ΕΥΡΩΠΑΪΚΟ ΚΕΝΤΡΟ ΑΡΙΣΤΕΙΑΣ JEAN MONNET
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COMMON EUROPEAN ASYLUM SYSTEM REFORM

Main issues and challenges

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Terms of Reference- Scope- Methodology

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Concerning its *scope*, and given the limitations of length and time, the present report aims to give an overview and a high level analysis of the current undergoing reform of the Common European Asylum System (CEAS) a well as identify the trends of the Asylum Law in Europe and the direction its heading for.

In terms of *methodology*, the report is mainly based in research on primary institutional sources of the institutions of the European Union, and less on academic sources, as the reform of the Common European Asylum System is ongoing and is actually in full process right now.

Executive Summary

Since its inception in 1999, the Common European Asylum System (CEAS) has undergone two major reforms with the view of further harmonisation of Refugee law among EU Member States. After the migration crisis of 2015, the CEAS has been put under significant strain, which revealed the shortcomings of the current system. In view of building a sustainable and resilient Asylum system respecting the Unions Fundamental Rights, the European Commission initiated in April 2016 a process of structurally reshaping the European Asylum System. At present the discussions among Member States and the European Institutions are mainly focused on the proposed automatic mechanism of allocation of asylum seekers to Member States (new proposed Dublin regulation). The notion of "solidarity" seems to be at stake within the Union, taking the form of "effective solidarity" or "flexible solidarity" depending on the views. It appears legally and politically interesting to follow whether, and with which compromise, the Member States will save the honour of the Union's Fundamental Rights.

INTRODUCTION

Since its inception in 1999, the Common European Asylum System (CEAS) has undergone two major reforms with the view of further harmonisation of Refugee law among EU Member States.

After the migration crisis that Europe experienced after 2015, the CEAS, as well as Member States, have been put under significant strain, which revealed the shortcomings of the current Common European Asylum System. Based on the lessons leant from the management of the migration crisis at European level, as well as on the identification of the defects of the current legal asylum system, the European Commission has initiated since April 2016 a new structural reshaping of the CEAS.

The proposed legislative package will be adopted according to the ordinary legislative procedure which means that the Member States, in the frame of the Council, will need to come to a common agreement and co-decide with the European Parliament, that needs to adopt beforehand its own position on the subject matter.

In this report, we aim to identify the new trends of the current reform, get a preview on how the European Asylum System will look like in the near future, identify the major controversial issues, as well as draw some conclusions on the possible evolution of the CEAS reform.

In this respect, a synopsis of the CEAS is given (I), followed by a description on how the Reform was initiated (II). Furthermore, an overview analysis of the Commission's proposal is put forwad (III), as well as the comments of various institutional and other stakeholders (IV). Last, some conclusions are drawn alongside with proposed considerations (V).

I. SYNOPSIS ON CEAS

The Common European Asylun System (CEAS) is a legislative framework established by the European Union. Based on 'accordance' with the Geneva Convention relating to the Status of Refugee, as amended by its 1967 Protocol[1]. the CEAS regulates and sets common standards in the field of international protection with a view to developing common concepts and criteria, and harmonising the interpretation and application of asylum law among EU Member States and ensuring that no person would be sent back to a place where they were exposed to persecution (*principle of non-refoulement*, art 33 of the 1951 Geneva Convention). International protection refers to refugee status and subsidiary protection status. CEAS is unique in regulating both procedural and substantive matters for international protection from entry into a Member State until final determination[2] of protection status[3].

All EU Member States are parties to both the 1951 Geneva Convention and the 1967 Protocol. Before the establishment of the CEAS, many Member States, as parties to the Geneva Convention and its Protocol, had developed national asylum systems to ensure the implementation of these instruments. Article 63 TEC[4] reflected the fact that EU Member States recognised that the 1951 Geneva Convention was the cornerstone of the international legal regime for the protection of refugees[5].

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[1] The 1951 Refugee Convention is the key legal document that forms the basis of our work. Ratified by 145 State parties, it defines the term 'refugee' and outlines the rights of the displaced, as well as the legal obligations of States to protect them, available at: http://www.unhcr.org/1951-refugee-convention.html

[2] Concerning the criteria of the refugee status assessment, see *P, Naskou- Perraki,* Analects of Refugee Law and Asylum, Edtions Ant.N. Sakkoulas, Athens- Komotini 1999, pp 16-26 (in greek).

[3] European Asylum Support Office, An Introduction to the Common European Asylum System for Courts and Tribunals, A Judicial Analysis, produced by the International Association of Refugee Law Judges European Chapter, August 2016, available at: https://www.easo.europa.eu/sites/default/files/public/BZ0216138ENN.PDF

[4] Article 63 of the Treaty Establishing the European Communities (TEC)

[5] European Asylum Support Office, An Introduction to the Common European Asylum System for Courts and Tribunals, A Judicial Analysis, produced by the International Association of Refugee Law Judges European Chapter, August 2016, available at: https://www.easo.europa.eu/sites/default/files/public/BZ0216138ENN.PDF

Back in 1990, the Dublin Convention was a turning-point in the development of a European asylum policy. The Dublin Convention established a system determining the State responsible for examining the applications for asylum lodged in one of the Member States of the European Communities[6]. One of its fundamental principles is that the Member State through which an asylum-seeker firstly entered the Union remains in most cases responsible for processing their asylum application. This principle was intended to prevent refugees from applying for asylum in several states within the European Community and to prevent states from seeking to offload their responsibility onto others. In the Amsterdam Treaty of 1997, the Member States agreed to jointly address important aspects of asylum and immigration polices, and draft uniform norms and procedures within five years[7].

At its meeting in Tampere in 1999, the European Council formally[8] approved the establishment of a shared European asylum system and referred to the term "*Common European Asylum System*"[9]. Following the Tampere Conclusions, the first phase of the CEAS included secondary legislation enacted between 2000 and 2005 based on defining common minimum standards to which Member States were to adhere in connection with the reception of asylum-seekers; qualification for international protection and the content of the protection granted; and procedures for granting and withdrawing refugee status. Legislation was adopted establishing minimum standards for giving temporary protection in the event of a mass influx. Finally, secondary legislation to establish criteria and mechanisms for determining the Member State responsible for examining an asylum application and to establish

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[6] *Agnès Hurwitz*, The 1990 Dublin Convention: A Comprehensive Assessment, *International Journal of Refugee Law*, Volume 11, Issue 4, 20 October 1999, Pages 646–677, https://doi.org/10.1093/ijrl/11.4.646

[7] *Steffen Angenendt, Marcus Engler and Jan Schneider*, German Institute for International and Security Affairs, European Refugee Policy Pathways to Fairer Burden-Sharing, November 2013, available at: https://www.swp-berlin.org/fileadmin/contents/products/comments/2013C36_adt_engler_schneider.pdf

[8] European Council, Presidency Conclusions, Tampere European Council 15 and 16 October 1999, SN 200/99, Brussels, paragraph 13, available at: http://www.europarl.europa.eu/summits/tam_en.htm

[9] European Commission, Migration and Home Affairs, Common European Asylum System, available at : https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en

a ‘Eurodac’ database for storing and comparing fingerprint data was also adopted. These first phase instruments were:

- The Eurodac Regulation, 2000[10]

- The Temporary Protection Directive, 2001[11]

- The Dublin II Regulation, 2003[12]

-The Regulation laying down detailed rules for the application of the Dublin Regulation, 2003[13]

- The Reception Conditions Directive (RCD), 2003[14]

- The Qualification Directive (QD), 2004[15]

- The Asylum Procedures Directive (APD), 2005[16].

In September 2008, the CEAS entered a second phase of harmonisation, which was launched with the European Pact on Asylum[17] by the European Commission with

[10] Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin Convention, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:316:0001:0010:EN:PDF

[11] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [2001], available at: http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32001L0055

[12] Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national [2003], available at: https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32003R0343

[13] Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national [2003], available at: https://publications.europa.eu/en/publication-detail/-/publication/679d5536-41b4-4ced-9d09-82d7f11d49d1/language-en

[14] Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers [2003], available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:En:PDF

[15] Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted [2004], available at: http://eur-lex.europa.eu/legal-content/GA/AUTO/?uri=CELEX:32004L0083

[16] Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status [2005], available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32005L0085

[17] European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee

the objective of further enhanced harmonisation of international protection in the European Union.

Meanwhile, on 1 December 2009, the Lisbon treaty came into force and Article 78 of the Treaty on the Functioning of the European Union (TFEU), provided the legal basis for the development of the second phase of the CEAS[18]. Article 78(1) provides the legal basis for an EU common policy on asylum, subsidiary protection and temporary protection which must be in accordance with the 1951 Geneva Convention and other relevant treaties.

The second phase of harmonisation of the CEAS was finalised by 2013 and comprises as of today the following instruments:

1/ The revised Asylum Procedures Directive (2013)[19] which aims at fairer, quicker and better quality asylum decisions. Asylum seekers with special needs will receive the necessary support to explain their claim and in particular there will be greater protection of unaccompanied minors and victims of torture.

