

Can the new refugee relocation system work?

Perils in the Dublin logic and flawed reception conditions in the EU

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Key Points

This Policy Brief argues that the newly adopted EU temporary relocation (quota) system constitutes a welcome yet timid step forward in addressing a number of central controversies of the current refugee debate in Europe. Two main challenges affect the effective operability of the new EU relocation model.

First, EU member states' asylum systems show profound (on-the-ground) weaknesses in reception conditions and judicial/administrative capacities. These prevent a fair and humane processing of asylum applications. EU states are not implementing the common standards enshrined in the EU reception conditions Directive 2013/33.

Second, the new relocation system constitutes a move away from the much-criticised Dublin system, but it is still anchored to its premises. The Dublin system is driven by an unfair and unsustainable rule according to which the first EU state of entry is responsible for assessing asylum applications. It does not properly consider the personal, private and family circumstances or the preferences of asylum-seekers.

Policy Recommendations

In order to respond to these challenges, the Policy Brief offers the following policy recommendations:

1. The EU should strengthen and better enforce member states' reception capacities, abolish the current Dublin system rule of allocation of responsibility and expand the new relocation distribution criteria to include in the assessment (as far as possible) asylum-seekers' preferences and personal/family links to EU member states.
2. EU member countries should give priority to boosting their current and forward-looking administrative and judicial capacities to deal and welcome asylum applications.
3. The EU should establish a permanent common European border and asylum service focused on ensuring the highest standards through stable operational support, institutional solidarity across all EU external borders and the practical implementation of new distribution relocation criteria.

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1. Introduction

On September 22nd, an Extraordinary Justice and Home Affairs Council Meeting adopted a controversial new Decision establishing provisional measures for the relocation of 120,000 asylum-seekers from Italy and Greece to other EU member states.¹ This was based on a previous proposal by the European Commission advanced on the occasion of President Juncker's State of the Union speech before the European Parliament on 9 September 2015.² The Commission has welcomed the adoption of the Decision by the Council³ and adopted on 23 September 2015 a Communication on Managing the Refugee Crisis⁴ laying down the priority actions for the months.

This Policy Brief examines the scope and components of the newly adopted EU Temporary Relocation System. It studies the material and personal scope of the system and addresses how it is expected to work in practice, how much it will cost and who will be covered by its relocation model. The Policy Brief pays particular attention to the main issues and challenges that confront the effective operability of the EU relocation regime.

It is argued that the EU provisional relocation system, and its potential future conversion into a permanent system, constitutes a timid step forward in addressing the central controversies of the current refugee debate in Europe, which revolve around the question whether all member states are doing enough to receive and assist refugees arriving in the EU. That question aside, two other main challenges also affect the

workability and suitability of the proposed relocation system.

First, EU member states are not fully complying with their obligations to provide acceptable and comprehensive reception conditions for asylum-seekers and refugees, as required by the EU reception conditions Directive 2013/33.⁵ The current shortcomings in the EU's reception conditions ultimately undermine any proposed variation of the Dublin asylum system just as it undermined the Dublin system itself, and constitutes a serious practical impediment for the temporary relocation model to work.

Second, some of the aspects introduced by the temporary and permanent EU relocation schemes are to be welcomed, such as the need for member state authorities to take into account the potential of the applicants to fit into daily life of the relocation state. For example, their language skills and family, cultural or social ties will have to be taken into account when making the decision. However, a key weakness of this relocation model is that it is still anchored in the much-criticised Dublin system. By doing so, it primarily addresses the symptoms and not the actual causes behind the 'crisis': an unfair system of attribution of state responsibility for determining asylum applications, which often results in human rights and protection failures; and a system that gives little consideration to the preferences of asylum-seekers when assessing their family, private and economic links to a certain state of relocation.⁶

This Policy Brief makes policy recommendations aimed at ensuring that any temporary and/or

¹ Council Decision establishing provisional measures in the area of international protection for the benefit of Italy and Greece, Council of the EU, 12098/15, 22 September 2015.

² See European Commission, Proposal for a Council Decision establishing provisional measures in the area of international protection for the benefit of Italy, Greece and Hungary, COM(2015) 451 final, 9.9.2015. (http://europa.eu/rapid/press-release_IP-15-5596_en.htm).

³ See the European Commission's Statement (http://europa.eu/rapid/press-release_STATEMENT-15-5697_en.htm).

⁴ Commission Communication, "Managing the refugee crisis: Immediate operational, budgetary and legal measures under the European Agenda on Migration", COM(2015)490 final, 23.9.2015.

⁵ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, OJ L 180, 29.6.2013, p. 96-116.

⁶ S. Carrera and K. Lannoo (2015), "Treat the Root Causes of the Asylum Crisis, not the Symptoms", CEPS Commentary, CEPS, Brussels.

permanent relocation system for refugees in the EU works effectively. It suggests that the EU should give priority to better strengthening and enforcing member states' reception capacities, abolishing the current Dublin rule of allocating responsibility and expanding the relocation distribution criteria to include in the assessment consideration of asylum-seekers' personal preferences and links to certain EU member states. It is recommended that the EU should establish a permanent border and asylum service focused on building sustainable and the highest standards through stable operational support, institutional solidarity across the Union's external borders and the practical implementation of new distribution relocation criteria.

2. The EU's temporary relocation system: What are the key features?

The Council Decision introduces a temporary relocation system in the EU. It consists of the transfer of applicants for international protection from two EU member states (Greece and Italy) to the territory of other EU member states of relocation. The Decision constitutes a provisional emergency-led scheme envisaged to run for a period of two years. It is legally founded on Article 78.3 TFEU.⁷ What are the most important features of the new system?

2.1 The system and its scope

There have been many discussions over whether the system should be mandatory or not for EU member states. While it has been said that the system does not oblige EU member states to

⁷This provision states: "In the event that one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries". It aims at "supporting them in better coping with an emergency situation characterised by a sudden inflow of nationals of third countries in those Member States" (Article 1.1).

