

Opinion of the Committee of the Regions on ‘Enhanced intra-EU solidarity in the field of asylum’

(2012/C 277/03)

THE COMMITTEE OF THE REGIONS,

- points to the capital importance of asylum as a human right, but also as an achievement of civilisation, enshrined in international legal documents such as the Geneva Convention, the EU’s Charter of Fundamental Rights, the Treaty on the Functioning of the EU (TFEU) and in the legislation of all the Member States bar none, the cornerstone of the asylum system being the principle of non-refoulement;
- points out that with reference to Article 80 TFEU, solidarity and the fair sharing of responsibility together form the institutional concepts governing the whole range of European policies which, in the context of the area of freedom, security and justice (AFSJ), cover the movement of persons, in this case, the management and crossing of external borders, asylum and international protection and immigration. This article provides an adequate legal basis for European legislative measures aimed at increasing solidarity and encouraging the fair sharing of responsibilities;
- points out that the current situation shows that in matters of asylum, practical solidarity is needed between the EU and the Member States and expresses its conviction that it will not be possible to achieve a common and high level of international protection for those seeking international protection or entitled to it unless mechanisms are in place that take account of the major disparities between the individual Member States, in terms both of the number of third-country nationals they receive on their soil and of the financial, technical and other options available for managing these migratory flows;
- underlines the local and regional dimension of solidarity and the fair sharing of responsibilities in terms of political asylum, and points out that local authorities play a major role in informing their citizens and that they can help raise awareness regarding questions of asylum and international protection, thereby positively influencing the way the local community receives and accepts incomers;

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Reference Communication from the Commission on enhanced intra-EU solidarity in the field of asylum – An EU agenda for better responsibility-sharing and more mutual trust

COM(2011) 835 final

I. POLICY RECOMMENDATIONS

THE COMMITTEE OF THE REGIONS,

General comments

1. points out that mixed migration flows are a feature of everyday life in all the EU Member States where they are currently making the headlines, mainly because of the political upheavals in the countries of North Africa and the Middle East, but also because of the broader political situation in areas such as Afghanistan and Pakistan, or Iraq and Iran, which is prompting fresh displacements of people towards Europe. These migration flows are placing a burden to differing degrees on the EU's external borders and, as a consequence, on the asylum facilities of some Member States, thereby generating humanitarian challenges;

2. emphasises that the acute economic crisis affecting the EU's Mediterranean countries in particular, which are receiving a disproportionate number of asylum seekers, and their subsequent inability to manage this issue as effectively as is needed, are negative factors in terms of taking the situation in hand and are worsening an already bleak situation;

3. deems it necessary to draw up a meaningful common European migration and asylum policy, in accordance with the provisions of the Stockholm programme. It should be anchored in an integrated approach, based partly on the effective management of legal immigration and combating illegal immigration, but also and above all on strengthening asylum systems;

4. points to the capital importance of asylum as a human right, but also as an achievement of civilisation, enshrined in international legal documents such as the Geneva Convention, the EU's Charter of Fundamental Rights, the Treaty on the Functioning of the EU (TFEU) and in the legislation of all the Member States bar none, the cornerstone of the asylum system being the principle of *non-refoulement*;

5. refers to the rights associated with the right to asylum, i.e. the right to dignity, the prohibition of torture and inhumane treatment, the protection to be given in the event of removal or

expulsion, separation or extradition and the right to effective remedy and fair judgment, together with the right to family reunification;

6. recognises that progress has been made in establishing a Common European Asylum System (CEAS) but believes that it is necessary to repeat the call made by the Stockholm programme for this to be completed by 2012 and to call on the Member States, the Council and the European Parliament to demonstrate the political commitment needed to conclude negotiations on reviewing the directives governing reception conditions and asylum procedures, together with the reform of the Dublin Regulation and the Eurodac system;

7. stresses that it is intended that the CEAS be guided in its action by the practical defence of the rights of individuals who need international protection and not just by the desire for security in the narrow sense of the term or to safeguard national sovereignty;

8. wishes to affirm that a truly common asylum system is based on uniform rights and procedures across the whole of the EU, in order to eliminate the risk of major disparities in the way such cases are handled, and therefore approves of the efforts being made to amend existing legislation with a view to moving towards the introduction of common rules rather than minimum standards;

9. points to the recent rulings by the courts in Strasbourg and Luxembourg ⁽¹⁾ which, more than anything else, highlight (a) the major shortcomings in existing legal arrangements and more specifically, the Dublin Regulation and (b) the loopholes which, in the current tense climate, seriously threaten the protection of the rights of those seeking international protection and which stem from differences in the political, legal and practical approaches pursued by the various Member States. These rulings underline the need to establish a common European asylum system in due and proper form and, as part of this undertaking, to strengthen the Dublin Regulation with provisions that address the causes of the crises and thereby ensure that the shortcomings inherent in the individual Member States' systems do not have damaging effects, either on the systems as a whole, or on the protection of human rights;

⁽¹⁾ In the case *M.S.S v Belgium and Greece*, judgment of the European Court of Human Rights in Strasbourg on 21 January 2011 and in the case *N. S. v the UK Secretary of State for the Home Department and others*, judgment of the European Court of Justice on 21 December 2011 on the joined cases C-411/10 and C-493/10 regarding references for a preliminary ruling.