2/ The revised Reception Conditions Directive (2013)[20] which ensures that there are humane material reception conditions (such as housing) for asylum seekers across the EU and that the fundamental rights of the concerned persons are fully respected. It also ensures that detention is only applied as a measure of last resort.

3/ The revised Qualification Directive (2011)[21] which clarifies the grounds for granting international protection and therefore will make asylum decisions more

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of Region, Policy Plan on Asylum: An Integrated Approach to Protection Across the EU, 17 June 2008, COM(2008) 360 final, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0360:FIN:EN:PDF

[18] Treaty on European Union (TEU) and Treaty on the Functioning of the European Union (TFEU), available at : http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT

[19] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, available at : http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013L0032

[20] 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, available at : http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013L0033

[21] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, available at : http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32011L0095

robust. It will also improve the access to rights and integration measures for beneficiaries of international protection.

4/ The revised Dublin Regulation (2013)[22] which enhances the protection of asylum seekers during the process of establishing the State responsible for examining the application, and clarifies the rules governing the relations between states. It creates a system to detect early problems in national asylum or reception systems, and address their root causes before they develop into fully fledged crises.

5/ The Temporary Protection Directive(2001)[23] on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

6/ The Commission Regulation of (2003)[24] laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national,

7/ The revised EURODAC Regulation of 2013[25] which allows law enforcement access to the EU database of the fingerprints of asylum seekers under strictly limited circumstances in order to prevent, detect or investigate the most serious crimes, such as murder, and terrorism.

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[22] 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, available at http://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013R0604

[23] Council Directive 2001/55/EC of 20 July 2001 available at : http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32001L0055

[24]Commission Regulation (EC) No 1560/2003, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32003R1560

[25] Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 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 and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011, available at : http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R0603

II. CHRONICLE OF A REFORM

Despite the important level of harmonization that the previous amendments brought to the Common European Asylum System, the severe strain it endured after the 2015 Migration crisis revealed many shortcomings of the system, as well as benefited from lessons learnt by the 2015 migration crises, elements which led to its "existential" next reform.

1. Reasons to Reform

In its political roadmap on migration, the Agenda on Migration[26], the European Commission explained that the overall objective of the CEAS reform is to move from a system which by design or poor implementation places a disproportionate responsibility on certain Member States and encourages uncontrolled and irregular migratory flows to a fairer system which provides orderly and safe pathways to the EU for third country nationals in need of protection or who can contribute to the EU's economic development. The EU needs a robust and effective system for sustainable migration management for the future that is fair for host societies and EU citizens as well as for third country nationals and countries of origin and transit. This reform is intended to form the medium term response to future migratory challenges[27]

The priorities set by the Commission in relation to reshaping the CEAS are[28]:

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[26] Brussels, 13.5.2015 COM(2015) 240 final COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS A EUROPEAN AGENDA ON MIGRATION, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf

[27] European Commission - Press release, Towards a sustainable and fair Common European Asylum System, Brussels, 4 May 2016, available at: http://europa.eu/rapid/press-release_IP-16-1620_en.htm

[28] Brussels, 6.4.2016 COM(2016) 197 final COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL, TOWARDS A REFORM OF THE COMMON EUROPEAN ASYLUM SYSTEM AND

a) Establishing a sustainable and fair system for determining the Member State responsible for asylum seekers with the objective to deal better with the arrival of a high number of asylum seekers/refugees through specific points of entry and ensuring a high degree of solidarity and a fair sharing of responsibility between Member States through a fair allocation of asylum seekers.

b) Reinforcing the Eurodac system with the objective to support the application of the Dublin Regulation and facilitating the fight against irregular migration.

c) Achieving greater convergence in the EU asylum system with the objective to strengthen and harmonise further the Common European Asylum System rules, so as to ensure more equal treatment across the EU and reduce undue pull factors to come to the EU.

d) Preventing secondary movements within the EU with the objective to Ensure that the functioning of the Dublin mechanism is not disrupted by abuses and asylum shopping by applicants for and beneficiaries of international protection.

e) A new mandate for the EU's asylum Agency, ensuring a more harmonised assessment of the protection needs across Member States.

2. Timeline

a/ On 6 April 2016, the Commission presented a first package of proposals reforming the Common European Asylum System (CEAS)[29]. The main objectives and priorities were presented in its Communication "Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe"[30].

ENHANCING LEGAL AVENUES TO EUROPE, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160406/towards_a_reform_of_the_common_european_asylum_system_and_enhancing_legal_avenues_to_europe_-_20160406_en.pdf

[29] idem

[30] Brussels, 4.5.2016 COM(2016) 270 final 2016/0133 (COD) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/dublin_reform_proposal_en.pdf

This first package of reform includes:

1. A proposal of the new Regulation on the reform of the Dublin III Regulation (called informally Dublin IV). The proposed amended Regulation is aimed to make the Dublin System more transparent and enhance its effectiveness, while providing a mechanism to deal with situations of disproportionate pressure on Member States' asylum systems. The new system is designed to be fairer but also more robust, one that is better able to withstand pressure. The new system will ensure quick determination of Member States' responsibility for examining an asylum application, protecting those in need, and discouraging secondary movements ('asylum shopping')

2. A proposal for recast of the Eurodac Regulation. Concerning Eurodac, the Commission proposes to adapt and reinforce the Eurodac system and to expand its purpose, facilitating returns and helping tackle irregular migration in order to serve practically the changes proposed in the Dublin regulation.

3. A proposed Regulation for the establishment of a European Union Agency for Asylum. The proposal will transform the existing European Asylum Support Office into an Agency with an enhanced mandate[31] and considerably expanded, such as ensuring a greater convergence in the assessment of applications for international protection across the Union, strengthening the practical cooperation and information exchange between Member States and promoting Union law and operational standards regarding asylum procedures, reception conditions.

b/ On the 13 july 2017, the European Commission presented the next set of proposals[32] to complete the proposed reform of the Common European Asylum System, and specifically:

1. A new Regulation replacing the Asylum Procedures Directive. The overall procedure is shortened and streamlined, with decisions normally to be taken within six months or less. It is aimed to ensure comm., on guarantees for asylum seekers

[31] Similarly to what was proposed by the Commission for the European Border and Coast Guard Agency on 15 December 2015, the role and functions of the Asylum Agency regarding operational and technical assistance will be expanded.

[32] European Commission - Press release, Completing the reform of the Common European Asylum System: towards an efficient, fair and humane asylum policy, Brussels, 13 July 2016, available at: http://europa.eu/rapid/press-release_IP-16-2433_en.htm

and ensure stricter rules to combat abuse of the process, lack of cooperation and secondary movements.

2. A new Regulation replacing the Qualification Directive, aiming to harmonise the granting of international protection, as Member States will be obliged to take into account guidance provided by the European Agency for Asylum, imposing firmer rules sanctioning secondary movements and strengthening integration incentivew**.**

3. An amended Reception Conditions Directive, aiming to ensure that asylum seekers remain available and discouraging them from absconding and applying standards and indicators on reception conditions developed by the European Asylum Support Office**.**

4. Finally on the same day the Commission presented the proposal for the new regulation establishing a Union Resettlement Framework[33].

Resettlement is defined as 'selection and transfer of refugees from a state in which they have sought protection to a third state which has agreed to admit them as refugees with permanent residence status. The status provided ensures protection against refoulement and provides a resettled refugee and his/her family or dependants with access to rights similar to those enjoyed by nationals. Resettlement also carries with it the opportunity to eventually become a naturalised citizen of the resettlement country[34]. The EU Resettlement Framework proposal[35] is aimed to set out the criteria which should be taken into account when determining the regions or third countries from which resettlement will take place, such as the number of persons in need of international protection in third countries, the overall relations between the EU and third countries and their effective cooperation in the area of

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33 European Commission - Press release, Enhancing legal channels: Commission proposes to create common EU Resettlement Framework , Brussels, 13 July 2016, available at: http://europa.eu/rapid/press-release_IP-16-2434_en.htm

34 European Parliament, Resettlement of refugees: EU framework, 2017, available at: http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/589859/EPRS_BRI(2016)589859_EN.pdf

35 Brussels, 13.7.2016 COM(2016) 468 final 2016/0225 (COD) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160713/resettlement_system_en.pdf

asylum and migration, including developing their asylum system and cooperation on irregular migration, readmission and return. The new EU Resettlement Framework, as proposed, establishes a common set of standard procedures for the selection and treatment of resettlement candidates. It also specifies the common eligibility criteria for resettlement to the EU under the targeted EU resettlement schemes, sets out common grounds for the exclusion of candidates and the type of resettlement procedure (ordinary procedure or expedited procedure) which could be used.

III. MAIN POINTS OF THE REFORM

The Reform of the Common European Asylum System (CEAS) as conceptualised by the European Commission through the two - above described- legislative packages could be summarised as following:

- The main criteria of the Dublin Regulation III remain in place.
- All applications of asylum seekers are registered on a common pan-european electronic platform technically managed by EU-Lisa[36].
- A corrective allocation mechanism shall be put in place in order to allocate the applicants to the Member States responsible to examine their applications, in case of overwhelming migratory flows.
- The corrective mechanism is triggered when the migratory flows at a certain Member State reach 150% of its capacity, which is a number resulting from a formula involving GDP and population of the said Member State.
- The corrective mechanism is triggered *automatically* by the European Agency for Asylum when the above mentioned threshold is reached and applicants are relocated to Member States who have not reached this threshold of 150% of their capacity.
- The European Agency for Asylum issues Country of Origin Information on the countries of origin and on the "safe' countries, that will have to be taken

[36] EU-Lisa, European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, https://www.eulisa.europa.eu

into consideration when assessing admissibility as well as merits of an application.

