

“We must never forget, however, that migrants, rather than simply being a statistic, are first of all persons who have faces, names and individual stories. Europe is the homeland of human rights, and whoever sets foot on European soil ought to sense this, and thus become more aware of the duty to respect and defend those rights.”

Pope Francis on Lesbos, April 2016

Non-Paper (Aide-mémoire)

Proposal for a practicable Common European Asylum System

I. Preliminary remarks

Collaboration within the European Union has facilitated the development of common standards for the Common European Asylum System (CEAS) during previous phases of harmonisation. Nevertheless, the current system’s weaknesses are becoming apparent, as they meet neither the needs of refugees nor the legitimate interests of the Member States sufficiently. This is why a fundamental advancement of the system is required.

This Non-paper (aide-mémoire) outlines an alternative proposal for a Common European Asylum System. The goal is to better meet the specific needs of refugees, while also considering practical requirements, in particular with respect to European front-line borders. The aim is to present a practicable solution for a common, functioning system.

A document of this kind naturally cannot cover all the details and must therefore be limited to outlining fundamental aspects.

II. The future system

It is undisputed that the fundamental goal of a Common European Asylum System is for the entire European Union to offer every third-country national in need of international protection an adequate status, and to guarantee the adherence to the principle of non-refoulement. This target is defined by primary law in Article 78 (1) TFEU.

The possibilities of a quota-based reception of refugees through EU humanitarian admission programmes and resettlements of refugees with special needs are broadened. Immediate access to protection is guaranteed both along the EU frontline borders and within the Union.

1. A European Union Agency for Asylum

The fact that there are 27 different national administrative and judicial systems makes a standardised definition of ‘refugee’ a great challenge, a difficulty that is also reflected by the large differences between individual Member States’ protection rates.¹ This is why the European Union Agency for Asylum in future should be in charge of, and implementing, the asylum procedure. The agency would have to operate a branch office in each Member State. Decisions on asylum applications and the structure of the process would have to be based on EU regulations that are directly applicable in the Member States.

2. Redistribution and asylum procedure

Refugees entering the EU spontaneously without an entry permit seeking protection undergo identity and security checks in open and humane registration centres operated on behalf of the EU Agency for Asylum immediately after crossing the border. Furthermore, the applicants undergo a medical examination and, if necessary, receive first medical and psychological help. As the transparency of the procedure and comprehension of the processes is vital for applicants’ compliance, applicants receive independent (legal) advice, explaining the entire system and the process. An applicant should stay at the registration centre for as short as possible, just as long as it takes for registration and the decision of which Member State the (European) asylum procedure should be carried out in. In all EU Member States the asylum procedure is conducted by a branch office of the EU Agency for Asylum in the respective Member State. Each applicant is assigned to a Member State in which his/her asylum procedure will be managed. When determining the Member State, justified concerns – such as children’s best interest – must be taken into consideration.

For persons seized within the EU and for persons who lodge an application for international protection from within the EU, generally the same mechanism for placement should apply.

To foster acceptance for the placement decision, the person seeking refuge is actively involved in the decision for the placement. This means that the person is asked about connections with any of the Member States. If it turns out that the person in question has connections with a specific Member State, such as

- family members (adult siblings are considered family, and in the case of unaccompanied minors and young adults, aunts or uncles are considered family),
- previous legal stays beyond short-term stays,
- skills in a Member State’s national language or professional connections,
- special cultural or social relationships,

the asylum procedure – if the person agrees – is managed in that Member State, and the person receives permission, required documents and help to make a controlled

¹ For instance, Eurostat reports that in 2021, not a single Afghan applicant was given any form of protection in Denmark, Cyprus or Malta, while about 12,180 people from Afghanistan received refugee and humanitarian protection status in France (see https://ec.europa.eu/eurostat/databrowser/view/MIGR_ASYDCFSTA_cus-tom_2912406/default/table?lang=en – Date of Access: 14 06 2022).

journey to the respective Member State. The same applies in the case of refugees whose profession is categorised as a shortage occupation in the Member State, as well as their families.

Persons who cannot be shown to have such a connection with a particular Member State and persons who do not agree to the suggested Member State, may choose between three receiving states, one of which may be the current host Member State. The three potential receiving states are determined using a distribution key agreed by the Member States and established by European law. Regarding the specific structure of a future distribution key, various models have already been drafted and contributed to the discussion on a reform of the Common European Asylum System. This discussion is not the topic of this document and is not discussed in detail.

Through its office, the EU Agency provides adequate and humane housing for the duration of the asylum procedure in the Member State.

