

DISCUSSION PAPER ON INTRA-EUROPEAN SOLIDARITY

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1. Solidarity between Member States is at the heart of the European objective to "Build a Europe of asylum". This concept was revived as a key policy objective in the European Pact on Immigration and Asylum which was adopted under the French Presidency in 2008 and later included in the Stockholm Programme of December 2009. It still has to be given concrete content by the European decision makers. The Belgian Presidency is to be thanked for having placed this subject at the heart of the conference.

2. Regarding the instruments and mechanisms that are called for, we should not be mistaken as to the instruments and mechanisms to be applied. A truly complementary approach between the different forms of solidarity, which is the objective of this paper, is absolutely required in order for the envisaged solutions to be successful in any way.

3. Two more general issues have to be touched on beforehand. First of all, there is a need for a more comprehensive and concrete approach to migratory questions inside the EU. The future of the common European asylum system directly depends on our capacity to reinforce on a long-term basis our control of external borders as well as our capacity to fight illegal immigration networks efficiently, especially in the Eastern Mediterranean. The Council has set itself both these goals in February 2010. Without an ambitious and voluntarist policy in this field, the right to asylum will be imperilled by abuse of asylum systems. Secondly, there is the need to further harmonise asylum legislations and practices of Member States. It is to be expected that increased harmonisation should indeed lead to a more natural and fair redistribution of protection claims between Member States.

While disparities that follow from migration routes result in a more important flow of asylum seekers in the Southern European countries, disparities that follow from the differences currently existing between national asylum systems are feeding the flow of asylum claims in Northern European countries, where they are currently increasing at a considerable rate. These observations should prompt us to come up with a global system of European solidarity addressing all of the abovementioned factors.

4. As for the more concrete issue of the way in which solidarity mechanisms can be put into practice, among the three kinds of solidarity put forward by the Belgian Presidency, the possibility of *physical* solidarity merits closer examination. France has played an important part in defining and using the concept of "intra-European relocation". One only has to recall the European Pact on Immigration and Asylum, which stresses the need to reinforce solidarity between Member States in

favour of *"those Member States which are faced with specific and disproportionate pressures on their national asylum systems, due in particular to their geographical or demographic situation"*. For those States, *"solidarity shall also aim to promote, on a voluntary and coordinated basis, better relocation of beneficiaries of international protection from such Member States to others, while ensuring that asylum systems are not abused."*

Since then, France has carried out, in 2009, a first intra-European transfer of persons placed under the protection of Malta (95 persons) and it has taken part in a European pilot project launched by the Commission and aimed at implementing, in 2010, this mechanism of "intra-European relocation" in favour of Malta (93 persons as far as France is concerned) .

In light of the accumulated experience, a comprehensive and detailed assessment of this pilot project, in which ten Member States took part, should be made in the coming months. This assessment could then serve as a basis for examining how to pursue this initiative at the European level.

As for France, several important elements have come to light:

- this solidarity mechanism, as conceived by its promoters, requires the existence of a specific and disproportionate pressure on a Member State which is unable, on account of this pressure, to offer a lasting perspective to the persons it has received on its territory. This means that the mechanism should not be considered as continuous and automatically renewable every year but that it should only be renewed after careful assessment of the inflow;
- implementation of this mechanism should be on a voluntary basis. Member States should be free to decide if they have the capacity to receive, in addition to those who applied for asylum on their own territory, other persons entitled to protection. They should be given the possibility to decide, upon examination of individual requests, which persons they can accept, for instance on account of their integration perspectives in the new host country;
- the mechanisms should still only apply to persons whose need for international protection has already been recognised by a Member State, whether by granting refugee status or subsidiary protection status. For France, the solidarity operation took the form of a protection transfer, the French protection authorities taking over responsibility from the Maltese authorities without assessing the asylum application again. This solution seems in accordance with the principle of mutual trust between Member States. However, existing legal rules in the field of transfer of protection should be clarified, as some Member States have shown reluctance on account of judicial uncertainties. It is also essential to actively pursue a common approach to protection motives, as this is a condition for mutual trust between Member States;
- finally, one should remain vigilant about the "pull factor" such a transfer mechanism may generate. The latest statistical data from Malta seem to confirm however that transfer operations have not, for the time being, led to an increased inflow on Malta and have not generated irregular movements toward France.

4. Another important form of solidarity is *financial* solidarity, which took concrete form in the year 2000 with the creation of a European refugee Fund (ERF) aimed at improving reception conditions

for asylum seekers, refugees and beneficiaries of subsidiary protection. Its integration, in 2008, in the "Solidarity and Management of Migration Flows" programme, also known as the SOLID programme, has placed the ERF in a more general and consistent framework, thus giving it greater visibility. In France, the four funds brought together under this programme are all managed by the Ministry responsible for asylum, immigration and integration so as to reinforce the programme's consistency.

The Stockholm Programme invites the Commission to examine the possibilities for using, in a more effective way, existing EU financial systems aiming at reinforcing internal solidarity. As a major host country for asylum seekers and refugees, France would like to see a thorough reflection process on this question in order to define flexible and appropriate rules regarding the use of allocated funds.

5. *Material* solidarity is the third kind of solidarity touched on during this conference. France gives also specific attention to this form of solidarity. The issue here is to reinforce the capacity of Member States facing difficulties in their national asylum system. The future European Asylum Support Office (EASO) will have a crucial part to play in the matter.

In addition to harmonising national legislations and practices, the construction of national asylum systems that are equal should be a policy priority regarding European solidarity. Domestic asylum systems should be such that they allow for the actual implementation of the protection, reception and procedure standards deriving from the existing directives and from the future directives of the asylum package currently under discussion. France will remain vigilant so as to ensure that the capacities of asylum systems are equal to the standards to be implemented. Reinforcing the capacity of domestic asylum systems should therefore be a priority for the Member States.

This goal should also be a priority for the EASO. The EASO should in the long run coordinate the measures needed to achieve this goal but should also offer to Member States facing specific pressures an emergency assistance through the asylum support teams instituted by the EASO's founding Regulation.

6. The thoughtful considerations in this paper are meant to lead to an exchange of thoughts in the framework of this workshop and to trigger some comments that could for instance pertain to the elements of assessment with regard to the modalities of intra-European relocation. Do participants to the workshop agree on these elements or do opinions diverge?

- 1) With regard to the continuity of the mechanism?
- 2) With regard to the aspect of voluntariness?
- 3) with regard to the people targeted?
- 4) With regard to the possible pull factor this type of operation can entail?