In the following chapters, the Commission's proposals are presented following the categorization in legal instruments proposed, although all proposals are highly interlinked.

1. Dublin Reform

The European Commission's proposal for the new "Dublin" Regulation[37] is a recast of 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 ("the Dublin III Regulation")[38].

In its explanatory memorandum of the proposed Regulation, the Commission clarifies that as long as separate national asylum systems exist within the Union, an EU instrument for establishing criteria and a mechanism for determining the Member State responsible for examining an application is essential.

The Dublin III Regulation had a limited impact on the distribution of applicants within the EU, given that net transfers in Dublin procedures are close to zero. When Member States receive and transfer similar numbers of applicants, their incoming and outgoing requests cancel each other out, indicating that there is no or very little redistributive effect from the Dublin III Regulation.

The Commission came to the conclusion that:

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[37] Brussels, 6.4.2016 COM(2016) 197 final COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL, TOWARDS A REFORM OF THE COMMON EUROPEAN ASYLUM SYSTEM AND ENHANCING LEGAL AVENUES TO EUROPE, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160406/towards_a_reform_of_the_common_european_asylum_system_and_enhancing_legal_avenues_to_europe_-_20160406_en.pdf

[38] COM(2016) 270 final available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/dublin_reform_proposal_en.pdf

- the current criteria in the Dublin system should be preserved,

- while supplementing them with a corrective allocation mechanism to relieve Member States under disproportionate pressure[39] with the aims to:

[39] It is interesting to note that in its Communication TOWARDS A REFORM OF THE COMMON EUROPEAN ASYLUM SYSTEM AND ENHANCING LEGAL AVENUES TO EUROPE, the Commission presented *three options* in order to re-shape Dublin. As seen below, Option 1 was chosen for the Dubliv IV Regulation proposal, but it seems that the Commission opens the debate for other possible options:

"Option 1: Supplementing the present system with a corrective fairness mechanism
Under this option, the current criteria for the allocation of responsibility would be essentially preserved, but the system would be supplemented with a corrective fairness mechanism, based on a distribution key, allowing for adjustments in allocation in certain circumstances. This option would maintain a linkage between the allocation of responsibility in the field of asylum and the respect by Member States of their obligations in terms of protection of the external border, but would enable situations of mass influx through individual Member States to be more effectively confronted and ensure greater fairness between Member States.

Option 2: A new system for allocating asylum applications in the EU based on a distribution key
Under a new system for allocating asylum applications in the EU, determination of responsibility would for the most part no longer be linked with the Member State of first application or irregular entry. Instead, responsibility would be primarily allocated on the basis of a distribution key reflecting the relative size, wealth and absorption capacities of the Member States. Member States of first application would, however, be responsible for examining the asylum claims of applicants for instance those coming from countries of origin which the EU has designated as safe so as to facilitate their speedy return and maintain a link with Member States' obligations in terms of protection of the external border. Different variants of this option are possible, placing a greater or lesser responsibility on the Member State where the application is made to verify whether the overriding criteria apply, such as whether the applicant has family links to another Member State. One alternative could be for this verification to be carried out by the Member State where the application is made; another could be for that verification to only take place in the Member State to which allocation has been made on the basis of the distribution key.

Option 3: Long-term perspective
As signalled already in the European Agenda on Migration, in the long term, consideration could be given to the possibility of transferring responsibility for the processing of asylum claims from the national to the EU level, for instance by transforming EASO into an EU-level first-instance decision-making Agency, with national branches in each Member State, and establishing an EU-level appeal structure. Under such an approach, Member States would remain responsible for the reception of asylum seekers, and of the refugees once recognised, which would be allocated to them on the basis of a distribution key as suggested above. This would establish a single and centralised decision-making process, in first instance and in appeal, and would thereby ensure a complete harmonisation of the procedures."

• enhance the system's capacity to determine efficiently and effectively a single Member State responsible for examining the application for international protection. In particular, it would remove the cessation of responsibility clauses and significantly shorten the time limits for sending requests, receiving replies and carrying out transfers between Member States;

• ensure fair sharing of responsibilities between Member States by complementing the current system with a corrective allocation mechanism. This mechanism would be activated automatically in cases where Member States would have to deal with a disproportionate number of asylum seekers;

• discourage abuses and prevent secondary movements of the applicants within the EU, in particular by including clear obligations for applicants to apply in the Member State of first entry and remain in the Member State determined as responsible. This also requires proportionate procedural and material consequences in case of noncompliance with their obligations.

a/ Pivotal change in the Dublin Regulation

The recast Regulation establishes a corrective mechanism in order to ensure a fair sharing of responsibility between Member States and a swift access of applicants to procedures for granting international protection, in situations when a Member State is confronted with a disproportionate number of applications for international protection for which it is the Member State responsible under the Regulation.

A/ Registration and monitoring system: An automated system[40] is established that will allow for the registration of all applications and the monitoring of each Member States' share in all applications. As soon as an application is lodged, the Member State shall register that application in the automated system, which will record each application under a unique application number. As soon as a Member State has been determined to be the Member State responsible, this will also be included in the system. The automated system will also indicate, in real time, the

[40] The Union's Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA) will be responsible for the development and technical operation of the system.

total number of applications lodged in the EU and the number per Member State, as well as – after a Member State responsible has been determined – the number of applications that each Member State must examine as Member State responsible and the share which this represents, compared to other Member States.

B/ The system continuously calculates the percentage of applications for which each Member State has been designated as responsible and compares with the reference percentage based on a key. This reference key is based on two criteria with equal 50% weighting, the size of the population and the total GDP of a Member State. The application of the corrective allocation for the benefit of a Member State is triggered automatically where the number of applications for international protection for which a Member State is responsible exceeds 150% of the figure identified in the reference key.

As of the triggering of the mechanism, all new applications lodged in the Member State experiencing the disproportionate pressure, after the admissibility check, but before the Dublin check, are allocated to those Member States with a number of applications for which they are the Member State responsible which is below the number identified in the reference key; the allocations are shared proportionately between those Member States, based on the reference key.

The proposal provides for an option that a Member State of allocation may decide to temporarily not take part in the corrective mechanism for a twelve months-period.The Member State which temporarily does not take part in the corrective allocation must make a solidarity contribution of EUR 250,000 per applicant to the Member States that were determined as responsible for examining those applications.

b/ Further Procedural Changes

- A new obligation is introduced that foresees that an applicant must apply in the Member State either of first irregular entry or, in case of legal stay, in that Member State. In case of non-compliance with this new obligation by an applicant the Member State must examine the application in an accelerated procedure. In addition, an applicant will only be entitled to material reception rights where he or she is required to be present.

- The Regulation introduces an obligation for the Member State of application to check whether the application is inadmissible, on the grounds that the applicant comes from a first country of asylum or a safe third country. If this is the case, the applicant will be returned to that first country or safe third country, and the Member State who made the inadmissibility check will be considered responsible for that application.

-The Regulation introduces a rule that once a Member State has examined the application as Member State responsible, it remains responsible also for examining future representations and applications of the given applicant.

-It is also explicitly stated that applicants have an obligation to be present and available for the authorities of a relevant Member State and respect the transfer decision. Non-fulfilment of legal obligations set out in the Regulation will have proportionate procedural consequences for the applicant, such as preclusion of accepting information that was unjustifiably submitted too late.

- The Regulation enlarges the scope of the information which must be provided to applicants.

- The definition of family members is extended in two ways: by (1) including the sibling or siblings of an applicant (recital 19) and by (2) including family relations which were formed after leaving the country of origin but before arrival on the territory of the Member State.

- In Article 15 on irregular entry, the clause envisaging cessation of responsibility after 12 months from irregular entry as well as the complicated and difficult to prove clause in relation to illegal stay were deleted. (art.14)

-Shorter time limits: This concerns time limits for submitting and replying to a take charge request, making a take back notification, and taking a transfer decision. As a result of shortening the time limits, the urgency procedure was removed. Take back requests have been transformed into simple take back notifications, given that it is clear which the responsible Member State is and there will be no longer be any scope for shift of responsibility. Such notifications do not require a reply, but instead an immediate confirmation of receipt.

- An obligation for the Member State responsible has been added to take back a beneficiary of international protection, who made an application or is irregularly present in another Member State. This obligation will give Member States the

necessary legal tool to enforce transfers back, which is important to limit secondary movements.

-A network of Dublin units is set up and facilitated by the European Union Agency for Asylum.

-In relation to unaccompanied minors, the proposal clarifies that the Member State where the minor first lodged his or her application for international protection will be responsible, unless it is demonstrated that this is not in the best interests of the minor. This rule will allow a quick determination of the Member State responsible and thus allow swift access to the procedure for this vulnerable group of applicants, also in view of the shortened time limits proposed.

