

**DISCUSSION PAPER ON  
INTRA-EUROPEAN SOLIDARITY  
EU MINISTERIAL CONFERENCE ON ASYLUM, 13-14 SEPTEMBER 2010, BRUSSELS**

**1. Introduction**

Solidarity in the field of asylum policy has formally been at the core of the European debate since the European Community began to develop plans for harmonising asylum policies in the late 1980s. The debate came to prominence initially with the conflicts in former Yugoslavia in the early 1990s, where the confluence of harmonisation and a refugee exodus within Europe surfaced. Previously the debates were more related to the Cold War and participation in various forms of regional and global refugee "responsibility-sharing" such as resettlement schemes.

In 1997 with the adoption of the Amsterdam Treaty, competence was formally given to the European Community to "promote a balance of efforts between Member States in receiving and bearing the consequences of receiving refugees and displaced persons"<sup>1</sup> and today "solidarity and fair sharing of responsibility" remains one of the governing principles of the implementation of the Common European Asylum System (CEAS) in the TFEU<sup>2</sup>.

Solidarity or responsibility-sharing fundamentally concerns kinship and willingness to help each other with a view to preserve unity, but in the field of asylum policy solidarity may also be expressed in more concrete forms, such as financial, material or physical solidarity. Solidarity is a mutual concept, which requires that Member States are both willing to provide assistance to others, as well as willing to receive assistance from other Member States.

As suggested above solidarity or assistance can be financial, and thus implies a financial system conceived to counterbalance or compensate the Member States experiencing or taking on burdensome asylum pressures. Solidarity can also be material, and thus implies assistance Member States receive or provide with a view to build capacity in the field of asylum facilities. Finally, the physical solidarity involves re-distribution of asylum seekers, refugees or beneficiaries of international protection on the territory of another Member State.

The 2004 Hague Programme<sup>3</sup> already recognised that one of the objectives of establishing a Common European Asylum System was to assist those Member States which, notably because of their geographical position, are faced with particular pressures on their national asylum systems.

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<sup>1</sup> Cf. Article 63 (2) litra b of the TEC.

<sup>2</sup> Cf. Article 80 of Treaty Establishing the European Union, Council of the European Union, 6655/1/08 REV 1, Brussels, 30 April 2008,

<sup>3</sup> European Council Meeting In Brussels 4/5 November 2004, Presidency Conclusions, Hague Programme (Annex),

The Stockholm Programme<sup>4</sup> which was adopted by the European Council in December 2009 as the multi-annual programme of the Union in the field of Justice and Home affairs in 2010-2014, calls especially for sharing of responsibilities and solidarity between the Member States, and states that “Effective solidarity with the Member States facing particular pressures should be promoted. This should be achieved through a broad and balanced approach. Mechanisms for the voluntary and coordinated sharing of responsibility between the Member States should therefore be further analysed and developed.”

A recent research<sup>5</sup> shows that the Member States, various stakeholders and the NGOs in general agree that the EU has an uneven distribution of burden with respect to handling asylum flows. The reasons for this uneven distribution however give rise to some disagreement, although Member States overall point to three possible solutions: physical relocation of beneficiaries of international protection; policy harmonisation; and technical and financial assistance. These solutions are to be seen against the background of each individual Member State’s responsibility to fully implement and respect the EU asylum acquis. In that respect responsibility and sharing of responsibility clearly go hand in hand.

These three issues which indeed are all closely interlinked will be examined further in this paper within a wider political context while drawing on most recent research. The present discussion paper has a two-fold purpose. It serves not only to provide some background information, but it also aims to set the field for the discussions to be held in the workshop on Intra-European solidarity during the EU Ministerial Conference on Asylum.

## **2. Financial solidarity**

The first legislative instrument in the area of asylum adopted after the entry into force of the Amsterdam Treaty (May 1999) was the Council Decision of 28 September 2000 establishing the European Refugee Fund (ERF). Recommended by the European Parliament and adopted on the basis of a Commission proposal, the ERF has ever since been a mechanism for financial solidarity across the Union.

In its initial incarnation the ERF supported Member State projects from 2000-2004 aimed at refugees and people with subsidiary or temporary protection (or who could be eligible for temporary protection) covering the conditions for reception; integration of persons whose stay in the Member State is of a lasting and/or stable nature; and repatriation, provided that the persons concerned have not acquired a new nationality and have not left the territory of the Member State. €187.541.160,68 were disbursed under the first phase: 95% supporting Member

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<sup>4</sup> Council of the European Union, Council Document 17024/09, The Stockholm Programme – and open and secure Europe serving and protecting the citizens. 2.12.2009.

<sup>5</sup> Study on establishing a mechanism for relocation of refugees and beneficiaries of international protection, July 2010 by Ramboll Management Consulting and Eurasyllum (soon to be published).



