A New Truly European Asylum Policy

ALLIANCE OF LIBERALS AND DEMOCRATS FOR EUROPE

Liberalerna

by Cecilia Wikström

Content:

1. Glossary:

Ad hoc recolation: During the last year the EU took a number of decisions to relocate up to 160 000 asylum seekers from Greece and Italy to other member states. These decisions were "one-time" decisions and not part of a systematic approach to the European asylum system. What we are now debating is whether relocation should become an integrated component of the Common European Asylum System.

Admissibility procedures: This is a procedure to determine whether an application for international protection is admissible under European or national law. Some of the more crucial factors in determining this is whether the asylum seeker already has protection in another (safe) country.

Corrective allocation: The solidarity system proposed by the European Commission to relocate asylum seekers from member states faced with a disproportionate number of asylum seekers.

Discretionary clause: This is a rule in the regulation that allows member states to assume responsibility for an application even though they are not strictly obliged to do so under the regulation, for example on humanitarian grounds.

Distribution key: This is the key that determines the national quotas for the corrective allocation system. The key determines the fair share of each member state by using a formula that depends on GDP and population. It means that rich countries with large populations will become responsible for more asylum seekers than small and less well-off member states.

Dublin regulation: The EU regulation which determines which country should be responsible for a refugee's asylum application.

Front line member states: The European member states with external borders. Usually the first country of arrival for refugees.

Relocation: Refugees arriving in a European member state who will be moved to a second one since the first country does not have the capacity to process their asylum application.

Secondary movement: Refugees who arrive in Europe but avoid applying for asylum in the first country of arrival and travel on or applicants that apply in one member state but then leave to another Member State

Unaccompanied minors: Children asylum seekers under 18 years old that travel without adults that are responsible for them.

Wave-through: The policy of member states not to register applicants who wish to apply for asylum in another country so that they themselves can avoid becoming responsible for the application.

2. Introduction.

2.1 A well functioning asylum system based on solidarity is possible!

The current Dublin regulation, which determines the country responsible for a refugee's asylum application, is now unfit for purpose. This became obvious in 2015, when more than one million people fled war, conflicts and persecution and applied for international protection in the EU, resulting in the total collapse of the Dublin system.

In response to this, the European Commission presented a proposal for a revised Dublin regulation in May 2016. Since being appointed the rapporteur in the European Parliament for this revision, I have analysed the proposal and started my task of forming the European Parliament's position and I am now ready to present my draft report.

The EU finds itself at a crossroads.We can no longer continue with watered down compromises and urgent ad hoc responses to crisis situations, that we all know in advance will be implemented too late or not implemented at all. Indead, we need to think innovatively and creatively. My conclusion is that the current Dublin regulation needs to be fundamentally changed and the new regulation must ensure:

- That all countries share responsibility for asylum seekers.
- That member states with external borders, the first place of arrival in Europe for most refugees, take their responsibility in registering all arriving people, as well as protecting and maintaining the external borders of the EU.
- That the people in need of international protection get it much faster than today, while those who are proven to not have the right to asylum are returned to their home countries in a swift and dignified manner.

It is time to stop supporting a system in which refugees are forced into the hands of unscrupulous human traffickers who smuggle them through Europe. Instead, we must build a system that creates incentives for all refugees to immediately register when arriving in the EU.

Asylum seekers should be able to feel confident that they will receive a legally correct asylum process no matter which European member state their application is filed in. They should also know that they have no right to decide for themselves in which EU member state they will be seeking asylum.

The new Dublin regulation must be simple, based on sound principles, and feasible in practice. I believe that I have succeeded in laying the ground for this in my draft report. It implies full and equal participation of all member states. Fully implemented, it will mean shared responsibilities and true solidarity.

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3. Case study.

3.1 Depicting the failure of the current Dublin regulation through the family of Leyla.

Leyla, an Iraqi asylum seeker, fled her home for Europe together with her husband and son during the winter of 2016. The family reached the shores of Greece on a small boat from Turkey. But they were never registered as asylum applicants in Greece. Instead they continued onwards through Macedonia, Serbia and finally to the Croatian border where they were stranded for three days before they were finally allowed to enter. When in Croatia they were told by Croatian authorities that they would be transferred to Slovenia, where their bus was stopped and sent back to the camp in Croatia.