- The provision on guarantees for unaccompanied minors is adapted to make the best interests assessment more operational. Thus, before transferring an unaccompanied minor to another Member State, the transferring Member State shall make sure that that Member State will take the necessary measures under the asylum procedures and reception conditions Directives without delay. It is also stipulated that any decision to transfer an unaccompanied minor must be preceded by an assessment of his/her best interests, to be done swiftly by qualified staff.

2. The amended EURODAC Regulation

This proposal[41] amends the current EURODAC Regulation (EU) No. 603/2013, and extends its scope for the purposes of identifying illegally staying third-country nationals and those who have entered the European Union irregularly at the external borders, with a view to using this information to assist a Member State to re-document a third-country national for return purposes.

It is also proposed that an additional biometric – a facial image - will also be collected by Member States and stored in the Central System as well as other

[41] Expanatory memorandum of COM(2016) 272 final 2016/0132 (COD) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/eurodac_proposal_en.pdf

personal data to reduce the need for additional communication infrastructure between Member States to share information on irregular migrants that have not claimed asylum. The collection of facial images will be the pre-cursor to introducing facial recognition software in the future.

The scope of the new EURODAC Regulation has been extended to include the possibility for Member States to store and search data belonging to third-country nationals or stateless persons who are not applicants for international protection so that they can be identified for return and readmission purposes. Thus EURODAC becomes a database for wider immigration purposes and no longer only exists to ensure the effective implementation of the Dublin III Regulation.

A provision has been included to ensure that where a fingerprint hit indicates that an asylum application has been made in the European Union, the Member State that conducted the search should ensure that the Dublin procedure is followed as a matter of course and not a return procedure for the individual concerned and so that no applicant for international protection is returned to their country of origin or to a third-country in breach of the principle of non-refoulement.

The new proposal permits the storage of personal data of the data-subject such as the name(s), age, date of birth, nationality, and identity documents, as well as a facial image. The storage of personal data will allow immigration and asylum authorities to easily identify an individual, without the need to request this information directly from another Member State. The age of taking fingerprints is lowered to 6 years old (Articles 10, 13 and 14).

Furthermore, the data of illegally staying third-country nationals who do not lodge an application for asylum within the European Union is erased in advance once a residence document is obtained. The proposal allow for European Border and Coast Guards and EASO Member State experts to take fingerprints.

3. European Union Agency for Asylum

The proposal[42] by the Commission builds upon the current mandate of EASO, which is renamed European Union Agency for Asylum (EUAA), and expands it so

[42] Brussels, 4.5.2016 COM(2016) 271 final 2016/0131 (COD) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010,

as to transform EUAA into a fully-fledged Agency equipped with the necessary tools to: (1) enhance practical cooperation and information exchange on asylum; (2) promote Union law and operational standards to ensure a high degree of uniform application of the legal framework on asylum; (3) ensure greater convergence in the assessment of protection needs across the Union; (4) monitor and assess the implementation of the CEAS; (5) provide increased operational and technical assistance to Member States for the management of the asylum and reception systems, in particular in cases of disproportionate pressure.

The proposal stipulates that the Agency and the Member States will have a duty to cooperate and an obligation to exchange information. The Agency will need to cooperate with Member States, with other relevant Union agencies, the European External Action Service and with international organisations such as UNHCR. Furthermore the Agency will operate and manage the corrective mechanism. The Agency would have the task to develop a common analysis providing guidance on the situation in third countries of origin. The Agency will, on its own initiative or at the request of the Commission, develop operational standards on the implementation of the instruments of Union law on asylum and indicators for monitoring compliance with those standards.

The Agency will be able to deploy asylum support teams to provide operational and technical assistance to Member States, either at the request of a Member State or on a proposal from the Agency. The Agency will, in cooperation with the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA), also develop and operate an information system capable of exchanging classified information.

4. New Asylum Procedures Regulation

The new Regulation[43] as proposed by the Commission is aimed to respect fundamental rights and observes the principles recognised, in particular, by the

available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/easo_proposal_en.pdf

[43] Brussels, 13.7.2016 COM(2016) 467 final 2016/0224 (COD) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

Charter of Fundamental Rights of the European Union, as well as the obligations stemming from international law, in particular from the Geneva Convention on the Status of Refugees. The procedural modifications are summarised as follows:

1. An application is considered to have been made as soon as a third-country national or stateless person expresses a wish to receive international protection from a Member State. That application needs to be registered promptly, or at the latest within three working days from when the national authorities receive it (which stays the same as existing directive). Within three working days from lodging an application, the applicant must be provided with a document[44] certifying that the individual is an applicant, stating that he or she has a right to remain on the territory of the Member State and stating that it is not a valid travel document.

2. A new proposal is that the individual applicant is to be provided with an effective opportunity to lodge his or her application and this should be done within ten working days from when the application is registered. For unaccompanied minors, that time limit will only start from when the guardian is appointed and meets the child.

3. The time-limit for the examination of applications under a regular procedure provided for in the proposal becomes of six months, extendable once by a further period of three months in cases of disproportionate pressure or due to the complexity of a case As in the Asylum Procedures Directive, the possibility of temporarily suspending the examination of an application due to a change in

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establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160713/proposal_for_a_common_procedure_for_international_protection_in_the_union_en.pdf

[44] The Commission commented that the main provisions on documents have been taken from the Reception Conditions Directive and incorporated in this proposal as an effort at streamlining the procedure for international protection. The proposal sets out the type of information that should be included in that document and foresees the possibility of having a uniform format for those documents to be established by means of an implementing act so as to ensure that all applicants receive the same document across all Member States .

circumstances in the country of origin remains. However, also in this case, the time-limit for examining an application should not be longer than 15 months.

4. New time-limits are set for the accelerated examination procedure and for the treatment of inadmissible applications, Furthermore:
- the time-limit proposed for an accelerated examination procedure is of two months
- for inadmissibility cases is of one month.
- In cases where the ground for inadmissibility is the fact that an applicant comes from a first country of asylum or a safe-third country, the time-limit for the admissibility check is set at ten working days. to make sure that the rules set out in the proposed Dublin reform requiring the first Member State in which an application is lodged to examine the admissibility before applying the criteria for determining a Member State responsible, are applied efficiently.
- The time-limit for the border procedure remains set at four weeks as in the Asylum Procedures Directive.

5. The obligation on Member States to provide the applicant with all the necessary information becomes all the more important because of the consequences that non-compliance may carry for the applicant. For instance, in case that an applicant refuses to cooperate by not providing the details necessary for the examination of the application and by not providing his or her fingerprints and facial image may lead to the application being rejected as abandoned subject to the procedure for implicit withdrawal of an application. (At present, the refusal to comply with the obligation to provide fingerprints is a ground for an accelerated examination of the procedure).

6. Applicants must remain in the Member States in which they are required to be present in accordance with the Dublin Regulation and they must respect any reporting obligations they may have deriving from the Receptions Conditions Directive. Non-compliance with reporting obligations may also lead to an application being rejected as abandoned and where an applicant does not remain in the Member State where he or she is required to be present, his or her application is dealt with under the accelerated examination procedure.

7. Further to the procedural guarantees for the applicants, the proposal foresees access to legal assistance and representation throughout all stages of the procedure (not only at 1st level as before) in order to enable applicants to fully exercise their rights given the tighter time-limits for the procedure. It therefore provides for the right of applicants to request free legal assistance and representation at all stages of the procedure.

8. Moreover, the proposal upholds a high level of special procedural guarantees for vulnerable categories of applicants and in particular for unaccompanied minors. All children, irrespective of their age and of whether they are accompanied or not, shall also have the right to a personal interview unless it is manifestly not in the child's best interests. The unaccompanied minors should be assigned a guardian as soon as possible and not later than five working days from the moment an unaccompanied minor makes an application. The Commission clarifies that this proposal seeks to standardise guardianship practices to make sure that guardianship becomes prompt and effective across the Union.

9. The accelerated examination procedure becomes compulsory under certain limited grounds related to prima facie manifestly unfounded claims, such as when the applicant makes clearly inconsistent or false representations, misleads the authorities with false information or when an applicant comes from a safe country of origin.
Border procedures, which normally imply the use of detention throughout the procedure, remain optional and can be applied for examining admissibility or the merits of applications on the same grounds as under an accelerated examination procedure. If no decision is taken within four weeks, the applicant gains the right to enter and remain on the territory.

5. New Qualification Regulation

While the existing recast Qualification Directive has contributed to some level of approximation of the national rules, the Commission observes that recognition rates still vary between Member States and there is equally a lack of convergence as regards decisions on the type of protection status granted by each Member State. [45]

The proposal of Regulation on Qualification[46] aims at further harmonisation of the common criteria for recognising applicants for international protection and builds on the provisions of the proposal for a European Asylum Agency insofar as it obliges the determining authorities of the Member States to take into account, when assessing asylum applications, the country of origin information which it gathers and the common analysis and guidance to be issued by the Agency on such country of origin information.