⁸ Article 5.2 of the Decision states: "Member States shall, at regular intervals, and at least every three months, indicate the number of applicants who can be relocated swiftly to their territory and any other relevant information."

participate, the Decision does lay down specific rules limiting their options not to participate in the new relocation model.⁸ The Decision expressly foresees in Article 4.5:

A Member State may, in exceptional circumstances notify the Council and the Commission that it is temporarily unable to take part in the relocation process of up to 30% of applicants allocated to it in accordance with paragraph 1, giving duly justified reasons compatible with the fundamental values of the Union enshrined in Article 2 of the Treaty on European Union.

Therefore one may conclude that it is *de facto* a binding system for participating EU member states. This is so even if the Council has finally lifted the possibility for the Commission to apply financial responsibility in cases of non-participation.⁹ The adopted version differs from the original Commission proposal, which had foreseen the application of a financial penalty or contribution to the EU budget (of 0.002% of GDP) in the event of non-participation by EU member states in cases where the Commission would have found that the non-participation was temporarily justified.¹⁰

The geographical scope of the Decision only covers Italy and Greece. Surprisingly it leaves out Hungary, which was part of the original Commission proposal of September 9th. The Hungarian government has repeatedly expressed opposition to any EU relocation system.¹¹ Hungary was reportedly among the EU member state governments voting against the adoption of the Decision inside the Council (in addition to the Czech Republic, Slovakia and

⁹The UK, Ireland and Denmark do not participate in this Decision.

¹⁰ The Commission proposal stated: "... and shall instead make a financial contribution to the EU budget of an amount of 0,002 % of GDP; in case of partial participation in the relocation, this amount shall be reduced in proportion. This contribution shall be used to finance assistance supporting the efforts undertaken by all other Member States to cope with the crisis situation and the consequences of the non-participation of such Member State."

¹¹ See <https://euobserver.com/migration/130105>.

Romania, with Finland abstaining).¹² The Decision however leaves the option open for other EU member states to be included in a later stage. Likewise, a member state may, giving duly justified reasons, notify the Council and the Commission that it is confronted with a similar emergency situation and fall within the scope of the system.

The Commission has planned to move from this provisional relocation arrangement to a permanent one with a proposal for a Regulation, which would establish a “permanent crisis relocation mechanism under the Dublin system”.¹³ This system would introduce a permanent framework for the implementation of temporary relocation measures and require a formal amendment of the Dublin Regulation (EU) No 604/2013.¹⁴ The legal basis for this additional proposal is Article 78.2.e TFEU, which envisages the application of the ordinary legislative procedure, and hence brings in the European Parliament as co-legislator.

The permanent mechanism would be triggered by the Commission on the basis of information provided by the European Asylum Support Office (EASO) and Frontex (the EU’s External Borders Agency) in situations where a member state would be confronted with “a crisis situation jeopardising the application of [the Dublin

System] due to extreme pressure characterised by a large and disproportionate inflow of third-country nationals or stateless persons, which places significant demands on its asylum system.”¹⁵

2.2 Moving beyond the Dublin system?

The temporary relocation system does not move far beyond the current EU Dublin system of rules on the distribution of responsibility. It is still intended to work under its premises and guiding principles. It constitutes a ‘temporary derogation’ of the Dublin principle laid out in Article 13(1) of Regulation (EU) No 604/2013,¹⁶ according to which the first state of entry is usually the one responsible for the examination of the asylum claim and those persons must stay in that member state.

The system brings in new criteria or ‘distribution keys’ for determining legal responsibility among EU member states. According to the Commission proposal COM(2015) 451 of 9 September, the relocation would be done on the basis of “a mandatory distribution key using objective and quantifiable criteria (40% of the size of the population, 40% of the GDP, 10% of the average number of past asylum applications, 10% of the unemployment rate)”.¹⁷ The exact distribution

¹² See www.euractiv.com/sections/global-europe/eu-backs-refugee-plan-teeth-east-european-opposition-317859.

¹³ Proposal for a Regulation establishing a crisis relocation mechanism and amending 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, COM(2015) 450 final, 9.9.2015, Brussels. As the proposal states, “these measures will be applied in respect of specific crisis situations in a given Member State and will, by definition, remain temporary.”

¹⁴ 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, OJ L 180, 29.6.2013, pp. 31–59.

¹⁵ The following indicators would be taken into account by the European Commission: “The total number of applicants for international protection and of irregular entries of third country nationals and stateless persons in the six months preceding the adoption of the delegated act, the increase in such numbers compared to the same period in the previous year as well as the number of applications per capita in the Member State benefiting from relocation over the previous 18 months compared to the Union average.”

¹⁶ Ibid.

¹⁷ The Decision does not make express reference to these distribution criteria. It only states in Recital 25: “...a clear and workable system is envisaged based on a threshold of the average rate at Union level of decisions granting international protection in the procedures at first instance, as defined by Eurostat, out of the total number at Union level of decisions on applications for international protection taken at first instance, based on

criteria were laid down in the Annexes of the proposal,¹⁸ which are included in Annex 1 of this Policy Brief, and which can be summarised as follows:

- a) The size of the population (40% weighting), which reflects the capacity of a member state to welcome a certain number of refugees;
- b) Total GDP (40% weighting), which aims to reflect the absolute wealth of a country and is indicative of the capacity of an economy to integrate refugees;
- c) Average number of asylum applications per one million inhabitants over 2010-14 (10% weighting, with a 30% cap of the population and GDP effect on the key); and
- d) Unemployment rate (10% weighting, with a 30% cap of the population and GDP effect on the key), which is aimed at showing the capacity to integrate refugees in the labour markets.

The exact economic formula that is used by the Commission is provided in Annex 2 of this Policy Brief. Other criteria applied in determining the EU member state of relocation include the so-called 'integration potential' of the applicants. The Council Decision establishes that specific attention shall be given to "the specific qualifications and characteristics of the applicants concerned, such as their language skills and other individual indications based on demonstrated family, cultural or social ties which could facilitate their integration into the Member State of relocation." It is by no means clear how

the latest available statistics. On the one hand, this threshold would have to ensure, to the maximum extent possible, that all applicants in clear need of international protection would be in a position to fully and swiftly enjoy their protection rights in the Member State of relocation. On the other hand, it would have to prevent, to the maximum extent possible, applicants who are likely to receive a negative decision on their application from being relocated to another Member State, and therefore from prolonging unduly their stay in the Union. A threshold of 75%, based on the latest available updated Eurostat quarterly data for decisions at first instance, should be used in this Decision."

