

DISCUSSION  
BRIEF

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## ASYLUM

Responsibility sharing  
in EU asylum policy



**ReSOMA Discussion Briefs** aim to address key topics of the European migration and integration debate in a timely matter. They bring together the expertise of stakeholder organisations and academic research institutes in order to identify policy trends, along with unmet needs that merit higher priority. Representing the first phase of the annual ReSOMA dialogue cycle, nine Discussion Briefs were produced, covering the following topics:

- hardship of family reunion for beneficiaries of international protection
- responsibility sharing in EU asylum policy
- the role and limits of the Safe third country concept in EU Asylum policy
- the crackdown on NGOs assisting refugees and other migrants
- migration-related conditionality in EU external funding
- EU return policy
- social inclusion of undocumented migrants
- sustaining mainstreaming of immigrant integration
- cities as providers of services to migrant populations

Under these nine topics, ReSOMA Discussion Briefs capture the main issues and controversies in the debate as well as the potential impacts of the policies adopted. They have been written under the supervision of Sergio Carrera (CEPS/EUI) and Thomas Huddleston (MPG). Based on the Discussion Briefs, other ReSOMA briefs will highlight the most effective policy responses (phase 2), challenge perceived policy dilemmas and offer alternatives (phase 3).

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## Discussion Brief

# Responsibility Sharing in EU Asylum Policy\*

## 1. Introduction

As a result of the increase in the number of asylum seekers arriving in Europe during 2015 and 2016, the debate on the distribution of asylum responsibilities among member states of the EU has gained relevance, leading to the introduction of several emergency measures aimed at addressing what was perceived as a 'crisis' situation. An emergency relocation mechanism was adopted to the benefit of member states under pressure: specifically, in September 2015, the Council adopted two decisions regarding the relocation of 106,000 asylum seekers from Greece and Italy to other member states to take place over 24 months from the adoption of the decisions. In addition, in order to provide operational assistance to 'frontline' member states, the 2015 EU Agenda on Migration laid down the 'hotspot approach to migration', which entails the deployment of EU agencies – Frontex, the European Asylum Support Office (EASO) and Europol – to conduct a variety of tasks. These include the screening of third country nationals (identification, fingerprinting and registration), provision of information and assistance to applicants of international protection and preparation for removing irregular immigrants.

The difficulties experienced since 2015, however, have clearly underlined the lack of pre-agreed criteria and measures to effectively manage situations of large inflows of asylum seekers and to equitably share responsibility among member states. To remedy these recognised structural

weaknesses, in 2016 the Commission launched an overall reform of the Common European Asylum System (CEAS), which also foresees a set of new provisions related to solidarity and responsibility sharing. In particular, the Commission proposed a reform of the Dublin system that foresees the introduction of a corrective allocation mechanism that would be activated automatically in cases where a member state has to deal with a disproportionate number of asylum seekers. Moreover, the Proposal for a Regulation on the European Union Agency for Asylum presented by the Commission in May 2016 takes stock of the hotspots' experience by enhancing EASO's mandate and resources. The proposal assigns new tasks to the agency in the field of operational support, including assessing asylum applications.

The suggested reform of the CEAS places a set of crucial choices in front of both member states and EU institutions that will shape EU asylum policy in the next years and, in light of the increasing salience of asylum issues in EU debates, also act as a testing ground of the EU capacity to effectively respond to a pressing policy challenge, while upholding the principles and obligations enshrined in the Lisbon Treaty. In this context, the principle of solidarity and fair sharing of responsibility, as well as its practical implementation, is both a key issue and major fault line in debates on the future of EU asylum policy.



## 2. Scoping the debate

During the first stage of development of the EU's asylum policy (2000–05), most of the efforts were concentrated on legislative harmonisation and, specifically, on the adoption of a set of legislative instruments to achieve that aim (EASO 2016). The focus on harmonisation was logical at the time, since EU asylum policy was taking its first steps and the EU Treaties provided only a limited legal basis for adopting solidarity-related measures in this field. It thus comes as no surprise that, except for the limited provisions included in the Temporary Protection Directive adopted in 2001, the rest of the asylum instruments adopted in that period contained no provisions related to responsibility sharing through the physical transfer of asylum seekers and beneficiaries of international protection.