The scope of the Regulation continues to be twofold:

- setting out the standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection,
- setting out the content of the international protection which they are granted.

In particular, the proposal:

1. establishes an obligation for the applicant to substantiate his application and stay present to the country of application.

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[45] For instance, during the period between January and September 2015, the recognition rates for asylum seekers from Afghanistan varied from almost 100% in Italy to 5.88% in Bulgaria (Eurostat). As regards the differences between the type of status granted, EASO data for the 2nd quarter of 2015 showed that Germany (99%), Greece (98%) and Bulgaria (85%) were giving refugee status to almost all Syrian nationals, whereas Malta (100%), Sweden (89%) Hungary (83%) and Czech Republic (80%) gave them subsidiary protection status. See: https://easo.europa.eu/wp-content/uploads/Quarterly-Asylum-Report2015_Q2_Final.pdf

[46] Brussels, 13.7.2016 COM(2016) 466 final 2016/0223 (COD) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160713/proposal_on_beneficiaries_of_international_protection_-_subsidiary_protection_eligibility_-_protection_granted_en.pdf

2. establishes the obligation for Member Statea to assess the possibility of internal protection in the country of origin of the applicant.

3. More detailed provisions are added on the basis of Court of Justice of the European Union to clarify that the commitment of certain crimes (particular cruel actions and terrorist acts) are a basis for exclusion from being a refugee even if committed with a political objective.

4. establishes the obligation for the determining authorities to base themselves on Union guidance in particular the common analysis and guidance on the situation in the country of origin provided by the European Union Agency for Asylum and the European networks on country of origin information either when granting international protection status, or for cessation reasons or for internal relocation assessment.

5. provides that, as a general rule, a beneficiary of international protection is obliged to reside in the Member States which granted protection and together with Article 44 provides disincentives if the beneficiary is found in another Member State without the right to stay or reside there.

6. provides for more harmonisation by laying uniform rules in relation to residence permits and travel documents, as well as, clarify the scope of the rights to be given access to with special regard to social rights. In relation to residence permits, it provides for a new explicit harmonisation of both the validity period and the format of the residence permit, but keeping the difference between beneficiaries of subsidiary protection and refugees. For subsidiary protection, the residence permit will be valid for 1 year renewable for 2 years (1+2+2 years formula) and for refugees the residence permit will be valid for 3 years renewable for 3 years (3+3+3 year formula).

6. The amended Reception Directive

The amended Reception Directive[47] as proposed by the Commission aims at further harmonisation of reception conditions in the European Union.

[47] Brussels, 13.7.2016 COM(2016) 465 final 2016/0222 (COD) Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down standards for the reception of applicants for international protection (recast), available at:

Specifically the proposal introduces the following:

1. An exception is introduced for cases where an applicant is irregularly present in another Member State than the one in which he or she is required to be present. In this situation, he or she is not entitled to material reception conditions, schooling and education of minors as well as employment and vocational training. The proposal clarifies that applicants will however always be entitled to health care and to a dignified standard of living, in accordance with fundamental rights.

2. Member States are required to take into account operational standards and indicators on reception conditions currently being developed by EASO, when monitoring and controlling their reception systems. The European Union Agency for Asylum will be assisted by the Member State Network of Reception Authorities when implementing its tasks under this proposal, including the development of templates, practical tools, indicators and guidance.

3. Obligation is made to Member States for contingency plans setting out the measures foreseen to be taken to ensure adequate reception of applicants in cases where the Member State is confronted with a disproportionate number of applicants.

4. Ii introduces stricter time limits, within five working days from the moment the application was made, for the Member States to assign a guardian to represent and assist an unaccompanied minor and requires Member States to inform applicants, using a common template.

5. Proposal defines absconding as encompassing both a deliberate action to avoid the applicable asylum procedures and the factual circumstance of not remaining available to the relevant authorities, including by leaving the territory where the applicant is required to be present. A risk of absconding is also defined as the existence of reasons in an individual case, which are based on objective criteria

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https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160713/proposal_on_standards_for_the_reception_of_applicants_for_international_protection_en.pdf

defined by national law, to believe that an applicant may abscond, in line with the definition in the Dublin III Regulation. In case an applicant has been assigned a specific place of residence but has not complied with this obligation, and where there is a continued risk that the applicant may abscond, the applicant may be detained in order to ensure the fulfilment of the obligation to reside in a specific place.

6. The definition of material reception conditions is extended by including non-food items, which reflects the material reception conditions already provided in many Member States and underlines the importance of such non-food items, such as sanitary items.

7. The proposal reduces the time-limit for access to the labour market from no later than nine months to no later than six months from the date when the application for international protection was lodged, where an administrative decision on the application has not been taken in accordance with the proposed Asylum Procedures regulation to increase integration prospects. It is proposed that, once granted access to the labour market, applicants should be entitled to a common set of rights based on equal treatment with nationals of the Member State.

7. New Resettlement Framework

Finally, following-up on the commitment to enhance legal avenues to the EU as announced on 6 April 2016, the Commission also proposes a structured Union resettlement framework[48], moving towards a more managed approach to international protection within the EU, ensuring orderly and safe pathways to the EU for persons in need of international protection, with the aim of progressively reducing the incentives for irregular arrivals.

[48] Brussels, 13.7.2016 COM(2016) 468 final 2016/0225 (COD) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160713/resettlement_system_en.pdf

Resettlement means the admission to the territory of the Member States of third country nationals in need of international protection who have been displaced from or within their country of nationality, for the purpose of granting them international protection. The same applies to stateless persons in need of international protection displaced from or within their country of former habitual residence.

In particular, the proposal aims to provide a common approach to safe and legal arrival in the Union for third-country nationals in need of international protection, thus also protecting them from exploitation by migrant smuggling networks and endangering their lives in trying the reach Europe; help reduce the pressure of spontaneous arrivals on the Member States' asylum systems; enable the sharing of the protection responsibility with countries to which or within which a large number of persons in need of international protection has been displaced and help alleviate the pressure on those countries; provide a common Union contribution to global resettlement efforts.

All Member States underlined the importance of Union funding to support resettlement efforts. This legislative proposal sets out eligibility criteria (Article 5) and exclusion grounds (Article 6) for persons who may be considered for resettlement.

IV. COMMENTS ON THE REFORM

As a common observation, we could note that the proposed new Dublin Regulation constitutes the pivotal element of the whole CEAS reform as proposed by the European Commission and attracts the biggest number of comments and reactions of non-governmental, as well as Institutional stakeholders and Member States and constitutes the main point of controversial discussions among Member States.
In this chapter, an effort is made to present the main comments and reactions on the Reform of the Common European Asylum System put in advance by International and Non-governmental stakeholders (1) as well as by EU Institutions and Member States (2).

1. International and Non-governmental stakeholders

a. United Nations High Commissioner for Refugees (UNHCR)

The United Nations High Commissioner for Refugees (UNHCR) came at first with global comments on the shape and content the European Asylum System should take (a) and later on they complemented their views with comments specifically on the Dublin Regulation reform (b).

a/ In their first set of comments[49] the UNHCR proposed that the Commission, EU Agencies and EU Member States could develop a system for (1) identifying and analyzing early warning signs, and (2) assessing their capacity to respond through registration, screening and reception. Existing national contingency plans would be updated and shared with neighbouring countries. The EU's two key Agencies would engage in contingency planning and emergency response. FRONTEX is already mandated to undertake regular capacity assessments and anticipate movements to the EU. The EUAA – the planned successor to EASO – has been proposed to lead early warning and contingency planning.

UNHCR proposes a simplified system that could also potentially save costs. This system would guarantee the right to asylum, enhance security screening, facilitate the efficien tmanagement of population movements, and would include the following elements:

-A common registration system
-Prioritization of family reunion
- Accelerated and simplified procedures for asylum determination
-A distribution mechanism for EU Member States under pressure
-A common approach to unaccompanied and separated children

[49] UN High Commissioner for Refugees (UNHCR), Better Protecting Refugees in the EU and Globally: UNHCR's proposals to rebuild trust through better management, partnership and solidarity, December 2016, available at: http://www.refworld.org/docid/58385d4e4.html

- Incentives for compliance with the new system
- An efficient system for return.

In relation to the corrective mechanism, the UNHCR proposes the existence of a mechanism that could be similar to the one proposed recently by the Commission, but with some important modifications:
-Manifestly unfounded claims would not be distributed to other EU Member States. They would undergo the accelerated procedure in the country of entry, with increased EU Agency support. This would avoid complicating return for those found not in need international protection.
- Manifestly well-founded claims would not be distributed to other EU Member States. They would be determined in the country of entry in the accelerated procedure, with increased EU Agency support. Once international protection is granted, they would be distributed.
- All other cases would be distributed to another EU Member State for asylum determination.
Futhermore, the UNHCR proposes increased integration processes for the recognised refugees and related funding from the EU.

b/ In their second set of comments[50] on the Dublin Reform as proposed by the Commission, they welcomed aspects such as, shortened time frames, mandatory suspensive effect in relation to appeal or review, family unity and the best interests of the child, but they do not approve the fact that the Commission's proposal maintains and further strengthens the irregular entry criterion whilst placing further duties and responsibilities on the Member States where applications are first lodged.