¹⁸ European Commission, Annexes accompanying the Proposal for a Council decision establishing provisional measures in the area of international protection for the

criteria such as 'cultural and social ties' are to be understood and interpreted by national authorities. Moreover, the operability of the temporary relocation system will be based on careful consideration of the capacity of the state of relocation to provide adequate support to vulnerable applicants.

2.3 Who and how many refugees will be covered?

How many asylum-seekers are to be relocated in accordance to the proposed system? The Council Decision refers to a total of 120,000, which corresponds with the Commission's proposal. This number needs to be added to the previously adopted Decision to relocate 40,000 asylum-seekers from Greece and Italy in July 2015.¹⁹

During the first year, the following number of applicants will be covered: 15,600 applicants are slated to be relocated from Italy to the territory of other member states; and 50,400 applicants will be relocated from Greece to the territory of other member states.

The Decision foresees an additional volume of 54,000 asylum-seekers to be relocated in a later stage from these two countries (Greece and Italy), with the starting date/period to be determined in a 2nd year phase. The Commission is expected to submit a proposal to the Council on the figures to be allocated accordingly per member state. This is an important variation from the original Commission proposal which had envisaged these 54,000 to be relocated from Hungary.²⁰

benefit of Italy, Greece and Hungary, COM(2015) 451, Brussels, 9.9.2015.

¹⁹ See http://europa.eu/rapid/press-release_IP-15-5039_en.htm. Council Decision establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, 11161/15, 3 September 2015. See also Council of the EU, Resolution of the Representatives of the Governments of the Member States meeting within the Council on relocating from Greece and Italy 40 000 persons in clear need of international protection, 11131/15, Brussels, 22 July 2015.

²⁰ The Decision leaves the Commission the option to consider the adaptation of the mechanism, and the potential sharing of the 54,000 volume, in light of "the evolution of the situation on the ground or that a

Yet, the personal scope will be limited. It would only cover applicants for international protection who have first lodged their applications in Greece or Italy, which would have been responsible for the assessment in light of the current Dublin system. Relocation will only cover those nationalities for which the proportion of positive decisions granting international protection has been 75% or more, according to the updated quarterly Union-wide average of Eurostat data. These include Syrians, Eritreans and Iraqis,²¹ and leaves out applicants such as those originating from the Western Balkans in a rather difficult position, while their situation in these countries appears to be far from 'safe'.²²

In light of the above, from a pure quantitative point of view, the temporary relocation system envisaged by the Council Decision will affect a relatively small number of refugees. This is particularly true in relation to those EU member states that have expressed the most concerns and did not agree with the Decision taken by the Council. Annex 1 shows that countries like Slovakia will receive a total of only 800 applicants, and the Czech Republic around 1,600. It is therefore difficult to rationally conceive why the relocation system will impose an unreasonable and disproportionate 'burden' on these and other EU countries.

Member State is confronted with an emergency situation characterised by a sudden inflow of nationals of third countries due to a sharp shift of migration flows and taking into account the views of the likely beneficiary Member State".

²¹ According to Eurostat, during the second quarter of 2015, "Syrians have received by far the highest number of protection statuses in the EU, including protection based on national legislations (24,400 positive first instance decisions, or 96% rate of recognition), followed by Eritreans (4,800, or 84%), Iraqis (4,700, or 87%) and Afghanis (2,500, or 70%)." See [http://ec.europa.eu/eurostat/statistics/explained/index.php/Asylum_quarterly_report#Further Eurostat information](http://ec.europa.eu/eurostat/statistics/explained/index.php/Asylum_quarterly_report#Further_Eurostat_information).

²² EASO (2015), "Asylum Applicants from Western Balkans: Comparative Analysis of Trends, Push-Pull Factors and Responses - Update"

2.4 How much will it cost?

The EU will play a very active role in covering its financial operability. The system will be supported by the Asylum, Migration and Integration Fund (AMIF), such that EU member states participating in the temporary relocation system will receive a lump sum of €6,000 for each beneficiary of international protection transferred from another member state. In addition, Greece and Italy will be paid a lump sum of at least €500 for each person to cover the transfer costs.

In addition, EU member states "should be entitled to receive additional pre-financing to be paid in 2016 following the revision of their national programmes under the Asylum, Migration and Integration Fund to implement actions under this Decision." Article 10 states that "Member States shall, in 2016, be paid a pre-financing amount of 50% of their total allocation pursuant to this Decision."²³ Annex 3 of this Policy Brief provides detailed information about EU financial support in the context of the Asylum, Migration and Integration and the Internal Security Funds. For the year 2015, Greece has received +/- €41.8 million (including €8.7 million in emergency funding), and Italy +/- €58.3 million (including €19 million in emergency funding).

(https://easo.europa.eu/wp-content/uploads/Asylum-Applicants-from-the-Western-Balkans_Update_r.pdf). See also (<https://easo.europa.eu/wp-content/uploads/EASO-Report-Western-Balkans.pdf>).

²³ According to the Commission Communication: "Under the Asylum, Migration and Integration Fund (AMIF) and the Internal Security Fund (ISF), Italy has, for example, received more than €19 million in emergency funding this year, Greece almost €5 million, with new requests now being processed. €4 million was allocated to Hungary last week, of a total of over €5 million so far this year. This is in addition to the large sums (over €300 million) being released in 2015 as pre-financing under the multi-annual funds for migration and borders. Last week, Greece received a first tranche of €33 million and Italy received €39.2 million in August."

2.5 How would the 'emergency procedure' work in practice?

Each member state will formally appoint a national contact point, which shall be communicated to the other member states and EASO (Article 5 of the Decision). Other EU member states may appoint liaison officers in Greece and Italy. At least every three months, EU member states shall indicate the total number of applicants who can be relocated to their territory as well as their preferences.²⁴ On the basis of this information, Italy and Greece, with the assistance of EASO, will identify those individuals who could be relocated, while giving priority to vulnerable applicants.