The 1990 Dublin Convention, and subsequently the Dublin Regulation, allocated responsibility for asylum applications on the basis of a set of criteria, but no mechanism was foreseen to alleviate pressure if the application of these criteria led to an unequal distributive effect (Garlick 2016). In fact, the Dublin system assigns responsibility to the state that has played the most important part in the entry or residence of the person concerned, such as the state issuing a valid residence permit or visa, or the state whose borders have been regularly or irregularly crossed by the asylum seeker on his or her way to the EU (Hurwitz 1999).

The 2007 Lisbon Treaty allowed the CEAS to move beyond minimum standards, providing a legal basis for the adoption of a common EU policy on asylum, subsidiary protection and temporary protection. According to Art. 78(1) of the Treaty on the Functioning of the European Union (TFEU), EU policies on asylum should be aimed at offering appropriate status to any third country national requiring international protection, ensuring compliance

with the principle of non-refoulement, fully respecting the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol, and other relevant international treaties. More broadly, the EU Charter of Fundamental Rights (and in particular, its Art. 18 on the right to asylum) must be taken into account when designing and interpreting EU rules.

Crucially, the Treaty of Lisbon elevated solidarity to the rank of a founding principle of EU migration and asylum policy. Art. 80 TFEU provides that EU migration and asylum policies “shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications between the Member States”. The introduction of Art. 80 TFEU means that solidarity is no longer simply a subject for political debate but a legal obligation that must be implemented in all the policies adopted by the EU on migration and asylum (De Bruycker & Tsourdi 2016). At the same time, observers have pointed out that solidarity in asylum policy can take different forms. While Art. 80 TFEU explicitly mentions “financial implications”, other means are available to give substance to this principle, such as relocating asylum seekers, enhancing operational support through EU agencies or establishing links with other policy fields. This implies that EU institutions retain a margin of appreciation when deciding what specific action is to be adopted (Thym and Tsourdi 2017).

2011 was crucial for debates on solidarity in asylum policy at the EU level. In fact, that year about 50,000 people from North Africa arrived in Italy over ten months, while the conflict that had begun some months earlier in Syria was beginning to produce the first flows of refugees towards several European states. In 2011, moreover, the respective *M.S.S.* and *NS/ME* cases were decided by European courts (see section 4 below). Those judgments raised serious concerns over the compatibility



of national systems for asylum reception with fundamental rights standards, thus undermining the principle of mutual trust on which the Dublin system is based. That difficult situation pushed EU institutions to publicly outline their vision on solidarity in asylum matters (Garlick 2016). In a Communication on Enhanced intra-EU Solidarity in the field of Asylum released in December 2011, the Commission articulated some of the dilemmas related to the establishment of an EU asylum policy based on solidarity. While acknowledging the "Union's responsibility to assist" member states confronted with increasing arrivals of asylum seekers, the Commission expressed the view that "solidarity must be coupled with responsibility" for fulfilling obligations established in international and European law, adding that "the need to keep one's house in order to avoid impacts on other Member States is a key aspect of solidarity" (European Commission 2011).

In that way, the Commission articulated the opposition between two alternative ways of understanding solidarity, which has continually resurfaced in EU policy debates. In one vision of solidarity, member states facing 'particular pressure', irrespective of its cause, should receive support; in the alternative vision, solidarity should be preceded by a member state's readiness to accept and fulfil its responsibilities established under EU law. This discussion has often turned into a dialogue of the deaf. Some member states have called for respect of EU law (in particular the fingerprinting of irregular migrants and asylum seekers under the EURODAC Regulation) as a precondition for introducing responsibility-sharing mechanisms. By contrast, another group of states (i.e. those states placed at the external border of the EU) have repeatedly denounced the unequal distributive effect of the system currently in place, calling for fair sharing of responsibility (De Bruycker & Tsourdi 2016).