Moreover, the introduction of an admissibility procedure, which precedes the determination of responsibility under the Dublin Regulation, may also prove to be

[50] UNHCR COMMENTS on the European Commission proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the member state responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) – COM (2016) 270, available at: http://www.refworld.org/pdfid/585cdb094.pdf

problematic. For example, admissibility considerations take precedence over family reunion possibilities, including on the basis of dependency. This also means that responsibility remains with the Member State of application for all claims found inadmissible.

Furthermore, it seems that that the responsibility for the gathering of information is shifted from the authorities to the applicant, rather than striking a balance that fosters cooperation through shared duties. UNHCR notes that an evident protection gap arises in the Dublin proposal, as children would not receive assistance during take back procedures and transfers.

Last, UNHCR states that Member States benefiting from the corrective allocation mechanism will, under the present proposal, still have to handle admissibility procedures and conduct security checks as well as handle return procedures, after any appeals, for those found inadmissible. Finally, when security verification is in issue, delays may occur and/or this may leave scope for fundamentally undermining the corrective allocation.

b. The European Council on Refugees and Exiles

The European Council on Refugees and Exiles (ECRE)[51] identifies two characteristics of serious concern in the Dublin IV proposal[52].

- Concerning the asylum seekers, the proposal reinforces many of the mechanism's flawed premises. With some limited exceptions such as broader family reunification possibilities through the expansion of the definition of family members, asylum seekers face stricter and unfair rules, likely to further undermine their trust in the CEAS. These measures include far-reaching sanctions for secondary movements, unlawful limitations on applicants' right to an effective remedy, and a high

[51] The European Council on Refugees and Exiles (ECRE) is a pan-European alliance of 95 NGOs in 40 countries protecting and advancing the rights of refugees, asylum seekers and displaced persons. Our mission is to promote the establishment of fair and humane European asylum policies and practices in accordance with international human rights law. Available at: https://www.ecre.org/mission-statement

[52] The European Council on Refugees and Exiles (ECRE), Comments on the Commission Proposal for a Dublin IV Regulation COM(2016) 270, October 2016, available at: https://www.ecre.org/wp-content/uploads/2016/10/ECRE-Comments-Dublin-IV.pdf

likelihood of having their claim rejected before ever reaching the Dublin system. The latter stems from the proposal's aim to require Member States of first entry to assess whether an asylum seeker can be transferred to a "safe third country" or a "first country of asylum", or be subjected to accelerated examination for "safe country of origin" or security reasons, before triggering the Dublin Regulation.

- Concerning Member States, they could see their distribution inequalities heavily exacerbated under the Dublin IV Regulation, as countries of first entry would be required to conduct admissibility and merit-related assessments before applying the Regulation. Given the deletion of existing clauses ceasing a Member State's responsibility after a lapse of time, these countries would face perpetual responsibility and have no means of relief from their obligation when a transferring country is not complying with time limits for transferring an applicant.

Concerning EURODAC[53], ECRE believes that the proposal has numerous issues of human rights ranging from rights to privacy and data protection to issues of dignity, physical and mental integrity, freedom from inhuman or degrading treatment, liberty and access to an effective remedy.

Furthermore, ECRE welcomes[54] the EU Agency for Asylum new broadened mandate but also recommends the establishment of an Independent Expert Panel on country of origin information (COI) advising the Agency on matters of methodology and peer reviewing the Agency's COI products, which would consist of academic country-specific experts, representatives of the judiciary, expert NGOs and UNHCR. ECRE also welcomes the enhanced competences of the new Agency to monitor and assess the operation and functioning of the Common European Asylum System in practice at the national level.

[53] The European Council on Refugees and Exiles (ECRE), Comments on the Commission Proposal to recast the Eurodac Regulation COM(2016) 272, July 2016, available at: https://www.ecre.org/wp-content/uploads/2016/07/ECRE-Comments-Eurodac-proposal.pdf

[54] The European Council on Refugees and Exiles (ECRE), Comments on the Commission Proposal for a Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 COM(2016) 271, July 2016, available at: https://www.ecre.org/wp-content/uploads/2016/07/ECRE-Comments-EU-Asylum-Agency_July-2016-final_2.pdf

Moreover, ECRE notes[55] that the exclusion of applicants from reception conditions for reasons of absconding, as well as a range of preventive and punitive restrictions to the fundamental rights to free movement and liberty create strong tension with primary EU law.

Concerning the EU resettlement framework[56] as proposed by the European Commision, ECRE raises a number of concerns that make it impossible to support the proposal in its current form. These concerns relate primarily to the way resettlement may be instrumentalized to encourage countries to cooperate on migration control and deterrence of irregular arrivals. Moreover, the Framework's eligibility and exclusion criteria potentially exclude many categories of refugees in need of resettlement, including vulnerable cases and those with no other solution.

c. The Danish Refugee Council

The Danish Refugee Council (DRC)[57] in view of the proposed reform by the Commission raised the following comments[58]:

- A binding corrective allocation mechanism is needed, but the triggering threshold be should be placed at 100% of capacity. Moreover the possibility for states to buy their way out of the allocation mechanism for a period of up to 12 months seems unfair and counteracts the stated objective of establishing a system based on solidarity among the Member States.

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[55] The European Council on Refugees and Exiles (ECRE), Comments on the Commission Proposal to recast the Reception Conditions Directive COM(2016) 465, October 2016, available at: https://www.ecre.org/ecre-comments-on-reception-conditions-directive-recast-proposal

[56]The European Council on Refugees and Exiles (ECRE), UNTYING THE EU RESETTLEMENT FRAMEWORK, 2016, available at:https://www.ecre.org/wp-content/uploads/2016/10/Policy-Note-01.pdf

[57] The Danish Refugee Council (DRC) is a humanitarian, non-governmental, non-profit organisation working in more than 30 countries throughout the world. Available at: https://drc.ngo/about-drc

[58] https://drc.ngo/media/3717013/drc-policy-paper_-drcs-postiion-on-the-reform-of-the-dublin-system.pdf

- The broadened definition of family is welcomed but it is still too narrow and that families will therefore still be separated because of the Dublin system. Asylum seekers, who have family in Europe, will first have to wait for the completion of the admissibility procedure. Then the allocation mechanism will commence and the asylum seeker will be transferred to another Member State. Once the asylum seeker has reached the other Member State, the Dublin procedure will finally start and give he/she the possibility to be reunited with family in a third Member State.
- The proposed changes to the provisions regarding unaccompanied children risk violating the best interest of the child.
- The limited access to appeal within the Dublin IV proposal risks violating the asylum seekers' right to an effective remedy under article 47 of the EU Charter of Fundamental Rights. The punitive and coercive measures to prevent secondary movement will result in the deterioration of asylum seekers fundamental rights.
- Strengthening the resettlement framework under the UNHCR scheme is key to increasing safe pathways to gain protection and is also an important demonstration of solidarity with refugee-hosting countries in the regions of origin.

d. The International Commission of Jurists (ICJ)

In a briefing paper of September 2016[59], the International Commission of Jurists (ICJ)[60] presents comments on key procedural aspects of the proposed Dublin Regulation. The paper raises concerns at the introduction of excessively short time-limits for asylum-seekers to access an effective remedy. It further opposes the limitation of the material scope of the remedy, and expresses concern at the punitive measures imposed on asylum-seekers, in particular when they lead to the loss of access to their rights.

[59] "Procedural rights in the proposed Dublin IV Regulation", Comments of the International Commission of Jurists on specific procedural measures in the Recast of the Dublin Regulation 27 September 2016, available at: https://www.icj.org/wp-content/uploads/2016/09/EU-Dublin-IV-Regulation_Comment-Advocacy-Analysis-Brief-2016-ENG.pdf

[60] For six decades, the ICJ has played a leading role in the development and implementation of international human rights law and standards. Through pioneering activities, including inquiry commissions, trial observations, fact-finding missions, public denunciations and diplomatic advocacy, the ICJ has been a powerful advocate for justice. Available at: https://www.icj.org/history

2. EU Institutions

a. Committee of the Regions (CoR)

The main elements of the Committee of the Regions opinion[61] on the reform of the CEAS, as adopted on 8 December 2016, are as follows:

-the approach taken by the Commission in the proposal to reform the Dublin Regulation is inadequate.

-recommends building greater consideration for the links of asylum applicants with Member States, their professional experience and what they want, thereby discouraging secondary movements. The CoR stresses that positive incentives should be privileged wherever possible over sanctions in trying to avoid unwanted secondary movements.

-suggests that in order to establish a Member State's real and current reception capacity, the number of arrivals in that country should also be taken into account, by incorporating this parameter into the reference key.

-welcomes the introduction of a corrective mechanism for the allocation of applicants for international protection. However, the CoR points out that the threshold proposed by the Commission for triggering the mechanism is so high that even in times of crisis, the mechanism might not be triggered and so would be of no structural benefit.

b. Economic and Social Committee (EESC)

In its opinion[62] on the reform of CEAS, adopted on 19 October 2016, the European Economic and Social Committee (EESC) made the following main points:

-The main principle of the reform should be the respect of persecuted people's human rights.