The Decision foresees that Greece and Italy will need to take the decision "as soon as possible", also in consultation with EASO, and they will need to notify the applicant accordingly.²⁵ The relocation procedure should be completed within two months from the time the member state indicates its willingness to receive refugees. It could be extended two weeks more in those cases where "the approval by the Member State of relocation takes place less than two weeks before the expiry of that two-month period". This time limit may also be extended for a four-week period "where Italy or Greece show objective practical obstacles that prevent the transfer from taking place". If those time limits are not respected, Italy and Greece will be responsible for examining the asylum application.

There is no provision for the preferences of the asylum-seekers to be taken into account. There

appears to be an assumption that the use of coercion is possible to force asylum-seekers to go to one destination rather than another without other considerations being taken on board. As the Commission has advised, the Dublin system of relocation does not work in practice with only 3% of asylum-seekers every actually being subject to it. The reasons for this failure are multiple. The failure to engage asylum-seekers themselves in the decision on where they want to live and where there is capacity to receive them there remains central.

The Decision only foresees a set of legal and procedural safeguards for those individuals relocated in Recital 35 and Article 6 of the Decision. These confer asylum-seekers the right to be informed about the relocation procedure "in a language which the applicant understands". Once the relocation decision has been taken, Greece and Italy need to notify the decision in written to the applicant as well as the Member state of relocation. EU member states shall ensure that family members who fall within the scope of this Decision are relocated to the territory of the same Member state, and take due account of the best interests of minors.²⁶

The temporary relocation system relies heavily on the obligation by the two countries concerned (Greece and Italy) to provide "structural solutions to address exceptional measures in their asylum and migration systems" and a "solid and strategic framework" for responding to the situation. And if that framework does not exist, the Commission has been entrusted to suspend the application of the Decision.²⁷

²⁴ The Decision also grants the possibility to EU member states to indicate their preferences for applicants "in light of the principle of non-discrimination" and on the basis of which "on the basis of which Italy and Greece, in consultation with EASO and, where applicable, liaison officers, may compile lists of possible applicants identified for relocation to that Member State."

²⁵ EU member states of relocation can refuse taking the applicant when "where there are reasonable grounds for regarding him or her as a danger to their national security or public order or where there are serious reasons for applying the exclusion provisions set out in Articles 12 and 17 of Directive 2011/95/EU". Article 5.9 states that "To ensure that the process remains efficient

and manageable, reception facilities and measures shall be duly organised so as to temporarily accommodate people, in line with the Union acquis, until a decision is quickly taken on their situation."

²⁶ Article 6.5 adds: "An applicant or beneficiary of international protection who enters the territory of a Member State other than the Member State of relocation without fulfilling the conditions for stay in that other Member State shall be required to return immediately. The Member State of relocation shall take back the person without delay."

²⁷ It recalls Greece and Italy's obligation to ensure "a robust mechanism of identification, registration and fingerprinting for the relocation procedure...so as to

2.6 The role of EU agencies in 'hotspots'

The Decision envisages operational support to Italy and Greece in Article 7. It calls on EU member states to increase their support in the area of international protection through the activities coordinated by EU agencies like EASO and Frontex. This will take the form of EU member states providing national experts or support teams to work in so-called 'hotspot areas' and to participate or assist in:

- The screening of those third-country nationals who arrive in Greece and Italy, which would include "their clear identification, fingerprinting and registration, and, where applicable, the registration of their application for international protection and, on request by Italy or Greece, their initial processing";
- The provision of information and assistance to applicants of international protection; and
- The preparation and conduct of return operations.

The model is developed in more detail in the Annex of the above-mentioned Commission Communication on Managing the Refugee Crisis,²⁸ which foresees a system of migration management support teams in 'hotspots'.²⁹ The Commission envisages this support to take place through existing EU Home Affairs agencies under the control of the host state. These agencies

quickly identify the persons in need of international protection who are eligible for relocation and to identify the migrants who do not qualify for international protection and should therefore be returned". Furthermore, the original Commission proposal stated in Article 8: "Hungary shall, on the date of entry into force of this Decision, present a roadmap to the Commission which shall include adequate measures in the area of asylum, first reception and return, enhancing the capacity, quality and efficiency of its systems in these areas as well as measures to ensure appropriate implementation of this Decision. Hungary shall fully implement this roadmap."

²⁸ Annex 2 to the Commission Communication, Managing the refugees crisis: Immediate operational, budgetary and legal measures under the European Agenda on Migration, COM(2015) 490 final, 23.9.2015.

will send "teams of experts directly to the 'hotspots' in the host Member State" as deployed by other EU member states. The specific tasks of the experts deployed by the agencies are described as follows in the Communication:

- Frontex: Screening experts and mobile offices to support in registering and fingerprinting migrants upon arrival; support in debriefing migrants to understand their routes to Europe and gathering information on the modus operandi of smugglers; providing pre-return assistance and coordinate return flights.
- EASO: Support in the registration of asylum-seekers and the preparation of the case file.
- Europol and Eurojust: Support in the collection of information to dismantle smuggling networks.

The operational support involves setting up in each member state a joint operational headquarters called the European Union Regional Task Force (EURTF), comprising representatives from the three agencies and coordinating the work on the ground as well as collaborating with national authorities. It also aims at facilitating the workability of the temporary relocation system envisaged by the Decision, in particular concerning the "identification, registration and fingerprinting of asylum applicants". The Communication advances that "a joint operational headquarters has been set up in Catania (Sicily)³⁰ to coordinate

²⁹ According to the Commission: "A 'hotspot' is an area at the external border that is confronted with disproportionate migratory pressure. Examples are Sicily and Lampedusa in Italy or Lesbos and Kos in Greece. It is in these 'hotspots' where most migrants enter the Union. It is here where the EU needs to provide operational support to ensure that arriving migrants are registered, and to avoid that they move on to other Member States in an uncontrolled way."