Another central dimension of the debate on solidarity, in both the academic and policy domains, has addressed the forms in which solidarity should be conceptualised and operationalised, be it through sharing "norms", "money" or "people" (Noll 2000; Thielemann and Armstrong 2012). Analyses of EU policy-making in the field of asylum have identified in this respect how the majority of measures implemented so far have been of an operational, technical or financial nature. The bulk of efforts on operational solidarity have been ensured through the engagement of EASO, established in 2010. In the Multiannual Financial Framework for 2014–20, financial solidarity is guaranteed by the Asylum, Migration and Integration Fund. By comparison, so-called physical solidarity, that is, the EU transfer of asylum seekers or beneficiaries of international protection among member states, has played only a marginal role in EU policy, at least until the introduction of the temporary relocation mechanism in 2015 and the ensuing debate on reform of the Dublin system.

The limited scope of EU initiatives to increase solidarity in EU asylum policy (particularly by physically redistributing asylum seekers among the member states) has been the object of widespread criticism. More fundamentally, the Dublin system has raised several concerns among both academic and civil society actors for its inherent inability to equitably share responsibility among the member states and also towards asylum seekers. The 'first country of entry' rule, following which an asylum claim is to be allocated to the member state most responsible for the presence of an asylum seeker in the EU, has been widely criticised for placing a disproportionate burden on member states at the EU external border, thus shifting, rather than sharing, responsibility (Carrera et al. 2015).



### 3. EU policy agenda

As a result of the difficulties experienced in recent years by member states in managing the increasing number of asylum seekers arriving in their territory, the debate on the distribution of asylum responsibilities has taken priority on the EU agenda. Over a very short timeframe, a set of new initiatives has been launched, with the objective of providing support to frontline member states facing disproportionate pressure on their asylum systems.

The hotspots approach to migration management was presented by the European Commission as one of the building blocks of the EU's response to the 'refugee crisis'. The aim of the hotspots approach is to provide coordinated, on-the-ground operational support to frontline member states in dealing with large inflows of arrivals of migrants at sea. The May 2015 EU Agenda on Migration specified that the hotspots approach entails operational deployment of different EU agencies, notably Frontex, EASO and Europol, whose activities are coordinated by a Regional Task Force in each member state where hotspots are in operation – namely Italy and Greece. In this context, EASO has been tasked with helping to register asylum requests and prepare case files (Neville et al. 2016).

Alongside operational support, a temporary relocation mechanism was adopted in 2015 to support Italy and Greece: specifically, in September 2015, the Council adopted two decisions regarding the relocation of 106,000 asylum seekers from Greece and Italy to other member states to take place over 24 months from the adoption of the decisions. The adoption of the emergency relocation mechanism ignited a heated debate among member states, with a group of them declaring their principled opposition to any kind of mandatory redistribution mechanism.

In June 2017, the Commission launched infringement procedures against the Czech Republic, Hungary and Poland for non-compliance with their obligations under the scheme (European Commission 2017). In an implementation report published in March 2018, the Commission took stock of the two-year-old initiative: about 34,000 people, more than 96% of all eligible applicants<sup>1</sup>, had been relocated, "with almost all Member States contributing" (European Commission 2018).

In 2016, the Commission launched an overall reform of the CEAS, which aims, among other things, to provide for structural responses to responsibility-sharing issues raised by the refugee crisis. The Commission's proposal on the reform of the Dublin Regulation foresees the introduction of a permanent allocation mechanism that would be activated automatically in cases where member states have to deal with a disproportionate number of asylum seekers. The application of the corrective allocation for the benefit of a member state could be triggered automatically where the number of applications for international protection for which a member state is responsible exceeds 150% of the figure identified in a 'reference key'. The key is based on two criteria with equal 50% weighting: the size of the population and the total GDP of a member state (European Commission 2016a).