[61] European Committee of the Regions, Opinion No CDR 3267/2016, available at : http://cor.europa.eu/en/activities/opinions/pages/opinion-factsheet.aspx?OpinionNumber=CDR%203267/2016

[62] European Economic and Social Committee, CEAS Reform I, 19/10/2016, Reference: SOC/543-EESC-2016-02981-00-00-ac, available at: http://www.eesc.europa.eu/?i=portal.en.soc-opinions.39248

-Approves of the proposed objective to improve and speed up the determination procedures in the interest of better efficiency, but believes that protective provisions should be clarified and included on procedural issues, individual treatment of applications, maintenance of discretionary clauses, maintenance of the deadline for the cessation of obligation for a Member State to assume responsibility, the rights of applicants, and the limitation of the corrective relocation mechanism.
- Stresses that all Member States should be responsible for providing applicants with detailed and up-to-date information regarding the procedures under the Dublin system.
- Points out that the principle of proportionality should be assured so that the system

c. European Union Agency for Fundamental Rights -FRA

Upon request of the European Parliament, the European Union Agency for Fundamental Rights (FRA)[63] issued an opinion which examined the substance of human rights of applicants, stating the following:

The EU legislator should exclude children in need of special procedural guarantees from admissibility and accelerated procedures envisaged in Article 3 of the proposed recast Dublin Regulation.

Furthermore, the EU legislator should allow a rejection of an asylum application as inadmissible or through an accelerated procedure only after having examined the rules to protect unaccompanied children and promote family unity included, giving thus priority to family unity over admissibility and safe countries of origin procedures.

The EU legislator should exclude child applicants from Article 3 (3) (b) (ii) of the proposed recast Dublin Regulation (fast track procedures), and ensure informing

[63] European Union Agency for Fundamental Rights, Opinion on the impact on children of the proposal for a revised Dublin Regulation, 23 November 2016, available at**:** http://fra.europa.eu/en/opinion/2016/fra-opinion-impact-children-proposal-revised-dublin-regulation

children adequately, ensuring effective guardianship, respecting the best interests of unaccompanied children without family members in the Dublin area, verifying family links of unaccompanied children before allocating them to another Member State and avoiding unjustified fast track procedures for applicants applying in a Member State other than that of first entry or legal stay, preserving family life when applying the corrective mechanism, and removing the prohibition to present new facts on members of family.

Moreover, the EU legislator would have to allow another Member State to continue the Dublin procedure when children join family members and respecting minimum social, economic and cultural rights and ensure future asylum claims are examined in substance if first asylum application is withdrawn.

d. European Parliament

The European Parliament as one of the main co-legislator in the frame of the Co-decision legislative procedure between the Council and the Parliament has adopted its position on the Commission proposal on the Dublin Regulation Reform in its plenary in November 2017. A broad majority of MEPs endorsed the mandate, drawn up by the Civil Liberties Committee (390 to 175, with 44 abstentions)[64]. After this vote the European Parliament can begin talks with the Council as soon as EU member states have agreed their own negotiating position. In the frame of the co-decision process, the starting position of the European Parliament has a significant weight:

The Parliament's position could be summarized as following:

[64] European Parliament ready to start talks with EU governments on overhaul of Dublin system, 16/11/2017, available at: http://www.europarl.europa.eu/unitedkingdom/en/media/news/2017/november17/dublinsystem16-11-17.html

1. Country of entry should no longer automatically be responsible for processing asylum applications
2. All EU countries should accept their fair share of responsibility for hosting asylum seekers
3. Those that refuse could lose EU funds

It is important to note that under the Parliament's proposal, the country of arrival of an asylum seeker would not be automatically and solely responsible to evaluate the request. Applicants should instead be distributed across all EU countries.
Contrary to both the Commission proposal and the discussions in the Council, the European Parliament incorporates fair allocation of asylum seekers as a core component of the Dublin system, without distinguishing between different phases in its operation[65]. Cecilia Wikström, the MEP that lead the work on the Parliament's position, described her proposal as an improved and more balanced version of a draft regulation proposed by the Commission. "Solidarity isn't only about distributing EU funding but also about sharing the burden in a fair way."

In a greater analysis the points of the European Parliament counter-proposal[66] are :
1/ Asylum seekers that have a "genuine link" with a particular member state should be transferred to it, since this increases their chances of integration and reduces the risk of secondary movements. Such links would be defined as having family members present in that country, as well as prior residence or studies in a particular EU country.

2/ Permanent and automatic relocation mechanism without thresholds: asylum seekers that do not have a genuine link with a particular Member State will

[65] European Parliament, Report on the proposal for a regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), 6 November 2017, (COM(2016)0270 – C8-0173/2016 – 2016/0133(COD)), Committee on Civil Liberties, Justice and Home Affairs, available at: http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&mode=XML&reference=A8-2017-0345&language=EN#title2

[66] European Parliament, Asylum policy: reforming the Dublin rules to create a fairer system, 19-10-2017, available at: http://www.europarl.europa.eu/pdfs/news/expert/background/20171019BKG86403/20171019BKG86403_en.pdf

automatically be assigned to an EU country which will take responsibility for them upon arrival in the EU, according to a distribution "key". This country will then be responsible for processing the asylum application, i.e. the country of first arrival will no longer be automatically responsible, as is the case today

3/ Registration and security verification upon arrival: countries of first arrival must register all asylum seekers and check their fingerprints against relevant EU databases, such as the Europol Information System, as well as the likelihood of an applicant being eligible for international protection, before he or she is transferred to another EU country. These initial checks will, however, be much faster than the current admissibility checks and have been carefully calibrated to avoid creating bottlenecks in "frontline" member states. If a member state fails to register the asylum seekers, transfers will be suspended.

4/ Early filtering of applicants with very small chances of being accepted: to avoid relocating applicants who have almost no chance of fulfilling the criteria for receiving international protection, applicants will be filtered in the countries of arrival. Instead of being immediately relocated, their applications would be treated in the member state of first entry. All costs of this extra work will be covered by the EU, to avoid placing undue burdens on frontline member states,

5/ Support from the EU-budget and EU Asylum Agency (EUAA): The European Parliament is of the view that the reception costs for applicants during the Dublin-phase of the procedures should be assumed by the EU-budget in order not to unfairly burden those member states that will have to perform a large number of these procedures. The European Parliament is also of the view that the responsibility for transferring applicants as a result of decisions under the Dublin regulation should be transferred to the EUAA.

6/ Asylum seekers will be able to choose among the four countries which at that given moment have received the fewest asylum seekers based on the distribution key. If the asylum seeker has previously resided or obtained a diploma in a member state, and thus has a link to that particular country, he or she will be transferred to

this place. By taking these preferences into consideration, member states would get applicants with better prospects of integrating.

7/ Protection of minors: MEPs want to strengthen the provisions on children, to ensure that the best interest of the child is always the focal point. Minors should always be interviewed in a child-friendly manner by specially trained staff. Unaccompanied minors must have a guardian appointed at the latest 24 hours after applying for asylum. The guardian must be present if fingerprints are taken and also during the interview. If an unaccompanied minor is transferred from one country to another, the receiving member state must appoint a guardian before the child is moved.

8/ Faster family reunification: to speed up procedures, asylum seekers should be immediately transferred to the country in which they claim to have family. It should then be for this member state to establish whether the claim is correct, and not, as is the case today, the member state where the applicant is present. Should it turn out not to be the case, the asylum seeker will be transferred onwards to another member state selected by the distribution key,

9/ Allocation of groups: applicants for international protection should have the option to register as a group (max. 30 people) upon arrival in Europe. Such a group registration would not imply the right to be transferred to a particular member state, but a right to be transferred together with people you know, whether from your home town or someone you have become attached to while travelling,

10/ incentives to stay within the system: should an asylum seeker attempt to avoid registration, or wrongly claim a link to a particular member state, he or she would be allocated to a random member state according to the distribution key.

11/ Full participation of all member states: all member states should share responsibility for asylum seekers. Member states refusing to accept relocation of applicants to their territory would face limits on their access to EU funds and would not be able to use these funds to return applicants whose asylum claims are rejected.

13/ A three-year transition period should be introduced during which member states which have historically received many asylum seekers will continue to shoulder a greater responsibility and where those with a more limited experience of welcoming asylum seekers would start with a lower share of the responsibility. During these three years, member states will then automatically see their shares move towards the fair share determined by the distribution key based on GDP and population size.

e/ EU Member States –Council

The other counter-part of the European Parliament in the frame of the co-decision process is the Council of the Member States of the Union.

Since the Commission presented its proposal for the reform of CEAS, Member States have been trying to find common agreements, either in the frame of the Council or bilaterally, on the various components of the Common European Asylum system but giving high priority to the Dublin reform[67]. Despite efforts by previous EU presidencies, member states have been unable to find agreement on the issue of imposing mandatory asylum-seeker quotas.

In October 2016 the Council endorsed the Slovak Presidency's three-track approach for examining CEAS reform (examining the Eurodac regulation and on the European Union Agency for Asylum regulation; discussing the Dublin regulation and the Asylum Procedures regulation, Reception Conditions directive and Qualification regulation; technical examination of the regulation establishing a Union Resettlement Framework).