State projects and 5% of the total covering Community Actions (Commission 2005). In 2004 the Council agreed to extend the ERF for the period 2005-2010<sup>6</sup>.

The 2005-2010 ERF II ran until the end of 2007 and a new ERF III began from 2008. This new format of the ERF included the idea of "double incentives"<sup>7</sup> with the possibility of awarding € 4,000 to the Member States per resettled refugee, if the resettled refugees fell under one of four categories listed in article 13 of the ERF Decision<sup>8</sup>.

From 2008 onwards the Refugee Fund has been part of the general programme entitled 'Solidarity and Management of Migration Flows', which also includes a Borders Fund, an Integration Fund and a Return Fund. The aim of the programme is to address "the issue of a *fair share of responsibilities* between Member States as concerns the financial burden arising from the introduction of an integrated management of the Union's external borders and from the implementation of common policies on asylum and immigration"<sup>9</sup>.

The basic principle of the ERF is to support with EU funding the activities the Member States are implementing to develop their asylum policies. The distribution of the resources between the Member States is done using a key based on the number of asylum applicants and persons receiving international protection status, plus a fixed amount for each Member State. Essentially, the more asylum seekers and beneficiaries of international protection a Member State has, the more financial support it would receive from the ERF.

The total allocation to the four funds from 2007-2013 is € 4020,37 Million with € 699,37 Million of that being dedicated to the ERF.

There are situations in which the capacity to deal with asylum arrivals is constrained by financial issues in a Member State, and where financial solidarity or responsibility-sharing – essentially offering financial support to a Member State receiving a high number of claims, in order for that Member State to better manage reception, processing and return, may be a possible solution.

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<sup>6</sup> Commission of the European Communities, Communication from the Commission to the European Parliament and the Council on the establishment of a joint EU resettlement programme COM(2009) 456 final, SEC(2009)1127, SEC(2009)1128, Brussels, 2.9.2009, COM(2009) 447 final <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0447:FIN:EN:PDF>

<sup>7</sup> The idea of double incentives means that the fixed amount provided for each relocated person will be subtracted from the global ERF envelope before dividing it among the Member States.

<sup>8</sup> (a) persons from a country or region designated for the implementation of a Regional Protection Programme; (b) unaccompanied minors; (c) children and women at risk, particularly from psychological, physical or sexual violence or exploitation; (d) persons with serious medical needs that can only be addressed through resettlement.

<sup>9</sup> Commission of the European Communities, Communication from the Commission to the European Parliament and the Council establishing a framework programme on Solidarity and the Management of Migration Flows for the period 2007-2013 Brussels, 6.4.2005, COM(2005) 123 final 2005/0046 (COD) 2005/0047 (COD) 2005/0048 (CNS) 2005/0049 (COD) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0123:FIN:EN:PDF>, p.4

Financial burden sharing is often considered as an alternative to relocation or physical solidarity<sup>10</sup>. However, financial burden sharing may also be seen as complementary mean to physical solidarity: some Member States would relocate, some would offer financial assistance only, and some might do both, alongside appropriate ERF funding to the Member States.

Recent research<sup>11</sup> shows that the financial compensation needs to be increased substantially in order to achieve greater equality for the purpose of responsibility sharing. At the same time other research shows<sup>12</sup> that several Member States are of the opinion that a relocation mechanism of “double-incentives”, similarly to the one already in use in the field of resettlement under the current ERF, requires some cautiousness as the reduction in the national envelope may indeed impact other activities financed by the ERF. In addition, a number of Member States agreed that in case a fixed amount per relocated person is allocated, this should be higher than the current €4,000 that is granted for each resettled refugee in a specific situation. While the €4,000 is seen as an incentive of a kind, it covers only a small share of the costs incurred when resettling or relocating a person.

One advantage to including financial assistance as an alternative to relocation for some Member States would be to have all Member States on board with a single scheme. Another might be that for those Member States where relocation itself is seen as non-feasible whereas contributing to protection elsewhere is deemed an acceptable form of solidarity in the realm of public and political opinion, they could participate in a way that accorded with national sentiment.

A disadvantage might be that Member States choose only financial assistance, which might not resolve the issues causing the over-burdening, particularly if not linked to other alternatives like technical assistance and/or (pressure for increased) harmonisation.

The issue of financial solidarity inevitably points to the question of how the limited funds available can best be distributed. With the major part of the European Refugee Fund being reserved for the national level, how can we ensure sufficient funding for capacity building initiatives and international cooperation?

Another key question which could be considered in light of financial solidarity, is whether it should be considered to fundamentally change the way in which the funding from the European Refugee Fund is distributed to the Member States by changing the existing repartition key?