The reform of the Dublin system has been the subject of fierce controversy within the Council. As was the case of discussions related to the temporary relocation mechanism adopted in 2015, Visegrad countries have resolutely opposed any proposal introducing a mandatory and

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<sup>1</sup> Eligibility for the relocation scheme was limited to applicants in clear need of international protection and belonging to a nationality with an EU-wide average recognition rate of 75 percent or higher (Guild et al. 2017).



automatic distribution system under the Dublin Regulation. On the other hand, a group of southern member states (including Cyprus, Greece, Malta, Italy and Spain) have expressed concerns about the direction taken in discussions by the Council, indicating a set of 'red lines' regarding a possible compromise for the Dublin reform. Those member states consider that their efforts in the control of EU external borders and in search and rescue operations should be considered when setting up new rules on relocation of asylum seekers. Moreover, according to southern states, other aspects of the reform under consideration, in particular the mandatory use of pre-Dublin checks based on safe country rules and extension of the period of responsibility for asylum applicants (ten years according to a compromise proposal advanced by the Bulgarian Presidency) would place a disproportionate burden on their asylum systems (Politico 2018; Cortinovia 2018).

In November 2017, the LIBE Committee of the European Parliament (EP) adopted its report on the Dublin reform as a basis for interinstitutional negotiations (European Parliament 2017). The EP report calls for amending the Dublin responsibility criteria on the following main points: 1) deleting the irregular entry criterion; 2) expanding the criteria based on family links; 3) introducing academic and professional qualifications as relevant criteria; and 4) introducing a distribution mechanism between member states as the default rule when none of the criteria laid down in the Dublin's hierarchy apply. The EP report envisages the fair allocation of asylum seekers as a core component of the Dublin system, without distinguishing between normal and emergency circumstances. Furthermore, the EP report introduces an element of choice in the allocation process that represents an absolute novelty in the Dublin procedure. Specifically, the report envisages a process whereby the applicant is given five days to

choose one of the 'bottom four' member states, i.e. those with the lowest number of asylum seekers, if none of the revised Dublin criteria advanced in the report apply (ECRE 2017; Maiani 2017).

Alongside allocation of responsibility for asylum claims, increasing operational support to member states in managing their asylum systems is another key element of the ongoing reform of the CEAS. The Proposal for a Regulation on the European Union Agency for Asylum presented by the Commission in 2016 aims to transform EASO into a fully-fledged agency by significantly expanding its mandate and resources (European Commission 2016b). The European Parliament and the Council reached a partial agreement on the file by June 2017. The final agreement, however, has not yet been formalised since parts of the new agency mandate are linked to other areas of the CEAS reform still under negotiation, in particular the Dublin system and the reform of asylum procedures (Tsourdi 2018).

Under the revised mandate assigned to the agency, so-called asylum support teams, which are composed of officials made available by the member states and coordinated by the agency, are assigned a wide array of tasks. These include assisting member states with the identification and registration of third country nationals and facilitating joint initiatives by member states in processing applications for international protection. In hotspot areas, the tasks assigned to EASO experts may include the registration of applications for international protection and, where requested by member states, the examination of such applications. In addition, following a development similar to that experienced by Frontex, the proposed regulation assigns the new agency a new monitoring role regarding the functioning of member states' asylum systems (Council of the European Union 2017).



## 4. Key issues and controversies

The Dublin system has been the subject of major controversy since its establishment three decades ago. While Dublin is considered by its supporters to be the 'cornerstone' of the CEAS, its operation has been characterised by substantial problems. One of the main criticisms addressed towards Dublin is its alleged failure to further the objective of solidarity and a fair sharing of responsibility for asylum within the EU as enshrined in Art. 80 TFEU. The Parliamentary Assembly of the Council of Europe, for example, has declared that the Dublin system is "dysfunctional and ineffective and should be urgently reformed to ensure 'equitable burden sharing' among member States" – a position shared by the Human Rights Commissioner of the Council of Europe (Council of Europe, Parliamentary Assembly 2015; Muižnieks 2015).

The above criticisms should come as no surprise given that, among the provisions included in the Dublin Regulation, there is no mention of the issue of responsibility sharing. The system's original purpose was to introduce a set of rules to swiftly allocate responsibility for asylum claims among the member states, without taking into account questions of overall numbers, capacity or other criteria aimed at harmonising outcomes (Garlick 2016). Far from equally distributing asylum seekers across the EU, several observers have argued that the Dublin system is based on a logic that is antagonistic to responsibility sharing. Specifically, the most frequently used criterion for requesting transfers under Dublin, which assigns responsibility to the member state of 'first entry', places a disproportionate burden on member states situated at the external border of the EU (Guild et al. 2015a).

