

Practical Conditions And Modalities For Taking Over Asylum Seekers At European Union Level In The Context Of Migration Crises

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Abstract

The migration crisis of 2015 brought this topic and related challenges to the top of the political agenda at EU and Member State level. At that time, a series of measures were taken by implementing a number of immediate and long-term initiatives aimed at stabilizing the situation. Among these measures two relocation Decisions were launched, which established the obligation to relocate a number of 160,000 persons in need of international protection by the Member States, with a deadline of September 2017. Currently, although the figures are not higher to the values at the beginning of the crisis, still some EU Member States on migration routes are frequently confronted with events that require the rescue of people trying to cross the sea as a result of search and rescue operations. These situations subsequently result in requests from the European Commission to the other Member States to take over a number of persons in need of international protection. In this context, in order to ensure the application of the principles of solidarity and responsibility and to support the states affected by large flows of migrants through an easier mechanism and given the fact that, at European level, there is currently no legal basis of direct applicability for relocation of persons landed as a result of search and rescue operations, the European Commission proposes and launches a series of transfer mechanisms to the EU Member States to be analyzed in this article.

Keywords: *public law, asylum, refugee, admission, relocation, resettlement*

I. Introduction

Safe access to protection for those who need it eliminates the motivation to embark on dangerous journeys to reach Europe, while allowing the EU to show solidarity with third countries hosting refugees.

Legal migration can benefit for our society and economy. Although Member States retain the right to determine the number of third-country nationals they admit to their territory in search of employment, the EU's common migration policy must reflect the integration of the EU economy and the interdependence of

Member States' force markets. For this reason, EU policies must promote a level playing field between national labor markets when they are the destination of migrants. EU policies should also help Member States make their EU membership an asset in attracting talent.

II. Intra EU relocation

In 2015 and 2016, the European Union (EU) faced an unprecedented influx of refugees and migrants. More than a million people have arrived in the EU, most fleeing war and terror in Syria and other countries. The EU has proposed a number of measures to deal with the crisis. These include trying to address the root causes of the crisis, as well as increasing aid to people in need of humanitarian assistance, both inside and outside the EU.

Steps have been taken to relocate asylum seekers who were already in Europe, resettle people in difficulty in neighboring countries and return those who did not meet the conditions for asylum. Thus, the Council adopted a series of decisions in response to the crisis, which led the Union institutions to recognize immediately that Italy and Greece were facing exceptional migratory flows and to lay the foundations for concrete measures of solidarity with the Member States in the EU. first line.

At its meeting on 23 April 2015 [1], the European Council decided, *inter alia*, to strengthen solidarity and responsibility, committing in particular, to increasing emergency aid to Greece and Italy, and examining options for organizing emergency transfers between Member States on a voluntary basis and deploy teams of the European Asylum Support Office (EASO) in the frontline Member States (Italy and Greece) to jointly process applications for international protection, including registration and sampling fingerprints. Moreover, the same Council decided that three key dimensions needed to move forward in parallel: transfer / relocation, return / readmission / reintegration and cooperation with countries of origin and transit.

Following the recent tragedies in the Mediterranean Sea, there has been a political consensus[2] in both the European Parliament and the European Council to mobilize all available efforts and instruments to take immediate action to prevent other people from they lose their lives at sea. Thus, the Commission has set out the concrete and immediate actions it will take, including the proposal to activate for the first time the emergency mechanism provided for in Article 78 (3) TFEU in order to provide assistance to Member States facing an unforeseen migration flow. At the end of May, the Commission proposed a temporary transfer mechanism for people who clearly need international protection within the EU[3].

In the context of the major changes and challenges that have arisen at European level in the field of asylum and migration in recent years, the Member

States of the European Union have had to identify ways and solutions both to manage new situations and to prevent situations which would make it impossible for one or more Member States to conduct the whole asylum process correctly and efficiently. Thus, the need to implement the principle of solidarity between the member states of the European Union as stipulated in the T.F.U.E. was reiterated once again, this principle can be considered as a guarantor of the functionality of the great family of the European Union.