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<sup>10</sup> See Study on establishing a mechanism for relocation of refugees and beneficiaries of international protection, July 2010 by Ramboll Management Consulting and Eurasyllum (soon to be published).

<sup>11</sup> What system of burden-sharing between Member States for the reception of asylum seekers? Study commissioned by the European Parliament.

<sup>12</sup> Study on establishing a mechanism for relocation of refugees and beneficiaries of international protection, July 2010 by Ramboll Management Consulting and Eurasyllum (soon to be published).

### 3. Physical solidarity

The idea of physical solidarity or intra-European relocation or redistribution of beneficiaries of international protection was proposed by the European Council in the Pact on Immigration and Asylum<sup>13</sup> adopted on 15 October 2008.

One of the objectives mentioned in the Pact was the call for physical solidarity: "For 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, solidarity shall also aim to promote, on a voluntary and coordinated basis, better reallocation of beneficiaries of international protection from such Member States to others, while ensuring that asylum systems are not abused."

In the Communication on the further Justice and Home affairs agenda for 2010-2014<sup>14</sup> adopted in June 2009 the Commission mentions that it could be considered to establish a mechanism for internal relocation (physical relocation) among the Member States of persons enjoying international protection that is voluntary and coordinated.

Following pressure from some of the EU Mediterranean countries for stronger commitments from the Council and the fellow Member States for solidarity to receive the flows of such people<sup>15</sup>, the European Council adopted in June 2009 conclusions calling for "voluntary measures for internal reallocation..." and welcomed the initiative establishing a pilot project for Malta.

The first Pilot project on the relocation of refugees located in Malta was initiated during the French Presidency of the Council in 2008 and aimed at helping ease the disproportionate and exceptional situation in Malta. The initial plan was to relocate 80 people during 2009, but in total 95 people were relocated under the pilot project<sup>16</sup>.

In addition to the first Maltese pilot project, a number of other Member States do have previous experience with relocation or are currently participating to on-going projects such as the EUREMA (EU Relocation Malta) project currently running in 10 Member States under which France<sup>17</sup> and Germany will each relocate around 100 beneficiaries of international protection located in Malta,

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<sup>13</sup> Council document 13440/08.

<sup>14</sup> See COM(2009)262, 10.6.2009

<sup>15</sup> See Burden-sharing in EU Asylum Policy, contribution from Joanna Drake, to the 12th European Conference on Asylum held in Rabat, Malta, October 2009.

<sup>16</sup> Study on establishing a mechanism for relocation of refugees and beneficiaries of international protection, July 2010 by Ramboll Management Consulting and Eurasyllum (soon to be published).

<sup>17</sup> The second pilot project between France and Malta.



with the other eight (Slovenia, Slovakia, Hungary, Poland, Romania, UK, Luxemburg and Portugal) each taking 6-10 persons<sup>18</sup>.

Physical relocation has a number of both political and legal issues in relation to both national legislation and the existing European asylum acquis which need to be solved or carefully considered before embarking on a fully-fledged relocation system. Recent research shows<sup>19</sup> that the legal basis for relocation is not evident, national legal obstacles still exist, there is a need for ensuring legal compliance with the current Dublin system, the role of EASO must be clarified and transfer of protection remains problematic.

Besides the above mentioned issues of mostly legal character, physical relocation gives rise to a number of related questions to be considered and discussed among Member States and other stakeholders, including, but not limited to:

- Relocation should not substitute **resettlement**. In this respect it is emphasised that it is more important to support refugees in third countries, as asylum seekers who are already in EU have a minimum level of support guaranteed. It could also be argued that if resettlement is increased and made effective, relocation would be less relevant as Europe may receive less asylum seekers at its borders.
- The question of **pull factors** has been invoked by some Member States as the reason why they do not like the idea of relocation. However preliminary research on the pilot project for relocation has so far not found any signs of pull factors as a result of current pilot projects, since there is neither a guarantee that a person arriving in Malta will be recognised as a beneficiary of international protection nor that they would prove successful in an application for relocation.
- Another concern mentioned by several Member States is that relocation will not encourage "sending" Member States to strengthen their own capacities.
- Even if Member States may not be legally required to seek *all* beneficiaries of international protection's **consent to relocation**, several Member States agree that the consent of the beneficiaries of international protection is both needed and desirable. Consequently, a feasible possibility for guaranteeing the rights of the persons to be relocated would be to first ensure the consent of all individuals to be relocated, for example by proposing a specific Member State to them and if they do not agree, to ask them to remain in the first country of asylum. Secondly, to develop a distribution key based on objective criteria.
- Which **criteria** should be used for the identification of people who could be the subject of relocation? Should a criterion related to people with special needs or a medical condition

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<sup>18</sup> Study on establishing a mechanism for relocation of refugees and beneficiaries of international protection, July 2010 by Ramboll Management Consulting and Eurasyllum (soon to be published).

