

BULLETIN

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Obligatory Solidarity: Does the EU Need a Formula for Redistributing Asylum-seekers Internally?

Roderick Parkes and Natascha Zaun

In the wake of recent EU Council conclusions on “practical solidarity” between EU states, and with a refugee crisis brewing in Syria, debate has reignited about the burden on certain Member States and the need for a system to redistribute asylum-seekers throughout the EU. This idea has been greeted with scepticism by governments since it contradicts the logic driving current efforts towards the EU-wide harmonisation of asylum law. In fact, precisely because this idea goes against misguided efforts at harmonisation it should be recommended.

The Asylum Impasse. Fifteen years ago, EU states began moves to create a “level playing field” in asylum policy. They wanted to end the situation whereby members with high standards would attract disproportionate numbers of asylum-seekers. They therefore agreed to gradually harmonise their standards, with the aim of creating robust common rules by the end of 2012. The first step was completed in 2005 with the adoption of minimum standards for receiving asylum-seekers (directive 2003/9/EC), processing their claims (2005/85/EC) and qualifying them as refugees (2004/83/EC), as well as measures ascertaining where an asylum-seeker had entered the EU (Eurodac regulation) and permitting him or her to be sent back to that Member State (Dublin II regulation).

The implementation of this first wave of measures has, however, proved difficult. Member States have found that the transposition of their EU obligations would necessitate the reform of core national policies. This is the EU’s first real attempt to harmonise not only national administrative law but also sensitive aspects of social services such as access to healthcare and education. The fact that the European Commission has been reticent about bringing cases against Member States for not transposing these asylum rules belies the chaos in the system. Rulings by the European Court of Human Rights have highlighted EU-wide failures. The recent case *MSS vs. Belgium and Greece* found, for instance, that Athens had deported asylum-seekers to third countries where they might be tortured.

Still struggling with the implementation of the first wave of standards, Member States are unenthusiastic about turning them into more robust rules. It is a mark of the absence of a clear sense of purpose that coalitions in the Council today form ad hoc and around single, often trifling, issues. Home Affairs Commissioner Cecilia Malmstrom has made things worse by trying to cherry-pick the highest national standards and turn these into the EU norm. Although negotiations on the second wave are nearing an end, not least thanks to the intervention of the Polish presidency in 2011 in the creation of a contact group between officials and MEPs, the results are modest. The UK has now taken the unprecedented step of signalling that it will opt out of the revised reception, qualification and procedures directives, intending to remain part of only the Dublin and Eurodac regulations—the very measures that compensate for the failures of the “level playing field” approach.

The Emerging Debate About an Asylum Formula. Anticipating that certain Member States will be disproportionately affected by the Syrian refugee crisis, MEPs and MPs are discussing the possibility of creating a formula for redistributing asylum-seekers amongst the Member States. The point of reference is the so called Koenigsteiner key, developed in order to allocate asylum-seekers to Germany’s *Bundesländer* according to GDP and population size. The suggestion of creating a similar formula for the EU has, however, been met with scepticism from most governments. They are unreceptive to yet another EU-inspired proposal that may bring greater

centralisation as well as the need for potentially costly transfers. The scepticism is understandable, but such a formula actually boasts a number of potential advantages.

First, the formula could reduce and rationalise the scope of EU harmonisation. The EU's current effort to standardise the full range of national asylum policies, and thereby to create a "level playing field", seeks to achieve exactly the same end as the proposed formula: to ensure that each Member State receives its fair share of asylum-seekers. The formula is a far less exhausting means of achieving this. That is not to say it would do away with the need for domestic reform—transferring an asylum-seeker to a Member State where he or she faces far worse treatment would be manifestly unfair. Nevertheless, a shift to a system of transfers would mean the principle of standardisation could be replaced by one of "equivalence" that recognised local specificities.

Second, not least thanks to its simplicity, an asylum formula modelled on the Koenigsteiner key would be easily explained to the public. Of course, member governments have always resisted such proposals because they believe it impossible to sell the transfer idea. Yet, under the Dublin II system, the EU is already involved in transfers, and unlike the Dublin II system, this setup should be more properly conceived of as an insurance policy. Member States risk paying a small "premium" during calm times, taking in slightly more asylum-seekers than they would normally, but this would pay off if they were badly affected by a sudden influx of asylum-seekers. Under the Koenigsteiner system, they could be sure that their partners would help them—something that is most certainly not the case under current EU asylum law.

Third, the formula would help governments increase their control of asylum. For one thing, a system of redistribution would cushion the effect of regional fluxes within the EU and allow governments to better gauge how many asylum-seekers they would need to reckon with annually. That would allay the situation today whereby some Member State reception centres sit empty, whilst others are in a permanent state of emergency. For another, the practice of redistributing asylum-seekers around the EU would reduce the incidence of "asylum-shopping", whereby individuals seek out the most amenable domestic conditions to make their application. The most important national "pull factors"—a state's geographical position, language, economic attractiveness or colonial history—will persist despite all efforts at harmonisation; transferring asylum-seekers to other countries would render these factors obsolete.

Implications for Poland. Those states that stand to benefit most from such a system of redistribution tend to be the countries with smaller populations—Malta, Cyprus, Sweden, Luxembourg, Belgium, Greece, Austria. Of the large and medium-sized EU states, only the Netherlands and France would likely gain. Germany is a borderline case. Perhaps surprisingly, given that Spain and Italy make the most noise about bearing the burden of the EU's asylum system, the two countries (along with the other southerner, Portugal) consistently take in fewer asylum-seekers than is proportionate under the formula. Poland would probably lose out if an EU-wide system of redistribution according to the Koenigsteiner formula were already in place. For example, Poland would have had to take in about 6,600 extra asylum-seekers in 2011—a sizeable increase given that it took in a total of 6,900 applicants that year.

But the case is not clear-cut. In 2009, Poland took in just 890 fewer asylum-seekers than it would have had to under the Koenigsteiner key, and it would not take much to make Poland a structural beneficiary of such a system as Bulgaria and Romania are set to join the Schengen area, creating a possible migration channel to Poland, the Dublin II system for returning asylum-seekers to their "entry states" is in disarray, and reinforced border controls on the Greek–Turkish border could potentially displace migration flows onto Poland's eastern border. Even in the absence of an actual rise in asylum applicants to Poland, therefore, it might be sensible to consider the "insurance" aspects of such a system. Moreover, the debate about the EU's Multi-annual Financial Framework 2014–2020 is currently underway, and the EU Commission has proposed that the vast majority of the Asylum Fund should go to national programmes, meaning that there is a chance of matching financial redistribution to the transfer of asylum-seekers.