In Croatia the family was detained for 53 days in the camp until finally being placed in an asylum centre in Zagreb. In Zagreb they were given 6 months to decide whether they wanted to apply for asylum in the country or leave. Since Leyla's husband had worked for a Swedish company while still in Iraq, they decided to leave Croatia for Sweden. They registered as asylum applicants in Sweden and the husband got a job there. However, after six months the family received a notice from the Swedish authorities saying that, since they had been finger printed in Croatia, they must be returned there. After another period of waiting, the family was sent back to Croatia.

The case of Leyla and her family illustrates the failures of the current Dublin system. The case is neither exceptional nor unusual, but a very common example of the situation, many refugees find themselves in Europe. Leyla's family spent many months in Europe before applying for asylum. In the meantime they had passed through several EU member states and crossed through external borders when entering to Greece from Turkey, from Greece to Macedonia and from Serbia to Croatia. The family received very limited information about the asylum process during their journey and faced a Dublin system that offered them absolutely no predictability.

The family was returned from Sweden to Croatia, despite the face that they had entered the EU in Greece. And they were fingerprinted only when they were returned to Croatia from Slovenia. Had their bus been allowed to enter Slovenia, they would thus never have been returned to Croatia from Sweden.

The currect Dublin regulation has obviously failed, leaving applicants of international protection at the mercy and risk of abuse of traffickers. With the current system, member states have every incentive not to register an applicant, since registration often implies responsibility. It thus leaves it up to the applicant to decide in which country they want to register, in Leyla's case it was Sweden.

The current Dublin regulation reduces the likelihood that adequate protection and information is provided, especially to vulnerable migrants. It ensures that member states have no actual knowledge of the background or point of departure of people who enter their territory. Without registration it is simply impossible to make proper security screenings, or if necessary to share this information with other member states.

4. Identifying the problems with the current Dublin regulation.

4.1 The reform must address the shortcomings of the existing Dublin system.

Under the current Dublin regulation, frontline member states are expected to register all asylum seekers entering into the EU. They are also obliged to process the applications of all refugees entering the EU through their country, unless the applicant has family members present in another EU member state. Theoretically, almost everyone that enters through Greece and Italy, where most refugees first put their foot on European soil, should be returned to these frontline member states if they move on.

In 2015, this would in practice have meant that Greece would have been responsible to deal with over one million asylum applicants, while most countries, like Germany and Sweden who are currently processing the lion share of the asylum applications, would be responsible for almost none. To insist that Greece should have been able to handle all these cases as long as other member states send over a few warm blankets, border guards and case officers is simply nonsensical.

The result is that member states do not require applicants who wish to apply for asylum in another member state, to register upon arrival. This does not only occur in frontline member states but in every member state they pass through on their journey.
The current system encourages secondary movements and wave-through policies.

4.2 The current system encourages secondary movements and wave-through policies.

Unless the asylum seeker has not already been registered in another member state, the current Dublin system implies that as soon as a member state registers an applicant, they will most likely also be regarded as the country responsible for the application. This is further compounded, for example, by cessation of responsibility clauses that incentivise applicants to go under the radar for a number of months until they are allowed to apply for asylum again.

In practice, today's Dublin regulation gives the refugee the opportunity to determine which member state should process their application, as long as they manage to reach it without registering in countries they pass along the way. Since member states want to avoid becoming responsible for asylum applicants, they seem to be more than happy to continue with wave-through policies where potential asylum seekers are not registered at all.

The current Dublin regulation systematically pushes asylum seekers into the hands of smugglers, which especially in situations of vulnerability can pose a significant risk of exploitation. These challenges makes it much more complicated to tackle human trafficking. It also makes it almost impossible to identify potential security threats.

5. My proposal for solutions and improvements to the revision of the Dublin regulation.

5.1 A workable permanent relocation system.

The ad hoc relocation of 160 000 asylum seekers from Italy to Greece has largely been a failure. We need to learn from the experiences of this system in order to build a resilient and practically functioning relocation system in the Dublin regulation.