One of the ways identified at the level of the European institutions, considered to be usable in the event of situations that would put pressure on the asylum system in one or more Member States and which would in fact represent the application of the principle of solidarity, is the use of the automatic allocation mechanism of asylum applications under the Dublin procedure (recast)[4]. In fact, this mechanism automatically allocates to each Member State a number of applications for international protection, according to a distribution key (taking into account the criteria for the population of the Member State 50% and the national GDP of the Member State 50. %), out of a set number of applications for international protection out of the total submitted at Member State level (for example, the Commission indicated a number of 200,000 applications for international protection).

In this regard, since 2016, the institutions of the European Union, as well as the Member States that held the presidency of the EU, put forward a number of proposals to amend the current Dublin Regulation[5], which each time included proposals for the use of the automatic allocation mechanism. The negotiation process is currently ongoing with a view to formulating a final form of the Dublin Regulation.

III. Resettlement and community or private sponsorship system

Resettlement is the process of selecting and transferring refugees from the first country of asylum to another country (the country of resettlement) in order to provide the necessary protection, being an instrument of international refugee protection.

Resettlement is one of the lasting solutions to the refugee problem, adopted by the international community, the other two being voluntary repatriation and local integration, culminating in naturalization. From the perspective of the foreign policy dimension, the resettlement of refugees is an instrument for sharing responsibility between states on refugee protection, as well as one for international cooperation in the field of asylum.

Resettlement process is a proven means of providing protection for the most vulnerable refugees. There has already been a significant increase in the number of relocations in the EU in recent years, and this work should be continued on a larger scale. The European Commission recommends that the ad hoc relocation

mechanism, which offers around 30,000 seats and is already implemented by the Member States, be formalized and cover a two-year period, namely 2020-2021¹.

In order to ensure the continuity of the EU's resettlement efforts after 2021 and to confirm its position as a world leader in resettlement, the Commission will invite Member States to make commitments for 2022. They will be funded from the EU budget and will be it includes complementary ways of accessing protection, such as humanitarian admission systems and measures such as study or work programs. The EU will also support Member States wishing to set up Community or private sponsorship programs through funding, capacity building and knowledge sharing, in cooperation with civil society, with a view to creating a European model of Community sponsorship, which, in the long run, can lead to better integration results.

IV. Development of other legal pathways for admission

The EU is working with partner countries on legal pathways to Europe through migration partnerships, paving the way for cooperation on programs to ensure that skills are linked to labor market needs through legal migration. At the same time, the development of legal remedies should help reduce illegal migration, which often leads to undeclared work and labor exploitation in the EU. The Commission will strengthen support for Member States to extend legal migration, together with partner countries, as an incentive and in line with EU skills needs and the needs of the EU labor market, while fully respecting Member States' competences.

EU labor mobility programs have been successful. Pilot projects on legal migration² have shown that by providing specific support, the EU can help Member States implement programs that meet the needs of employers. The EU also allowed third-country nationals to participate in the Erasmus + program and training programs and provided grants to mobilize the diaspora. However, the scope and ambition of existing programs remain limited.

A strengthened and more comprehensive approach would ensure cooperation with partner countries and help encourage mutually beneficial international mobility³. The Commission will therefore launch partnerships to

¹ Commission Recommendation on legal pathways to protection in the EU: promoting relocation, humanitarian admission and other complementary pathways, C (2020) 6467.

² Eight Member States are currently involved in six such projects with Egypt, Morocco, Tunisia, Nigeria and Senegal. Key topics include the mobility of ICT experts, opportunities to pursue studies and internships in Europe, and strengthening the capacity of third countries to manage migration and support reintegration.