³⁰ According to the Communication: "Establishment of an EU Regional Task in Catania on 26 June 2015, composed of representatives of Frontex, EASO, Europol, EUNAVFORMED and national authorities to coordinate efforts of the Support Teams, ensuring coverage at different ports of disembarkation. Support of Eurojust to the Operational Frontex Regional Team in Catania and intensive cooperation with the correspondent of the National Anti-mafia and Anti-terrorism Directorate

the work in Italy, and a similar headquarters will be set up in Piraeus for the 'hotspots' in Greece."

EASO already plans that 45 experts will be deployed to Italy, and 28 to Greece. Frontex presence in Italy will be reinforced with the deployment of 18 debriefing experts, 16 cultural mediators and 12 screening experts, and in Greece with 33 experts (including Greek officials) and 7 mobile offices on the Aegean Islands (Samos, Lesbos, Chios, Kos, and Leros).³¹ A similar model may be applied in other EU member states facing similar challenges. The Communication emphasises that the Support Team does not operate reception centres and that:

For the approach to be successful, the host Member State has to provide *well-functioning reception facilities* in which the expert teams deployed by the EU Agencies can operate. This includes first reception and pre-removal centres. The existence of *sufficient reception facilities* is also a *necessary precondition* for relocation, and the EU provides substantial financial support to Member States to build this infrastructure.³² (Emphasis added)

This takes into account the criticism of reception conditions in Greece in particular and may be interpreted as a way to avoid EU responsibility for reception failures in Greece.³³ Yet reception is at the heart of the system: as Human Rights Watch demonstrates in its report on Frontex's assistance in border control in Greece after 2012, if the member state holds asylum-seekers in inhuman and degrading conditions akin to ill-treatment or torture, an EU agency remains complicit in the continuation of that inhuman

(DNA) responsible for the district of Catania", and "Setting up of first reception centres at four hotspots namely, Pozzallo, Porto Empedocle and Trapani in Sicily and the island of Lampedusa with a total capacity of approximately 1500. Two more first reception centres are planned for Augusta and Taranto by the end of the year."

³¹ In the case of Greece, it is stated in EASO (2015) that: "Greece has accepted that EASO supports it with the registration of applicants for international protection, the referral for outgoing Dublin 'take charge' requests and the provisional relocation measures. Greece has accepted an offer by Frontex to deploy 30 more screeners and debriefers."

and degrading system and therefore would be still legally responsible for the breach of the EU Charter of Fundamental Rights and the European Convention on Human Rights.³⁴

3. Moving beyond the Dublin logic?

The building blocks of the EU relocation system are confronted with a number of problematic issues, which if not effectively addressed by European representatives will undermine its value added and efficacy from the very start of their implementation. Two in particular are in the dire need of correction, as discussed below.

3.1 Weaknesses in the Dublin system

The asylum relocation system proposed by the Commission is based on the assumption that the Dublin system can be saved by adding an 'emergency-led' or crisis-focused regime for distributing asylum applicants between participating EU member states. Founding the application of new distribution criteria for sharing legal responsibility between member states under the Dublin system regulation is problematic. The quota plans still frame the protection of refugees as a border/burden-sharing issue rather than as a collective EU-wide obligation.³⁵

International actors such as the Human Rights Commissioner of the Council of Europe and the United Nations Special Rapporteur on the human rights of migrants have called for a fundamental review of the Dublin Regulation

³² That EASO report stipulates that in the case of Greece it is necessary to significantly strengthen "first reception capacity for new arrivals in mixed migratory movements on the Aegean islands, for which the Commission has just awarded €4.1 million" (Ibid., p. 3).

³³ www.hrw.org/report/2011/09/21/eus-dirty-hands/frontex-involvement-ill-treatment-migrant-detainees-greece

³⁴ www.hrw.org/report/2011/09/21/eus-dirty-hands/frontex-involvement-ill-treatment-migrant-detainees-greece

³⁵ Carrera & Lannoo, op. cit.

due to its inherent unfairness³⁶ and the failure of the Dublin logic.³⁷ The entire philosophy behind ‘relocation’ is still based on the belief that the state of first entry should be solely responsible and structurally capable for assessing asylum applications and ensuring access to international protection the EU.

The multitude of photos and videos showing the hardships experienced by asylum-seekers in countries like Greece or Hungary send a clear message that the system is not sustainable. The fact that no EU member states is sending back asylum-seekers to Greece due to systematic deficiencies in its asylum system further illustrates the unsustainability of this allocation of responsibility (the Dublin logic) model.

Another shortcoming of the Dublin system has not been fully resolved by the relocation measures adopted and proposed so far. The EU relocation system foresees the application of alternative distribution criteria for determining state responsibility. These include, as outlined in section 2.2, population, total GDP, average number of asylum applications during the last five years and unemployment rates. As underlined elsewhere, however, these main indicators are mainly of a numerical or economic nature. Special care should be paid to ensure that these indicators do not obscure the protection needs of specific groups and take due account of the changing circumstances in countries of origin.³⁸

³⁶See “European can do more to protect refugees”, (<http://www.coe.int/en/web/commissioner/-/europe-can-do-more-to-protect-refugees?inheritRedirect=true&redirect=%2Fen%2Fweb%2Fcommissioner%2Fopinion-articles>).

³⁷Report of the Special Rapporteur on the human rights of migrants, François Crépeau, “Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants”, 8 May 2015 (www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/AnnualReports.aspx). One of his recommendations was for the EU to “take stock of the systemic failure of the Dublin mechanism. Reverse the present logic by allowing asylum-seekers to register their asylum claims in the country of their choice within the European Union, while supporting the countries

The new relocation model also requires EU member states to take into consideration the so-called ‘integration potential’ of asylum-seekers in other EU member states, which require national authorities to carry out an individual assessment considering the specific qualifications and characteristics of each applicant as well as his/her family linkages in specific EU member states.

These criteria offer interesting possibilities for moving beyond the Dublin system, yet they don’t include the asylum-seeker’s preferences when determining the state of relocation and assessing those personal, family and economic circumstances. This oversight has been signalled as one of the most important weaknesses undermining the suitability of the Dublin system and calling for urgent EU policy reform.³⁹ The European Parliament has agreed with the relocation proposals by the Commission.⁴⁰ But it has also called for the new distribution system to include consideration of the asylum-seekers’ preferences as far as possible.

