations. The aim of the proposals is for greater convergence in the EU asylum system and reducing "pull" factors of migration to the EU. To prevent irregular secondary movements within the EU and so-called "asylum shopping," the Member States would assign a residence to asylum-seekers, impose reporting obligations and introduce geographical limits on the provision of material reception benefits. If a relocated person leaves the designated area, he or she would have to wait longer to obtain long-term resident status in the EU.

**V4 Proposal: "Effective Solidarity."** The V4 have presented a counter-proposal. An earlier general declaration termed "flexible solidarity" that the EU response to migration challenges should consider a Member State's specific experience and potential was further developed by the Slovak EU presidency under the new banner "effective solidarity."

The Slovak concept envisions three scenarios of Member State response, depending on the level of migration intensity. The foundations of the existing Dublin system would be kept, but the Member States would work towards upgrading the system. In normal circumstances, the states would make more effort to fulfil their obligations related to migrant registration and preventing secondary movement. In crisis situations, the Member States would take part in a collective effort to support frontline countries affected by the inflow. However, the states would be able to choose how they want to express their "solidarity." If not relocation of asylum-seekers, the states could make financial contributions to the Member States under pressure, increase contributions to EU agencies, take over responsibility for the return of applicants whose asylum claim has been rejected, or sharing reception facilities with neighbouring countries to process and examine applications or conduct joint processing of applications. In emergency situations, the Slovak concept allows for additional supportive measures based on Art. 78(3) TFEU, which was used to adopt the relocation decisions in 2015. The proposal also provides that the European Council would have to consent to the use of such supportive measures, which would be voluntary.

**The Search for Compromise.** Italy, Greece, Germany, Sweden and Malta, which holds the EU presidency, support the automatic redistribution concept. However, many Member States have voiced objection to it and others, such as the V4 countries, have absolutely rejected it. Finding compromise between the positions will not be easy. Given the uncertain future of the EU-Turkey deal, continued migration pressure on the EU's borders, and limited perspectives for cooperation with other third countries, finding internal solutions seems necessary.

Any compromise solution should begin with three basic principles. First, it should strive to maintain a balance between the principles of first safe country and of international solidarity in crisis situations. Second, other forms of support or show of solidarity should not relieve a Member State from the obligation to accept refugees. Relocation cannot be easily replaced by another form of assistance, including financial support. Forced displacement is a modern long-term phenomenon, so even with financial support, frontline countries may not be able to provide for all newcomers, including such basics as access to education. Not doing so could create a "lost generation" of refugee children and progressive radicalisation. Third, the CEAS reform should consider the differences in the economic development of the EU Member States and such issues as the consequences of secondary movement of asylum-seekers and accepted refugees.

The EU, given some Member States' scepticism of its Dublin+ proposal, should seek solutions similar to the EU resettlement framework. In case of increased migration pressure, and based on objective data, the European Commission would present an EU relocation plan that sets the number of people to be transferred from the countries most affected by the crisis to other EU states. The Commission proposal would include a distribution key that can be used as a reference point by ministers negotiating its final shape in the JHA Council. The distribution key could be more fair than the one used in 2015, such as replacing the GDP indicator with one based on GDP per capita. "Relocation shame" could enable small modifications of the quotas if a Member State increases its contributions to EU in response to the crisis and then willing countries or Member States formally outside the system, such as Ireland, which voluntarily joined the two relocation programmes in 2015, could take on the remaining asylum-seekers. This solution would appear to be more flexible. It would also enable the Member States to keep control over the inflow of refugees to their territory.

The reform of relocation programmes should include the existing requirements for applicants that are relocated to other Member States. Registration should be a condition for eventual relocation. Priority should be given to vulnerable applicants (children, people with disabilities, etc.). Member States should have the right to refuse to relocate an applicant they deem poses a threat to their national security. To decide which Member State should take them in, specific language and professional skills and other criteria such as the family ties of the applicants should be considered. In the destination countries, the procedures for monitoring refugees should be improved. This will probably not eliminate the problem of secondary movement but it can reduce the problem while also reducing conflicts between EU countries.