The agency's design and operating principles ensure the highest possible public transparency and close monitoring by the European Commission and the European Parliament. Refugees have the right to file a complaint to the asylum agency against any incorrect data recorded during registration or distribution. If the asylum application is rejected by the agency, an amendment of EU primary legislation provides the option of legal recourse with the European Court of Justice – which also operates local divisions in the Member States.

If the asylum procedure leads to protection status being granted, or if the principle of non-refoulement according to Art. 4 CFR EU and Art. 3 ECHR applies, the person will receive financial support to help with integration. Such measures, which are implemented by different players such as independent organisations or local authorities, should be financed from a dedicated EU budget. Member States should also use such endowments to finance measures aimed at strengthening social cohesion within the receiving societies. Permanent relocation to another Member State is possible once a person is able to sustain themselves, for instance, due to a job offer.

If the asylum application has been finally rejected and a deportation ban (the principle of “non-refoulement”) within the meaning of Article 4 CFR EU and Article 3 ECHR has not been found to apply, the affected person is granted comprehensive independent (legal) advice about the possibilities of accepted repatriation and the available support services. Any necessary removals will be organised and supervised by the EU. If removal is not possible within a certain time period, after which the integration of the person under duty to leave has already progressed to such an extent that a forced return is unreasonable, the person in question is granted a residence permit and help with further integration by the asylum agency, amongst others.

III. How to get there

The goal of a Common European Asylum System as described above cannot be achieved over night. As an intermediate step, we need to develop a system that pragmatically considers the actual situation within the European Union, practicably builds on existing structures and builds on past positive experience with national asylum systems.

Implementation by Member States must be based on the principle of voluntary involvement, backed by additional incentives.

1. The situation

Member States on the EU frontline border currently find themselves in the situation that on the one hand they must prevent illegal entry into the EU and on the other hand they have to grant entry to those seeking protection. Some of these Member States have largely inadequate asylum and integration systems. These states are also usually the first point of entry into the EU, which makes them responsible for processing the asylum application, and, if the application is rejected, are responsible for the forced return to the person's country of origin. This means that the Member States on the frontline border carry most of the burden of responsibility on their own. In actual fact, there is no systematic division of responsibility. As a consequence, Member States try to shun the responsibility for asylum procedures according to EU standards and for ensuring international protection by encouraging transmigration. This is achieved by providing poor reception conditions or through illegal pushbacks on the borders which rob refugees of the opportunity to even lodge a request for protection through an asylum procedure in the EU.

What's more, when it comes to uncontrolled transmigration, national asylum authorities are spending a large part of their resources on determining which Member State is responsible under the Dublin III Regulation and organising transfers.

2. Sharing responsibility

Responsibility-sharing for the time being could make a fresh start by:

Granting an appropriate status to every third-country national in need of international protection based on Article 78 (1) TFEU. This requires the procedures for examining a claim for international protection to take place within the EU.

To this end, all Member States of the European Union inform the European Commission of their refugee intake capacity for the subsequent year. The calculation takes into account the number of refugees received in previous years and a forecast of future capacities. The Member States thus determine their own reception capacity in a binding manner. The solidarity platform created by the European Commission for refugees from Ukraine could serve as a role model. The solidarity platform coordinates pledges – including available reception capacities – and identified needs.²

The commitment of each Member State includes information about the number of refugees they are ready and prepared to receive, reflecting their current *de facto* willingness to receive refugees. That being said, Member States should generally not have to take in more refugees than they are willing to, or see themselves able to, receive. In this way overburdening of national asylum systems is impossible.

However, if the commitment of Member States is significantly lower than their usual annual commitment, they must provide a reason for the deviation. If the reduction in capacity is due to their asylum system or their reception centres not functioning

² See Communication from the European Commission: Welcoming those fleeing war in Ukraine: Readyng Europe to meet the needs COM(2022) 131 final, 23.3.2022, p. 2.

adequately, they will receive support for building more capacity. If the reduction is based on societal rejection, they will receive support for projects that aim to strengthen social cohesion.³

Member States that pledge a higher reception capacity than in the previous year do not have to give a reason. One reason may be that a number of states want to set a positive example for other states to follow, for instance. This would ensure that the ratio within each Member State could organically develop towards higher reception capacities.

If the number of people applying for international protection surpasses the capacity offered by EU Member States, a two-step procedure will take effect: In a first step, Member States may offer a higher capacity than initially pledged on a voluntary basis. If this is not enough to receive all refugees, in a second step the remaining number of refugees are distributed among Member States pro rata, based on the reception capacity originally pledged. Member States could use the capacities freed by waiving the Dublin procedure to process asylum applications.