The continuity of the Dublin logic positions the proposed model for ‘operational support’ in ‘hotspots’ in a similarly difficult situation. If asylum-seekers refuse to register at the ‘hotspots’, they will be most likely obliged to stay in that country without their personal circumstances and preferences being taken duly into consideration. As ECRE (European Council

receiving asylum claims with proportionate and adequate financial and technical support.”

³⁸E. Guild et al. (2015), “The 2015 Refugee Crisis in the European Union”, CEPS Policy Brief, CEPS, Brussels.

³⁹E. Guild et al. (2015), “Enhancing the Common European Asylum System and Alternatives to Dublin”, CEPS Paper in Liberty and Security in Europe, CEPS, Brussels.

⁴⁰ See www.europarl.europa.eu/news/en/news-room/content/20150915IPR93259/html/MEPs-give-go-ahead-to-relocate-an-additional-120000-asylum-seekers-in-the-EU and www.europarl.europa.eu/news/en/news-room/content/20150903IPR91518/html/MEPs-approve-first-emergency-rules-for-distributing-asylum-seekers-in-the-EU.

on Refugees and Exiles) has argued,⁴¹ on the basis of a letter issued by the European Commissioner for Migration Avramopoulos to member state Interior Ministries,⁴² this may lead to more detention of asylum-seekers in the EU.

The need for EU member states to take into account the applicants' language skills and family, cultural or social ties when making the relocation decision will facilitate a more 'person-centric' distribution asylum system in the Union. However, careful monitoring of its practical application should be carried out. Moreover, any permanent relocation system should take one step further and also include in these criteria the asylum-seekers' preferences and circumstances.

3.2 Flaws in the reception conditions

A second outstanding challenge affecting the EU relocation system is the presumption or 'trust' that EU member states can in fact ensure sound and appropriate reception conditions and fulfil their human rights obligations vis-à-vis asylum-seekers on the ground.

Evidence provided by the United Nations High Commissioner for Refugees (UNHCR) has highlighted the main challenges that EU member states such as Greece face in their asylum systems. These relate to profound difficulties for asylum-seeker to obtain access to asylum procedures, a huge backlog of unresolved cases,

incidents of arbitrary detention, the lack of proper identification procedures and support for vulnerable individuals and appalling reception conditions.⁴³ In its study of homeless refugees in Hungary, the UNHCR confirmed the poor reception conditions in the country and concluded that a key driver discouraging asylum-seekers from undertaking further onward movements in the EU mainly relate concerns over reception conditions and well-being.⁴⁴ Similar problems have also been identified in countries like Italy, the Czech Republic, Poland, Bulgaria and Slovakia.⁴⁵

The entire relocation and operational support system relies heavily on EU member states' transposing effectively EU law and the strength of their national asylum process systems. This has been illustrated in several cases before the European Court of Human Rights in Strasbourg.⁴⁶ It has also been highlighted by the UNHCR which has stated that the new EU relocation plan "can only work if, at entry points in Europe, robust facilities are created to receive, assist, register and screen people. These facilities must have a capacity that could handle the current average 5,000 people arriving every day by boat."⁴⁷

A key incentive for people to stay in a particular country is that proper and humane reception conditions are fully ensured. This is clearly not the case across the EU. Annex 7 accompanying

⁴¹ See <http://ecre.org/component/content/article/70-weekly-bulletin-articles/1114-eu-council-meeting-reveals-a-lack-of-common-vision-amongst-member-states-a-breakdown-of-trust-and-little-regard-for-the-plight-of-refugees.html>.

⁴² See www.statewatch.org/news/2015/jun/eu-AVRAMOPOULOS-migration-letter-to-eu-ministers.pdf. The letter states: "The Hotspot approach, should enable frontline states to return irregular migrants swifter. Information on assisted voluntary return should be provided immediately and systematically upon arrival and at all stages of the identification and preparation of return. During and after the process of identification, to make sure that irregular migrants are effectively returned, detention should be applied, as a legitimate measure of last resort, where it is necessary to avoid that the irregular migrants abscond. For as long as there is a reasonable likelihood of removal,

prospects of removal should not be undermined by premature ending of detention."

⁴³ See UNHCR (2015).

⁴⁴ *Ibid.* The report states: "Refugees' decision to engage in onward movements was reported to be primarily linked to survival concerns rather than being motivated by refugee aspirations for economic betterment or interest in more generous welfare provisions available in other EU Member States."

⁴⁵ For Czech Republic see www.refworld.org/pdfid/4f853c552.pdf, Italy (www.unhcr.org/554a075a6.html) and Poland, Bulgaria and Slovakia (www.un.org/apps/news/story.asp?NewsID=45116#.Vggwj8uqqkp).

⁴⁶ See the European Court of Human Rights Factsheet on 'Dublin Cases' (www.echr.coe.int/Documents/FS_Dublin_ENG.pdf).

⁴⁷ See UNHCR (2015).

the above-mentioned Commission Communication on Managing the Refugee Crisis COM(2013) 490⁴⁸ provides a useful overview showing an astonishing failure by a large majority of EU member states in communicating to the Commission how they have implemented the EU reception conditions Directive 2013/33 and other pieces of legislation comprising the European asylum system. The resulting picture undermines the efficiency of the entire EU asylum system.

4. Policy recommendations

1. The EU should devise and develop a new European asylum system based on an innovative model of ‘institutional solidarity’ and operational support and taking the form of a Common EU Asylum Service.⁴⁹ The Service would be competent to examine asylum applications and independently implement the new distribution key model of asylum-seekers. The feasibility, impact and specific features that would characterise the Service should be independently examined.
2. The European Commission should pay close attention to more actively enforcing current EU legal standards on asylum, in particular the EU reception Directive and
3. EU member countries should urgently boost their current and forward-looking capacity (of both their administrative and judicial systems) to deal with asylum applications, both in what concerns the speedy processing of asylum applications and avoiding arbitrary detention of applicants.⁵¹
4. Any new and permanent EU distribution key system should complement the new distribution key criteria with an effective way for national authorities to assess the private and family links and vulnerabilities of the persons involved. As the European Parliament has recommended,⁵² this should also take into account as far as possible asylum-seekers’ personal preferences when determining the states responsible for examining their application for international protection.