The most important lesson to learn from the temporary relocation scheme, introduced in the middle of an ongoing crisis, shows that crisis mechanisms and contingencies must exist before the crisis happens. European decision-making processes are simply not responsive enough to properly address such a complex issue in a timely manner in the midst of an ongoing crisis.

Existing measures such as the early warning mechanism in the Dublin regulation, or the Temporary Protection Directive, intended to be used in an emergency but requiring a vote in the Council to start, have never been triggered, regardless of the magnitude of the crisis. It would therefore be unwise to base a relocation system on anything other than an automatic system.

A number of issues need to be addressed:

- The relocation of asylum seekers from frontline member states under disproportionate pressure cannot be optional for the individual asylum seekers, as was the case for the temporary system. Once the corrective allocation is triggered, it will have to apply mandatorily for all affected asylum seekers to comply with it.

- The acceptance by member states of asylum seekers under the corrective allocation scheme cannot build on "pledges" but must build on a legal obligation for all member states to accept the asylum seekers that are designated as their responsibility through the automated system. The practical modalities should be clear and limit the potential for disagreements between member states on their implementation.

- Several key aspects of the Dublin regulation that are not directly related to the corrective allocation mechanism need fundamental reform and simplification, not least in order to limit secondary movements and other types of behaviour by applicants to "get around" the existing rules. The provision of accurate information and incentives must aim to increase trust in the system, for the member states, EU citizens and asylum seekers.

- Relocation needs to happen in a stable flow, in order to relieve the pressure on the frontline member states, and allow for acceptable reception conditions in these countries. This requires a careful consideration of which procedures are required to be carried out by the frontline member states, and which should be handled by the receiving member states.

- Frontline member states need to maintain good management of their external borders, notably by ensuring that all arriving asylum applicants are properly registered and screened.

5.2 No pre-Dublin regulation admissibility checks.

The Commission has proposed an obligation for frontline member states to make so-called admissibility procedures for all applications prior to the determination of which member state should be responsible for an application.

This would impose major administrative burdens on the frontline member states, and would cause the entire system to break down before it is even given a chance to start.

It should be noted that the removal of pre-Dublin admissibility procedures does not remove the possibility for responsible member states to make use of admissibility procedures, but it would happen once a responsible member state has been established. In this way, the responsibility for conducting admissibility procedures will be shared

amongst member states, instead of being the exclusive obligation of the frontline member states.

5.3 Light family procedure.

In the situation where a member state benefits from corrective allocation, the Commission has suggested that family reunification should be processed not in the member state of application, but after a transfer of the applicant, under the corrective mechanism, to a random member state. This would imply many double transfers, unnecessary delays in family reunification and increased costs for the system.

I suggest that applicants declare where they have family directly when they are being processed in the first arrival country. Following a light prima facie check, they should then be transferred to this member state.

It must be an obligation of the second member state to establish whether the applicant really has family in that country. If they do have family there, then naturally this member state would become responsible. If not, the applicant must be automatically relocated elsewhere, in order to deter abuse of the new Dublin system.

This proposal would remove much of the complex and lengthy procedures where two national administrators need to cooperate to establish whether a family link exists and examining the case in the same member state where the family members are allegedly present will greatly facilitate the administrative tasks related to the tracing of the family members.

5.4 Requesting the application of the discretionary clause.

The current Dublin regulation already contains a clause, which allows member states to decide to voluntarily assume the responsibility for an application, even though strictly speaking under the criteria of the regulation they would not have to. This is considered by most member states as an important safeguard and adds flexibility into the system.

The novelty in my report is that I introduce a system whereby the applicant can apply for the use of this discretionary clause also from a different member state. This would give an applicant in Greece the opportunity to ask for any member state to assume responsibility for his/her application.

In the context of corrective allocation, member states will, in any case, be able to expect a certain number of transfers. Voluntarily accepting certain applicants would count towards the quota of that member state. Accepting applicants with better prospects of integrating in their respective member state under this system could thus be an interesting proposition for member states, and offer incentives for applicants to work within the system.

5.5 Allocation of groups.

Under the Commission's proposal for corrective allocation, the system would relocate asylum seekers one person at a time. This would imply that a group of 30 applicants could potentially be relocated to 28 different member states.