At the same time, it should be remembered that this circumstance has often not materialised in practice, owing to the extremely poor implementation of Dublin

rules. The fear of incurring overwhelming responsibilities for asylum claims has in the past motivated frontline member states to refrain from registering incoming migrants, undermining the effective operation of the system (Maiani 2017, p. 15). As an example, during the 2015 'crisis', Dublin rules were largely ignored by transit countries adopting a 'wave-through policy', especially following the German government's temporary decision to grant protection to all Syrian refugees coming into its territory (Di Filippo 2017, p. 66).

Available statistics also reveal substantial implementation gaps: during the period 2008–12, on average some 35,000 outgoing Dublin requests were made annually; 80% of the outgoing requests were accepted, but only around 25% of the outgoing requests resulted in the physical transfer of a person from one member state to another (on average, about 8,500 persons annually) (EASO 2014, p. 30). According to an evaluation of the Dublin system requested by the European Commission, this very low proportion of transfers suggests that there are problems with the feasibility of the Dublin III Regulation, as it shows that member states only rarely succeed in implementing the last stage of the Dublin procedure, i.e. the transfer of applicants to other member states (European Commission 2015).

The Dublin system has been observed as being characterised by a double solidarity deficit, not only towards the EU member states concerned, but also towards the asylum seekers themselves (Carrera et al. 2017). The Dublin system is based on the general principle of 'mutual trust', which presumes that EU member states' asylum systems are fit to correctly implement EU asylum law. At the same time, implementation of the Dublin system has demonstrated that the presumption of safety for asylum seekers in



all member states of the EU cannot be presumed as a basis for Dublin transfers.

In its landmark judgment *M.S.S. v Belgium and Greece* of January 2011, the European Court of Human Rights concluded that Greece was in violation of Art. 3 of the European Convention on Human Rights (ECHR) because of the extremely poor reception conditions to which an asylum applicant had been subject in Greece, which amounted to inhuman and degrading treatment, as well as the shortcomings in the asylum procedure, which placed the applicant at risk of refoulement. The Court also held that Belgium had violated Art. 3 of the ECHR by transferring the applicant to Greece without prior verification of Greece's compliance with EU and Greek standards in terms of asylum procedures, and for exposing the applicant to detention and living conditions that are contrary to Art. 3 of the ECHR. The Court of Justice of the European Union (CJEU), in the case *NS/ME* of December 2011, also found that Dublin transfers to Greece could breach Art. 4 of the EU Charter of Fundamental Rights, which prohibits inhuman or degrading treatment or punishment. These cases marked a watershed in Dublin practices, forcing member states to suspend all Dublin transfers to Greece and even to include an amendment to the Dublin III Regulation specifying that no transfer should be executed towards a member state affected by systemic flaws in the asylum procedure and in the reception conditions for applicants (Garlick 2016).

Besides widespread divergences in asylum standards across the member states, which in some cases fall below international and European standards, the unfairness of the Dublin system is further exacerbated by the narrow and unidirectional way that the principle of mutual trust on which the system is premised is currently formulated. In fact, that principle only provides for the mutual recognition of negative asylum decisions

issued by member states. Instead, neither Dublin nor other instruments in the CEAS provide for recognition of positive asylum decisions, which means that refugees who have been granted international protection in a member state cannot enjoy the rights associated with that status in another member state. Thus, the principle of mutual trust as currently applied in EU asylum policy only responds to the interest of states wishing to transfer responsibility to other states, and not to the interest of people who have been granted protection in a member state and would like to move elsewhere in the EU (Garlick 2016).