⁴⁸ Annex 7 of the Commission Communication on Managing the refugee crisis: Immediate operational, budgetary and legal measures under the European Agenda on Migration’, COM(2013) 490, 23.9.2015.

⁴⁹ As proposed in S. Carrera, E. Guild and D. Gros (2015), “What priorities for the new European agenda on migration?”, CEPS Commentary; and S. Carrera and K.

Lannoo (2015), “Treat the Root Causes of the Asylum Crisis, not the Symptoms”, CEPS Commentary, Brussels.

⁵⁰ As proposed by UNHCR (www.unhcr.org/55f28c4c9.html).

⁵¹ As proposed by D. Gros (2015), Europe’s Double Refugee Crisis, CEPS Commentary, Brussels.

⁵² European Parliament Resolution of 10 September 2015 on migration and refugees in Europe (2015/2833(RSP)).

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Annex 1

Table 1. Allocations from Italy

	Allocation per Member State (15 600 applicants relocated)
Austria	462
Belgium	579
Bulgaria	201
Croatia	134
Cyprus	35
Czech Republic	376
Estonia	47
Finland	304
France	3 064
Germany	4 027
Hungary	306
Latvia	66
Lithuania	98
Luxembourg	56
Malta	17
Netherlands	922
Poland	1 201
Portugal	388
Romania	585
Slovakia	190
Slovenia	80
Spain	1 896
Sweden	567

Source: Council Decision establishing provisional measures in the area of international protection for the benefit of Italy and Greece, Council of the EU, 12098/15, 22 September 2015.

Table 2. Distribution key for Italy

	Overall key	Allocation per Member State (15 600 applicants relocated)
Austria	3,03%	473
Belgium	3,80%	593
Bulgaria	1,33%	208
Croatia	0,89%	138
Cyprus	0,23%	36
Czech Republic	2,48%	387
Estonia	0,31%	48
Finland	2,00%	312
France	20,03%	3 124
Germany	26,20%	4 088
Latvia	0,44%	68
Lithuania	0,65%	101
Luxembourg	0,37%	57
Malta	0,11%	17
Netherlands	6,01%	938
Poland	7,74%	1 207
Portugal	2,56%	400
Romania	3,87%	604
Slovakia	1,25%	195
Slovenia	0,53%	82
Spain	12,44%	1 941
Sweden	3,72%	581

Source: European Commission, Proposal for a Council Decision establishing provisional measures in the area of international protection for the benefit of Italy, Greece and Hungary, COM(2015) 451 final, 9.9.2015. (http://europa.eu/rapid/press-release_IP-15-5596_en.htm).

Table 3. Allocations from Greece

	Allocation per Member State (50 400 applicants relocated)
Austria	1 491
Belgium	1 869
Bulgaria	651
Croatia	434
Cyprus	112
Czech Republic	1 215
Estonia	152
Finland	982
France	9 898
Germany	13 009
Hungary	988
Latvia	215
Lithuania	318
Luxembourg	181
Malta	54
Netherlands	2 978
Poland	3 881
Portugal	1 254
Romania	1 890
Slovakia	612
Slovenia	257
Spain	6 127
Sweden	1 830

Source: Council Decision establishing provisional measures in the area of international protection for the benefit of Italy and Greece, Council of the EU, 12098/15, 22 September 2015.

Table 4. Distribution key for Greece

	Overall key	Allocation per Member State (50 400 applicants relocated)
Austria	3,03%	1 529
Belgium	3,80%	1 917
Bulgaria	1,33%	672
Croatia	0,89%	447
Cyprus	0,23%	115
Czech Republic	2,48%	1 251
Estonia	0,31%	157
Finland	2,00%	1 007
France	20,03%	10 093
Germany	26,20%	13 206
Latvia	0,44%	221
Lithuania	0,65%	328
Luxembourg	0,37%	185
Malta	0,11%	56
Netherlands	6,01%	3 030
Poland	7,74%	3 901
Portugal	2,56%	1 291
Romania	3,87%	1 951
Slovakia	1,25%	631
Slovenia	0,53%	265
Spain	12,44%	6 271
Sweden	3,72%	1 877

Source: European Commission, Proposal for a Council Decision establishing provisional measures in the area of international protection for the benefit of Italy, Greece and Hungary, COM(2015) 451 final, 9.9.2015. (http://europa.eu/rapid/press-release_IP-15-5596_en.htm).

Annex 2. The economic formula devised by the Commission for a refugee distribution key

$$\text{Population effect}_{\text{MS/AS}} = \frac{\text{Population}_{\text{MS/AS}}}{\text{Population}_{\text{EU+(32)}}}$$

$$\text{GDP effect}_{\text{MS/AS}} = \frac{\text{GDP}_{\text{MS/AS}}}{\text{GDP}_{\text{EU+(32)}}}$$

$$\text{Asylum effect}_{\text{MS/AS}} = \min \left\{ \frac{\frac{1}{\text{Average(5 preceding years) applicants per Million inhabitants}_{\text{MS/AS}}}}{\sum_{i=1}^{32} \frac{1}{\text{Average(5 preceding years) applicants per Million inhabitants}_{\text{MS/AS}_i}}}, 30\%(\text{Population effect}_{\text{MS/AS}} + \text{GDP effect}_{\text{MS/AS}}) \right\}$$

$$\text{Unemployment effect}_{\text{MS/AS}} = \min \left\{ \frac{\frac{1}{\text{Unemployment rate}_{\text{MS/AS}}}}{\sum_{i=1}^{32} \frac{1}{\text{Unemployment rate}_{\text{MS/AS}_i}}}, 30\%(\text{Population effect}_{\text{MS/AS}} + \text{GDP effect}_{\text{MS/AS}}) \right\}$$

$$\text{Capped Quota}_{\text{MS/AS}} = \text{Allocation} * (40\% \text{ Population effect}_{\text{MS/AS}} + 40\% \text{ GDP effect}_{\text{MS/AS}} + 10\% \text{ Asylum effect}_{\text{MS/AS}} + 10\% \text{ Unemployment effect}_{\text{MS/AS}})$$

$$\text{Residual Quota}_{\text{MS/AS}} = (\text{Allocation} - \sum_{i=1}^{32} \text{Capped Quota}_{\text{MS/AS}_i}) * (50\% \text{ Population effect}_{\text{MS/AS}} + 50\% \text{ GDP effect}_{\text{MS/AS}})$$

$$\text{Final Allocation Quota}_{\text{MS/AS}} = \text{Capped Quota}_{\text{MS/AS}} + \text{Residual Quota}_{\text{MS/AS}}$$

$$\text{Final share}_{\text{MS/AS}} (\text{de facto key}) = \frac{\text{Final Allocation Quota}_{\text{MS/AS}}}{\text{Allocation}} * 100\%$$