My suggestion is that instead of relocating applicants based on a one person at a time system, the relocation should be done in groups of up to 30 applicants at a time. In connection with this change, I suggest allowing applicants to have the option to register as a group upon arrival in Europe. Such a group registration would not imply a right to be transferred to a particular member state, but a right to be transferred together with the other members of the group to a member state determined by the corrective allocation system.

This would substantially reduce administrative burdens on member states by reducing, for example, the number of different interpreters and translators that will be required. Experience indicates that it would also likely be easier to integrate small groups of applicants that already feel a connection to one another.

Not splitting up these groups of people among multiple member states, should also reduce the risk of secondary movements.

5.6 Corrective allocation only if responsibility to protect the borders is respected.

Introducing an automatic system for corrective allocation could be seen as reducing the incentives, particularly for frontline member states, to properly manage their external borders. Solidarity has to be shown with frontline member states as they can't be expected to deal with all asylum applicants on their own. It is however equally important that these member states are fully respecting their obligations to the other member states of the EU, as regards to the protection and management of the external borders of the union.

In order to strike an appropriate balance between these two aspects of solidarity I suggest the introduction of an emergency brake in the automatic corrective allocation system. If a member state benefitting from the corrective allocation mechanism does not respect its obligations towards the other member states, by protecting and managing its external borders, it should be possible to suspend the corrective allocation system for that member state, through a decision in Council.

5.7 Thresholds for triggering relocation and "financial solidarity".

The Commission proposal requires that a member state take on 150 percent of their fair share of asylum applications before receiving assistance from the corrective allocation system. I suggest that this threshold should be lowered to 100 percent, in order to ensure that no member state should be forced to exceed its fair share of the common responsibility. I also suggest that corrective allocation should stop once the relative

share of a member state under corrective allocation has dropped to 75 percent of total allocations, in order to ensure that member states do not fluctuate in and out of corrective allocation.

The Commission suggested introducing an "opt-out" from the corrective allocation system, which would have allowed member states to buy themselves out of the corrective allocation by paying 250 000 euros per applicant that the member state should have been receiving. I do not find it acceptable to put such a price tag on human beings seeking international protection, and I therefore suggest deleting the provision.

It is important that every member state in the European Union fully respects the rules that are democratically agreed between the European legislators. In this context we are concerned by the comments of several leading politicians in different member states to the effect that they would ignore democratic decisions by the EU if these were not in line with their national preferences. In view of these comments I have suggested the introduction of a conditionality between the proper participation in the procedures under this regulation, in particular with regards to the corrective allocation mechanism, and the European Structural and Investment Funds. It would not seem logical to allow member states to benefit from the solidarity of others whilst ignoring their own commitments under our commonly agreed rules.

5.8 The gradual introduction of the corrective allocation model.

Whilst some member states have received many asylum applicants annually over a long period of time, others have very limited experience. This is not necessarily related to the will of certain member states to offer shelter to refugees, but can rather be explained by the historical and reputational factors of member states among refugees.

Nevertheless, this means that, member states have different capacities for receiving asylum seekers. Whilst we should move towards a system where all member states assume their fair share of the responsibility, it can be very difficult to move to such a system over night.

I therefore suggest a transitional period over five years for the distribution key, determining the quotas for each member state. In the beginning of the transition period, the key must be based on an average proportion of the number of historically lodged applications for international protection in the different member states. For each year, twenty percent of the historical key would be removed, and twenty percent of the key suggested by the European Commission, based on GDP and population, would be added.

Through such a system, member states that have previously received many asylum applicants will be assured that their shares of the responsibility will be gradually reduced.

At the same time member states without the same experience will be given the time to build up their reception systems, preferably with assistance from the Asylum, Migration and Integration fund, AMIF, and with the support from the European Union Asylum Agency.

6. Other major modifications proposed to the Dublin-system.

6.1 A system to fundamentally break the underlying reason for secondary movement.

Breaking the link between the registration of an application and that member state becoming responsible is essential in order to ensure the functioning of the Dublin regulation. One element in this is ensuring that the procedures in the regulation are enforceable and practical.