<sup>19</sup> Ibid



which could be addressed more effectively by another Member States apply? Should priority be given to people rescued or intercepted at sea?

- Some Member States may be more 'popular' than others, thus physical relocation may create an uneven distribution which would not necessarily benefit the integration of the relocated individuals. Generally, Member States are therefore in favour of implementing an **objective distribution key** based on Member States GDP, population density or similar objective criteria.

#### 4. Material Solidarity

Although Member States are bound by the existing asylum aquis, discrepancies between asylum decisions still exist due to different administrative practices within the national administrations and to the level of harmonization built on minimum standards reached. One way of improving this situation is through practical cooperation activities and through material solidarity between Member States.

The Stockholm Programme calls for effective solidarity with the Member States facing particular pressures and urges the Member States to build sufficient capacity in the national asylum systems, and to support each other in doing so. According to the Stockholm Programme the European Asylum Support Office (EASO) should have a central role in coordinating these capacity-building measures.

In its Action Plan implementing the Stockholm Programme<sup>20</sup>, the European Commission confirms the establishment of a mechanism to review the Member States' national asylum systems and identify the issues related to capacities which will enable Member States to support each other in building capacity in 2011. In this respect it is foreseen that the Commission will submit in 2011 further views in a Communication on enhanced intra-EU solidarity.

The establishment of EASO can therefore be seen as a step towards improving material solidarity between Member States.

The purpose and role of EASO are specified in the Regulation establishing the Office<sup>21</sup>. According to article 2 (1) of the Regulation the purpose of the Support Office is to *facilitate, coordinate and strengthen* practical cooperation among Member States on many aspects of asylum and to help improve the implementation of the Common European Asylum System. Article 2 (2) furthermore indicates that the Support Office shall provide effective operational support to Member States subject to particular pressure on their asylum and reception systems, drawing upon all useful resources at its disposal which may include the coordination of resources provided for by Member States under the conditions laid down in the Regulation.

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<sup>20</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Delivering an area of freedom, security and justice for Europe's citizens. Action Plan Implementing the Stockholm Programme. COM (2010) 171 final, 20.4.2010.

<sup>21</sup> Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office. OJ L 132, 29.5.2010.

The EASO therefore aims to support Member States in their efforts to implement a more consistent and fairer asylum policy, for example by helping to identify good practices, organising training at European level and improving access to accurate information on countries of origin. The EASO will also be responsible for organising practical cooperation by coordinating support teams made up of national experts to be deployed at the request of Member States faced with severe asylum pressures.

In order to increase administrative capacities, and comparability of implementation of EU asylum policy, it should be envisaged to carry out technical assistance to a greater degree than is currently the case. Such assistance can consist of training and study visits, for example, or of lending staff, introducing ideas for how to improve reception facilities, decision-making and other elements in the implementation of asylum directives.

Familiarity with 'best practices' and with each others' ways of dealing with issues could lead both to an optimal system, and to a shared basis of understanding for future common policy making in the asylum area.

In this respect it may be relevant to further explore and discuss the possibilities within the proposed mechanism to review the Member States' national asylum systems and identify the issues related to capacities as suggested by the European Commission in its Action Plan, which may enhance responsibility taking as well as enabling a more targeted capacity building?

Increased technical assistance might thus feed into policy harmonisation, and to the common implementation of directives and regulations. However, technical assistance also has its limits: some Member States may not want it to 'spill over' into joint processing, for example. Capacity building and material solidarity therefore raises the following question: In what way can intra-European solidarity be enhanced by the continuing efforts to create a level playing field through the development of a Common European Asylum System?

Recent research demonstrates<sup>22</sup> that several Member States see technical assistance, twinning projects or funding possibilities for building infrastructure and capacity as an essential part of intra-European solidarity and that any physical relocation mechanism should include a funding mechanism for supporting twinning and technical assistance projects. Whether the funding mechanism should be conditioned to physical relocation or not (i.e. relocation is a precondition to receiving funding for other related projects) was not clear and some Member States were also doubtful about the possibilities provided by technical assistance and twinning projects.

## 5. Final remarks

Tools for solidarity, whether financial, material or physical, rarely stand on their own. Intra-European solidarity may only prove to be efficient if Member States at the same time respect and

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<sup>22</sup> See Study on establishing a mechanism for relocation of refugees and beneficiaries of international protection, July 2010 by Ramboll Management Consulting and Eurasyllum (soon to be published).





implement the common asylum acquis. A true solidarity mechanism indeed requires mutual trust between the Member States concerned.

Finally, it is also worthwhile recalling that intra European solidarity is closely interlinked with other policy fields, such as border management, integration of third-country nationals and cooperation with third countries.

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