A situation like in 2015/2016, when some individual Member States took in vast numbers of refugees, would be avoided, as reception would not be managed at a national, but a European level. The distribution would always involve all Member States, based on the capacities they pledged. Should the number of refugees received surge due to an increase in the flow of refugees on the main migration routes, an appropriate crisis mechanism must take effect, which shall not be further discussed here.

A funding plan within the EU budget is earmarked to support Member States with a high reception capacity and to create incentives for those Member States that pledged a low reception capacity. All Member States pay into the fund according to their GDP and receive payments according to their reception capacity. This helps balance their costs and finance measures that strengthen social cohesion within the receiving societies. Member States that reported a low reception capacity should receive additional funding to expand the capacity of their asylum system, depending on their effectiveness and need for support. The improved effectiveness of that Member State's asylum system and subsequent increase in reception capacity would have to be reflected in the Member State's yearly pledge. In addition, Member States should support each other by allowing refugees granted protection to move freely between all Member States, for instance, to take up work. The possibilities⁴ made available by the Long-term Residents Directive⁵ are not affected by this.

The voluntary involvement that forms the basis of this proposal would add a new dimension to the political discourse, and could contribute to solving the current stalemate generated by the conflicting interests of Member States leading to a common approach. It would allow Member States to receive refugees if they were willing to do so without this hindering their ability to respond to future domestic developments. Any states that are – or feel – overburdened would experience palpable relief, and those that want to – or are able to – receive just a small number of refugees at a particular

³ See current projects sponsored by the European Social Fund Plus as an example.

⁴ especially long-term residence in another Member State (cf. Article 14 et seq. of the directive).

⁵ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, p. 44).

time could take that decision independently and receive the support they feel that they need.

3. The redistribution

As we move towards a viable system for the reception of refugees in all EU Member States, refugees who enter the EU without permission should immediately be taken to open and humanely designed registration centres during a proposed transitional phase. To overcome the current differences in procedures and accommodation standards, the EU administration is in charge of these centres, which are not necessarily located near the borders. At these centres, identity, security and health checks are performed and medical or psychological care is provided where necessary. This will allow taking into account any signs of exceptional vulnerability. As the transparency of the procedure determining the responsible Member State, as well as the comprehension of the individual steps are vital for applicants' compliance, applicants receive independent (legal) advice, explaining the system and the process. A pool of consultants is set up for this purpose. In order to offer (legal) advice to all asylum seekers at the registration centres, a combination of on-site and online formats are offered. An applicant should stay at the registration centre for a short period of time only, just as long as it takes for registration and the decision of which Member State is responsible for the applicant's asylum procedure.

In general, the distribution mechanism should also be applied when refugees lodge an application for international protection from within the EU or when they are seized within the EU.

As we move towards a viable reception system, it is important that the person seeking for asylum is actively involved in the decision on which Member State the asylum procedure is carried out in, as this makes it more likely that the person will accept the distribution decision. This includes asking the person about connections with particular Member States based on the above criteria (family ties, previous legal stays, language skills, professional ties, special cultural and social connections). If such connections are found to exist, the concerned Member State – as described in II.2. – is put in charge. The same applies in the case of refugees whose profession is categorised as a shortage occupation in the Member State, as well as their families. The asylum application is forwarded to the responsible authority in the Member State, where the asylum application will be processed.

Persons who cannot be shown to have such a connection with a particular Member State and persons who do not agree to the suggested placement may choose between three receiving states, which are identified by the EU Agency for Asylum based on existing capacities. One of these three receiving states may be the current host Member State.

If a Member State's pledged capacity for the reception of refugees is exhausted, the only type of connection which will be taken into consideration will be family ties. Even when the pledged capacity has been reached, a Member State is obligated to accept refugees that have family ties in that Member State. For all other refugees, three receiving states are proposed, either according to current capacity or by applying the procedure for the case that the reception capacity has been exhausted.

The application for protection is examined by national authorities and courts of the respective receiving Member State.

At the same time, the legal basis (in terms of substantive and procedural law) of the decisions on the sought protection as well as the standards for the reception conditions are standardised more intensely across the European Union.

In the mid- to long-term, the transition phase should lead to the above described common asylum system.

Contact:

Kerstin Düsch-Wehr (duesch@kath-buero.de), Commissariat of the German Bishops - Catholic Office in Berlin

Stefan Keßler (stefan.kessler@jrs.net), Jesuit Refugee Service Germany

Martin Beißwenger (Martin.Beisswenger@caritas.de), German Caritas Association