I fully support the Commission in its ambitions to remove the loopholes that allowed for shifts of responsibility and support the ambition to ensure that procedures are speeded up. This however only addresses one part of the problem. In theory, the principle is that if no other criteria in the regulation gives responsibility to a specific country, responsibility falls on the first country of entry in the EU. In practice however, this is more or less impossible to establish unless there is a registration in the Eurodac database, which today is often not the case.

After months of useless bureaucratic back and forths, the member state where the applicant is present will usually end up having to assume responsibility. This implies delays in the procedures, with all associated costs, uncertainty for the applicant, and most importantly, that moving to a specific country actually often works for applicants who wish to apply in a specific member state. It encourages secondary movement.

In order to break this vicious circle and ensure a simple rule for allocation I suggest modifying the irregular entry criteria. If an applicant lodges an application in a frontline member state that is not under the corrective allocation, this member state should be responsible for the application, just as today. This is crucial in order to ensure the link between the proper management of the external borders and the Dublin system. Under the new system the frontline member state will also be assisted through the corrective allocation system, as soon as they have taken their share of the collective responsibility.

If an asylum seeker moves on from the first country of entry without registering into another member state and applies for asylum there, this member state shall not be responsible for the application. Instead of the complex and non-functioning system where we pretend that we can send people back to the first country of arrival, the applicant would be randomly allocated to a responsible member state and transferred there.

This system ensures that asylum seekers will know that moving on to a specific member state in order to apply for asylum will imply that they will be automatically removed from that country. The criteria would be easy to apply and should prove dissuasive to applicants, since the underlying reasons not to apply in the first country of entry onto European soil, would in fact be removed. The system also removes all incentives for member states to avoid registering potential asylum seekers on their territory.

It must be crystal clear to asylum seekers that they do not have a choice of which country is to be responsible for their application, and that the only pathway to legal status in Europe is to remain within the official system.

6.2 A Dublin regulation that can gain the understanding and acceptance of applicants.

Breaking the incentives for secondary movements, and moving towards a model that ensures all applicants register immediately upon arrival, provides an opportunity to invest in information to applicants, as well as special protection to minors. By ensuring that applicants are given appropriate information and given the chance to ask questions about how the system works, we can build trust in the system and ensure smoother processes.

The current regulation ensures that only a few common leaflets providing information are produced by the Commission. This is inadequate given the needs of applicants. I therefore suggest that the European Union Asylum Agency, in close cooperation with national agencies, is tasked with developing a range of information products. Legislators should not decide on their format and content, but rather encourage the agency itself to find the most useful formats, using modern IT-tools, in order to ensure that the information can meet every day needs at reception centres, hotspots etc..

When it comes to unaccompanied minors, the quick appointment of guardians (within five days), improved best interest assessments, as well as the use of multidisciplinary teams for assessments, will allow authorities to build trust with the minors, as well as break the negative influence of smugglers and traffickers. This will greatly improve the chances that minors will trust and work within the system. We cannot go on with a system that causes thousands of children to go missing, as is unfortunately the case today.

Investing in information and appropriate care, notably for unaccompanied minors, as soon as they enter the union, will allow for significant savings in other parts of the Dublin system, as it will reduce the needs for multiple transfers, protracted appeals and so on.

7. The survival of free movement of people in Europe is dependent on reform of the Dublin system.

During 2015 we could see how member state after member state reintroduced internal EU border controls, as a direct result of the so-called refugee crisis. If we do not fundamentally reform the European asylum system with the Dublin regulation at its core, and leave the system in its dysfunctional state, it could very well be the beginning of the end for the free movement of people in Europe.

This is a fact that every responsible politician in Europe needs to understand, no matter what their position is on the issue of asylum law. The creation of the European Border and Coast Guard was the first step to ensure better controls at the external borders. Correctly reformed, the common European asylum system can also play a vital part in supporting this goal, whilst ensuring at the same time that Europe respects its obligations under international asylum law.

The reformed system needs to work on the ground, in practice, and unlike today's system it needs to ensure that everyone is incentivised to play by the rules.

Follow my work with the revision of the Dublin regulation on:

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