Source: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/proposal_for_regulation_of_ep_and_council_establishing_a_crisis_relocation_mechanism_-_annex_en.pdf

Annex 3. Financial Support under the Asylum, Migration and Integration Fund and the Internal Security Fund

	Long-term Funding 2014-2020				First Payments in 2015 of Long-term Funding		Emergency Funding	
	AMIF Allocation	ISF-Borders Allocation	ISF-Police Allocation	TOTAL AMIF + ISF Allocations	First AMIF pre-financing payment (Green/Bold = Paid)	First ISF pre-financing payment (Green/Bold = Paid)	AMIF emergency assistance received and requested	ISF Borders emergency assistance received and requested
Austria	€64,533,977	€14,162,727	€12,162,906€	€90,859,610	€4,937,378.39	€1,858,229.31	€5,030,000	
Belgium	€89,250,977	€17,519,321	€17,903,270	€124,673,568	€6,878,531.95	€2,745,441.37		
Bulgaria	€10,006,777	€40,366,130	€32,002,293	€82,375,200	€700,474.39	€5,093,194.61	€4,150,000	
Croatia	€32,308,677	€34,507,030	€8,117,257	€74,932,964	€1,199,366.00	€3,829,363.79		
Cyprus	€17,133,800	€35,609,771	€19,095,426	€71,838,997	€2,261,607.39	€2,983,700.09	€940,000	
Czech Republic	€26,185,177	€14,381,484	€17,029,012	€57,595,673	€1,937,962.39	€2,252,914.72		
Denmark		€10,322,133		€10,322,133		€722,549.31		
Estonia	€10,156,577	€21,781,752	€13,480,269	€45,418,598	€406,263.08	€2,468,341.47		
Finland	€23,488,777	€36,934,528	€15,682,348	€76,105,653	€3,089,714.39	€3,708,381.32		
France	€265,565,577	€84,999,342	€70,114,640	€420,679,559	€20,061,340.39	€12,401,478.74	€8,980,000	
Germany	€208,416,877	€51,753,437	€79,504,401	€339,674,715	€15,499,181.39	€9,411,698.66	€7,030,000 <i>Further requests pending</i>	
Greece	€259,348,877	€166,814,388	€20,489,650	€446,652,915	€18,154,421.39	€15,039,082.66	€1,180,000 <i>Further requests pending</i>	€7,500,000
Hungary	€23,713,477	€40,829,197	€20,663,922	€85,206,596	€1,687,943.39	€4,304,518.33	€5,210,000	€1,490,000
Ireland	€19,519,077		€9,243,080	€28,762,157	€1,587,535.39	€647,015.60		
Italy	€310,355,777	€156,306,897	€56,631,761	€523,294,435	€22,074,904.39	€17,142,206.06	€13,660,000	€5,460,000

	Long-term Funding 2014-2020				First Payments in 2015 of Long-term Funding		Emergency Funding	
	AMIF Allocation	ISF-Borders Allocation	ISF-Police Allocation	TOTAL AMIF + ISF Allocations	First AMIF pre-financing payment (Green/Bold = Paid)	First ISF pre-financing payment (Green/Bold = Paid)	AMIF emergency assistance received and requested	ISF Borders emergency assistance received and requested
Latvia	€13,751,777	€15,521,704	€16,941,431	€46,214,912	€962,624.39	€2,303,919.45		
Lithuania	€9,632,277	€178.704.873	€16,120,656	€204,457,806	€674,259.39	€13,716,537.03		
Luxembourg	€7,160,577	€5,400,129 €	€2,102,689 €	€14,663,395	€557,240.39	€525,197.26		
Malta	€17,178,877	€53,098,597 €	€8,979,107 €	€79,256,581	€1,202,521.39	€5,227,439.28		
Netherlands	€94,419,077	€30,609,543 €	€31,540,510 €	€156,569,130	€8,940,685.39	€4,596,203.71	€2,150,000	
Poland	€63,410,477	€49,113,133 €	€39,294,220 €	€151,817,830	€4,857,553.48	€6,188,514.71		
Portugal	€32,776,377	€18,900,023 €	€18,693,124 €	€70,369,524	€2,369,946.39	€2,705,442.04		
Romania	€21,915,877	€61,151,568 €	€37,150,105 €	€120,217,550	€1,710,161.39	€6,893,717.11		
Slovakia	€10,980,477	€10,092,525 €	€13,891,478 €	€34,964,480	€915,353.39	€1,678,880.21		
Slovenia	€14,725,477	€30,669,103 €	€9,882,037 €	€55,276,617	€1,030,783.39	€2,883,032.60		
Spain	€257,101,877	€195,366,875 €	€54,227,207 €	€506,695,959	€18,179,131.39	€18,348,545.74		
Sweden	€118,536,877	€11,518,706	€21,057,201 €	€151,112,784	€10,790,281.39	€2,280,313.49		
United Kingdom	€370,425,577	N/A	N/A	€370,425,577	€27,483,790.39	N/A		
TOTAL	€2,392,000,002	€1,207,730,043	€662,000,000	€4,440,434,918	€180,150,956.48	€151,955,858.67	€48,330,000	€14,450,000.00

Source: European Commission, Annex to the Communication from the Commission to the EU Parliament, the European Council and the Council, Managing the Refugees Crisis: Immediate Operational, Budgetary and Legal Measures under the European Agenda on Migration, COM(2015) 451, 23.9.2015.