At the December 2016 Council meeting the Maltese Presidency announced CEAS and Dublin regulation reform as a major priority, following up on the implementation of measures which have already been agreed to.

[67]European Parliament, Legislative train schedule, Towards a new policy on migration, March 2018, available at: http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-revision-of-the-dublin-regulation

In June 2017 the Justice and Home Affairs Council meeting continued work on a compromise on the responsibility and solidarity principles' effective application and also examined articles of the Dublin Regulation relating to guardianship and limiting abuse and secondary movements. In October 2017 the Council noted that the Estonian presidency had advanced discussions with a view to reaching a compromise on the effective application of the principles of solidarity and responsibility on the basis of a right balance between responsibility and solidarity and the need to ensure resilience to future crises.

In December 2017 the Council pointed out that the Estonian Presidency had tried to consolidate agreement on the more consensual items in bilateral contacts with delegations and to find more common ground on issues where the compromise had not proved possible. It also added that the Council would continue to seek reaching a consensus during the first half of 2018.

On 25 January 2018 the Bulgarian presidency (January-June 2018) which pledged to achieve as much progress as possible in CEAS reform, including on the Dublin Regulation, organised an informal meeting of home affairs ministers in Sofia. The presidency proposed to work on an expert level with the view of preparing a political consensus (general approach) until June 2018, with the Dublin Regulation being a major priority.

In the meantime, on 15 February 2018 the Hungarian government announced that it would propose alternative amendments to the Dublin Regulation based on a focus on security and a strict expulsion policy, and rejection of any kind of mandatory admittance quota.

The opinions around the reshaping of the Dublin regulation could be grouped in two categories:

- those Member States which are are in favour of mandatory relocation of refugees and agree with the " effective solidarity" term. In this respect ,according to MEP Wikström, up to 23 Member States agree in this direction.
- those Member States, such as the Czech Republic, Hungary, Poland and Slovakia, known as the Visegrad four, who are leading the opposition pack

against any future plans to parcel out asylum seekers on a mandatory basis and are invoking the concept of "flexible solidarity".

According to Czech Republic, EU must first have complete control of its external borders. Hungary and Slovakia have challenged a previous relocation decision taken by qualified majority by the Council and there are on-going infringement proceedings also against the Czech Republic. The Member States opposing to mandatory quotas propose the concept of "flexible solidarity"[68] instead of mandatory and automatic relocation mechanism, with the argument that "Countries with a strong demand for labour, for instance, can integrate refugees into the labour market more easily than countries with high unemployment. Countries with low numbers of asylum applications can assign specialized staff to assist member states on the external borders by providing support with border security, registration of asylum seekers, and processing asylum claims. Member states with extensive experience in the social integration of immigrants will face less difficulty taking in vulnerable refugees from overburdened non-member states—not least from Turkey, as expressly provided for in the agreement with the EU." In the frame of this proposal[69] the Member 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.

[68] Mercator Dialogue on Asylum and Migration, EU Asylum Policy: Overcoming the Quota Impasse, 17.01.2018, available at: http://www.medam-migration.eu/en/archive/publications/eu-asylum-policy-overcoming-the-quota-impasse

[69] *Jolanta Szymanska*, Prospects for Compromise on Reform of the Common European Asylum System, The Polish Institute of International Affairs, 2 February 2017, available at: https://www.pism.pl/files/?id_plik=22882

Member states[70] have still today not agreed on a common position, but hope to be able to do so during the first half of 2018, after which the inter-institutional talks to reach a final compromise could begin. It is noted though that on 25 January 2018 German Interior Minister Thomas de Maizière warned it would be "difficult" to reach a June deal on quotas and suggested concentrating first on "easier" asylum reforms linked to family reunification and other issues.

Austria, whose government is composed of far-right anti-immigrant ministers, will be next line to take the EU lead[71] in July 2018.

V. CONCLUSION AND POSSIBLE WAY FORWARD

As a conclusion, we would like to highlight the following points:

1/ The main issue of controversy among Member States concerning the CEAS reform seems to be the proposed "automatism" of distributing asylum seekers to Member States, without them being able to control the asylum seekers quota after the system is established.

Asylum as the protection that "a State grants on its territory or in some other place under the control of certain of its organs to a person who comes to seek it"[72] *is a form of expression of State sovereignty* as well as *an individual right* guaranteed by international law. In this respect, the controversy among EU Member States on the establishment or not of an automatic mechanism, which would distribute asylum seekers in different Member States, reveals a real sovereignty issue.

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[70] *Cecilia Malstrom* Asylum reform: EU leaders must not drag their feet on new Dublin rules, December 2017, available at: https://www.ceciliawikstrom.eu/en/asylum-reform-eu-leaders-must-not-drag-feet-new-dublin-rules

[71] Council Presidency for the period July-December 2018 : Austria, available at: http://www.consilium.europa.eu/en/council-eu/presidency-council-eu

[72] María-Teresa Gil-Bazo; Asylum as a General Principle of International Law, *International Journal of Refugee Law*, Volume 27, Issue 1, 1 March 2015, Pages 3–28, https://doi.org/10.1093/ijrl/eeu062

Are Member States ready to place solidarity –with their peer EU Member States- above their sovereign right to chose when, how and how many asylum seekers they will accept?

The follow up of the European policies and diplomatic evolutions of the past decades show that evolutions in the field of migration, a "sensitive" domain in junction with human individual rights, security, territorial control and diplomatic relations, have proven to advance in a quite slow pace. In this respect, let's remember that, as presented above, the second phase of harmonisation of CEAS was launched in 2008 and was finalised in 2013. That means it took five years to reach a global agreement on all aspects of the common European asylum system, even at less tumultuous times.

2/ The corrective mechanism proposed by the Commission reveals the underlining principle that the "territory" taken into account by the Commission is the European territory and the "borders" are not those of Member States but the External Borders. In this respect, seeing the European Union as whole and not as separate states, it makes sense to envisage an equitable burden sharing among Member States in terms of international protection granting. This is also reflected in article 67[73] of the Treaty on the Functioning of the European Union[74], as it stipulates that "*the Union shall constitute an area of freedom, security and justice with respect for fundamental rights…it shall frame a common policy on asylum, immigration and*

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[73] « *Art. 67 TFEU*

1. The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.

2. It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals."

Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012E%2FTXT

[74] *Jean-Claude Zarka*, Traités Européens, Gualino Lextenso Editions, 2014-2015 (in french).

external border control, based on solidarity between Member States, which is fair towards third-country nationals".

3/ What seems to weigh more is that institutional decisions concerning this *area of freedom, security and justice* are taken according to the ordinary legislative procedure (Proposal by the Commission, Qualified Majority in the Council and co-decision with the European Parliament)[75], which means no absolute consensus is required legally, although it could be wishful politically.

4/ Because granting international protection has many consequences in further granting a series of related social rights (health, education, access to work) 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. In this respect, we would agree with the argument that the difficulty of the current situation lies in the fact that a successful asylum policy requires "more Europe" and not less[76].

5/ Furthermore, the European Parliament in its report on the Dublin Reform went further than the Commission: they proposed a permanent – and not in time of pressure- allocation mechanism of asylum seekers among Member States, considering this position as an expression of (permanent) solidarity.

In view of the above, we could express the thoughts that:

- The negotiations among Member States, the Commission and the Parliament would last for quite some time more. Since the launch of the Commission proposal (april 2016) two years have elapsed. We would expect the process to take many more months to reach a common position.
- A kind of corrective relocation mechanism of asylum seekers among Member States will probably be established.

[75] *P.K. Ioakeimidis*, The Lisbon Treaty: Presentation, Analysis, Assessment, Themelio Editions, 2010 2nd edition (in greek), pp. 119-121, and *Jean-Claude Zarka*, L'Essentiel des Institutions de l'Union Européenne, Gualino Lextenso Editions, 2014-2015 (in french)

[76] *Ulrich Becker*, Max Planck Institute for Social Law and Social Policy, "European solidarity with refugees?" available at: https://www.mpg.de/10581936/european-solidarity-with-refugees.pdf

- It seems quite possible that the Council will vote with Qualified Majority, thus obliging the revolting minority to abide with the EU's fundamental values. Similar vote with Qualified Majority took place in the Council concerning the latest decision on relocation of asylum seekers within the EU[77].
- Despite controversies and practical difficulties to reach common agreements among Member States on the CEAS reform, the European Union, as an entity, plays its role on the international scene assuming its global responsibility to provide asylum for an important share of the world's refugees: in 2016 alone, the EU resettled or granted asylum to over 720,000 refugees, three times as many as Australia, Canada and the United States combined[78]. In 2017, the EU granted protection status to 538,000 asylum seekers and 24,000 refugees were resettled in the region[79].

[77] Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (Date of end of validity: 26/09/2017), available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A320

[78] COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on the Delivery of the European Agenda on Migration, COM/2017/0558 final, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017DC0558

[79] EUROSTAT, Release News, 67/2018 - 19 April 2018 Asylum decisions in the EU, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/3-19042018-AP-EN.pdf

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