Both the UN High Commissioner for Refugees (UNHCR) and NGOs working in the field of asylum have referred to mutual recognition of positive asylum decisions as the logical long-term goal of the CEAS (UNHCR 2014; ECRE 2014). Along the same line, scholars have argued that mutual recognition of positive decisions to grant asylum, accompanied by mobility rights at an earlier stage than currently available to beneficiaries of protection, would address many of the dysfunctions of the Dublin system. In particular, it would reduce the importance of the member state in which an asylum claim is determined and the ensuing incentive for asylum seekers to undertake secondary movements to reach their preferred destination (Guild et al. 2015b; Mitsilegas 2017; Mouzourakis 2014).

Yet due to member states' reluctance to consider mutual recognition of positive asylum decisions, discussions in recent years have focused instead on how to 'correct' the current system by better sharing responsibility with member states under pressure, without changing its overall structure. The launch of the emergency relocation mechanism in 2015, generated a tense debate among member states, with a group of them declaring their principled opposition to any



kind of mandatory redistribution mechanism. Further criticism was targeted at the rules governing the functioning of the mechanism, e.g. the criteria for determining eligible asylum seekers and the distribution key on the basis of which member states' quotas were to be calculated. Owing to a lack of commitment and operational difficulties, the relocation mechanism has experienced a difficult and unsatisfactory implementation process (Guild et al. 2017).

Slovakia and Hungary, which, like the Czech Republic and Romania, opposed the adoption of the relocation mechanism in the Council of Ministers, also brought an action for annulment of the second Relocation Decision in front of the CJEU. Nevertheless, in its judgment delivered on September 2017, the CJEU dismissed in their entirety the actions brought by Slovakia and Hungary.<sup>2</sup> The Court made it clear that the relocation scheme established by the Council should be considered an appropriate measure to give effect to the principle of solidarity and fair sharing of responsibility, which applies when the EU common policy on asylum is implemented (Di Filippo 2017, p. 55).

In light of the controversies that have characterised the adoption and functioning of the emergency relocation mechanism, it is no wonder that discussions on solidarity and fair sharing of responsibility in the context of the envisaged reform of the Dublin Regulation have exposed major diverging views among relevant EU actors. Contrary to the Commission's proposal, the EP report on the Dublin reform envisages an automatic quota-based allocation of responsibility as the normal function of the system (European

Parliament 2017). While analysts have welcomed the EP report as the 'boldest' proposal ever submitted for the reform of responsibility allocation, they have also underlined that the system therein envisaged is premised on the feasibility of substantially increasing the number of transfers of asylum seekers among the member states. However, one of the main lessons learned from the history of implementing the Dublin system is that transferring a large number of asylum seekers against their will, while respecting their fundamental rights, is a particularly daunting task (Maiani 2017).

While the reform of the Dublin system has monopolised EU debates in the last two years, another relevant dimension of solidarity in EU asylum policy concerns the provision of operational support to member states subject to particular pressure. EASO has been assigned a central role in the implementation of the hotspots approach in Italy and Greece. The tasks conducted by EASO in hotspots are manifold, including assistance in the implementation of the relocation process, the detection of document fraud, registration of relocation and asylum requests and practical support in the operation of reception centres. Moreover, since adoption of the EU-Turkey Statement in 2016, EASO has been directly involved in the processing of asylum requests in Greece's hotspots. Specifically, EASO officials have been tasked with independently conducting interviews with asylum seekers and recommending final decisions on individual cases to the Greek Asylum Service (Guild et al. 2017).

EASO's role in the examination of asylum claims assigned in Greece's hotspots has been considered by some commentators to exceed the mandate of the agency laid out in its founding regulation (Guild et al. 2017; Tsourdi 2016). Additionally, NGOs providing legal advice to refugees have identified a number of procedural shortcomings (related

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<sup>2</sup> See the judgment in the joined cases C-643/15 and C-647/15, *Slovak Republic and Hungary v Council of the European Union*, 6 September 2017 (<https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-09/cp170091en.pdf>).



to the quality of interviews and opinions on asylum applications) that raise doubts about EASO's capacity to process applications for international protection, in respect of the principles of fairness and neutrality (ECRE 2016; HIAS & IRU 2018).