³ This approach would be in line with the Global Skills Partnerships, which are bilateral agreements whereby a destination country participates directly in the creation of human capital among potential migrants in the country of origin, before migration.

attract talent, in the form of a strengthened commitment with key partners to support legal migration and mobility. These partnerships should be launched first in the EU's neighborhood, in the Western Balkans and in Africa, and later extended to other regions. These partnerships will provide a comprehensive EU policy framework, as well as financial support for cooperation with third countries, to ensure a better link between skills and labor market needs. At the same time, these partnerships will have to be part of the EU's toolkit designed to ensure the strategic involvement of partner countries in the field of migration. Strong involvement of Member States will be essential, as will the involvement of the private sector and the social partners and the assumption of responsibility by partner countries. The Commission will hold a high-level conference, attended by Member States and key EU stakeholders, at which talent partnerships will be launched.

Talent partnerships should be inclusive, enabling close cooperation to be established between the institutions involved (such as ministries of labor and education, employers and social partners, education and training providers and diaspora associations).

The Commission will encourage this cooperation through specific information activities and create a network of the companies involved.

Talent partnerships will provide a unique framework for mobilizing EU and Member States' instruments. EU funding flows in the fields of external relations, home affairs, research and education (Erasmus +) could turn in contribute. The partnerships would combine direct support for job or training mobility programs with capacity building in areas such as the labor market or skills information, education and training, the integration of migrants returning to their country of origin and the mobilization of the diaspora. Giving more attention to education, this would help support and strengthen investment in local skills.

In the comprehensive approach to migration and mobility, visa measures can be an incentive in the dialogue with third countries. The full implementation of the recently revised Visa Code[6] and further efforts to facilitate the issuance of visas to third countries will strengthen coherence and should encourage short-term mobility in good faith, including student exchanges. Short-term mobility could complement other legal pathways to improve upstream cooperation with third countries (for example, in terms of stopping illegal migration flows).

V. Conclusions and proposals

The European Commission, in close cooperation with the United Nations High Commissioner for Refugees and the Member States, should immediately work to develop and deepen appropriate, comprehensive and balanced dialogues and partnerships on migration with countries of origin and transit, which has to be complemented by regional and global cooperation. Support for

people in difficulty and their host communities in first asylum countries should also be extended.

Support for improving the economic outlook and addressing the root causes of irregular migration will need to be combined with increasing emphasis on migration in the programming of new instruments in the next multiannual financial framework provided by the European Commission.

In the same line, the full and effective implementation of existing EU readmission agreements and mechanisms will need to be ensured and options for concluding new such agreements and mechanisms will have to be examined. The Visa Code will need to be used to support and improve cooperation to facilitate return and readmission and will be based on the new asylum and migration management regulations when they enter into force. The Commission will need to encourage the use of the Recommendation on legal pathways to protection in the EU, including relocation, and establish partnerships with key EU partner countries to attract talent, in order to facilitate legal migration and mobility.

Due to the large number of migrants who lose their lives on the boats of traffickers, Member States should provide practical and legislative measures to enable them to seek asylum through extra-territorial procedures, as an exceptional measure applied for humanitarian reasons. At the same time, according to the principles of international law, persons must apply for international protection in the first safe country in which they have arrived, whose authorities are obliged to receive and deal with such applications properly. I believe that the Member States must comply with their international obligations and coordinate their efforts to protect human lives at sea. Member States must establish clearly defined geographical responsibilities for search and rescue operations at sea, provide assistance to all commercial or private vessels conducting search and rescue operations and allow their access to their own ports. In the same line, I believe that urgent measures are needed to ensure the safety and protection of migrants and refugees, and I cite the UNHCR camps in Turkey, Jordan and Libya as examples.

Calls could be made at the international level for the introduction in asylum national legislation of provisions providing for the possibility of seeking asylum at foreign diplomatic missions, applying accelerated extraterritorial procedures in well-defined cases, providing shelter, food and medical care for asylum seekers, and comprehensive information on asylum procedures.

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