The Commission's proposal on a new EU asylum agency, which aims, among other things, to take stock of the expanded role assumed by EASO in hotspot areas, inevitably brings to the fore the question of the added value of models for the joint processing of asylum claims at the EU level. Analyses conducted so far have argued that 'joint' or 'supported' processing arrangements have the potential to improve asylum systems, especially by fostering learning between member state authorities and sharing best practices (Guild et al. 2015a; Urth 2013). Still, it is important that concerns raised as to the legality and legitimacy of EASO's action (as in the case of Greek hotspots) are given proper consideration and legal certainty when defining joint processing mechanisms to be operated by the envisaged EU asylum agency.

## 5. Potential impacts of policies adopted in this area



### EU and international human rights standards

Landmark judgments from European courts relating to Dublin transfers have shown how the application of the system could lead to serious violations of the human rights of asylum applicants. The reform of the Dublin system currently under negotiation touches upon a number of substantive and procedural issues – such as the amendment of responsibility criteria, rules on the mandatory application of accelerated and

inadmissibility procedures before applying the criteria allocating responsibility, sanctions against asylum seekers who undertake secondary movements and remedies against transfer decisions – that require a comprehensive assessment as to their compliance with EU international and human rights standards.

Concerning operational solidarity, the direct involvement of EASO in the examination of asylum applications in the Greek hotspots has raised concerns from several sides regarding the protection of fundamental rights of asylum seekers. More specifically, it has been stressed that the use of fast-track inadmissibility procedures risks undermining the effectiveness of procedural safeguards to ensure access to protection. In light of this, the regulation on the EU asylum agency should include adequate provisions so as to guarantee that fundamental rights standards are fully respected in the fulfilment of the agency's tasks, including tasks carried out in hotspot areas.



### EU rule of law and better regulation principles

Current debates on the Dublin reform show a stark disagreement among the main actors at the negotiating table on how to give effect to the principle of solidarity enshrined in Art. 80 TFEU. While some reform proposals seem to be inspired by a status quo rationale (i.e. preserving the structural elements of the current system), other proposals aim to produce a fundamental reform of the governance of the Dublin system. Against this background, it is important to recall once again the widespread recognition, even among EU policy-makers, that the Dublin system in its current form was not designed to ensure a fair sharing of responsibility and that its functioning may result in a disproportionate burden placed upon some member states.



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The recognition that the Dublin system suffers from structural shortcomings points to the inadequacy of merely corrective measures, calling instead for a comprehensive reform of its design. Specifically, a broad reform of the Dublin system represents a crucial step towards making the system compatible with the principle of solidarity and fair responsibility sharing established in Art. 80 TFEU.

The proposal on an EU asylum agency includes a set of measures that enhance the mandate of the agency as well as the resources at its disposal. The reform introduces new competences for EASO in the provision of operational support and in monitoring member states' asylum systems. The expansion of EASO's mandate raises a set of issues regarding the governance design needed to effectively carry out the new tasks assigned to the agency, as well as the legal framework that should regulate those tasks and the existence of adequate accountability mechanisms.

The issue of solidarity in EU asylum policy should not be considered merely an internal policy issue. Forced displacement is a global



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issue that requires cooperation at the international level in order to be addressed in an effective and sustainable manner. In 2016, the EU member states committed in the New York Declaration to achieve a more equitable sharing of the burden and responsibility for hosting and supporting the world's refugees. An efficient, sustainable, equitable system for sharing responsibility within the EU and providing support to member states under pressure is a precondition for the EU to honour its commitments at the global level, including by increasing resettlement efforts and opening additional legal pathways to access protection in Europe.



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# ReSOMA

RESEARCH SOCIAL  
PLATFORM ON MIGRATION  
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## ReSOMA - Research Social Platform on Migration and Asylum

is a project funded under the Horizon 2020 Programme that aims at creating a platform for regular collaboration and exchange between Europe's well-developed networks of migration researchers, stakeholders and practitioners to foster evidence-based policymaking. Being a Coordination and Support Action (CSA), ReSOMA is meant to communicate directly with policy makers by providing ready-to-use evidence on policy, policy perceptions and policy options on migration, asylum and integration gathered among researchers, stakeholders and practitioners.

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