10. feels that, faced with the scale of migration, major changes must be made to EU asylum policy and that the need to implement effective policies and methods is becoming urgent;

11. points out that with reference to Article 80 TFEU, solidarity and the fair sharing of responsibility together form the institutional concepts governing the whole range of European policies which, in the context of the area of freedom, security and justice (AFSJ), cover the movement of persons, in this case, the management and crossing of external borders, asylum and international protection and immigration. This article provides an adequate legal basis for European legislative measures aimed at increasing solidarity and encouraging the fair sharing of responsibilities;

12. recognises that solidarity is closely linked to responsibility and encourages all Member States to put their own house in order by honouring and enforcing the commitments they have made at international and EU levels. Nevertheless, the Committee emphasises that a narrow concept of responsibility must not be set up as a prerequisite for solidarity in legal or practical terms; there are cases in which a practical show of solidarity can be useful in helping to ensure compliance with commitments;

13. points out that the current situation shows that in matters of asylum, practical solidarity, as set out in Article 80 TFEU, is needed between the EU and the Member States and expresses its conviction that it will not be possible to achieve a common and high level of international protection for those seeking international protection or entitled to it unless mechanisms are in place that take account of the major disparities between the individual Member States, in terms both of the number of third-country nationals they receive on their soil - whether they be economic migrants or applicants for international protection - and of the financial, technical and other options available for managing these migratory flows;

14. notes that the Commission communication provides an analytical description of the current situation and lists the tools available for enhancing solidarity, but nevertheless laments the absence of proposals for positive measures to encourage solidarity and make it easier to share responsibilities;

15. welcomes the Council initiative to establish a 'common framework for solidarity towards Member States facing particular pressures on their asylum systems, including through mixed migration flows' ⁽²⁾;

16. nevertheless emphasises that positive measures to encourage solidarity and shared responsibilities would mean stricter observance of human rights and the concepts of

justice, fairness, cooperation and political involvement. These provisions would need to comply with the principles of subsidiarity and proportionality;

17. points out in this respect that it is not possible to consider the European Commission's communication entirely in terms of complying with the subsidiarity principle, insofar as it essentially describes the way in which the existing instruments and EU legislation can help enhance solidarity. However, to the extent that it refers to possible future initiatives, relating, for example, to programmes for relocating recognised refugees, or regulations for jointly considering asylum requests where there are grounds for believing that they would have repercussions on matters which had hitherto been closely linked with questions of Member States' national sovereignty (such as considering asylum applications or the reception of asylum seekers) and which could have broader political, legal or financial implications, the Committee calls on the European Commission to pay the due and necessary attention to their drafting;

18. points out that the concept of solidarity also has an external component which, in this case, relates to the solidarity between the EU and other regions of the world affected by humanitarian crises and which, according to the United Nations High Commission for Refugees (UNHCR), take in the overwhelming majority of refugees and those seeking international protection. It is therefore essential for Member States to work with third countries on development cooperation in an attempt to create better economic and social conditions and to consolidate peace. However, support for third-country asylum systems cannot be considered as a means of avoiding granting the right to international protection within the EU or of transferring procedures outside its borders, but must be seen simply as a tool for improving economic and social conditions in third countries;

19. calls on the relevant institutions and the EU Member States to do more to actively urge the countries bordering the EU to meet the obligations they assume both under international law and vis-à-vis the EU and the Member States, particularly relating to countries that have reached readmission agreements with the EU;

The role of local and regional authorities

20. emphasises the local and regional dimension of solidarity and the fair sharing of responsibilities in terms of political asylum. Local and regional authorities situated close to the EU's external borders particularly find themselves on the front line as regards implementing European asylum legislation and the CEAS. The same applies to municipal authorities and major conurbations, which record a constant increase in flows of refugees and asylum seekers. Local and regional authorities play an important role in the reception of asylum seekers, refugees and beneficiaries of international protection and, in some Member States, are responsible for initial contacts with the new arrivals;

⁽²⁾ 3151st Justice and Home Affairs Council, Brussels, 8 March 2012.

21. underlines that, despite the well-established role they play, local and regional authorities are not included at all in the concepts of solidarity and the sharing of responsibilities, which at present apply only to the Member States. Furthermore, programming and discussions at political level only take account of the financial impact on Member States and not the repercussions for social cohesion felt at local and regional levels when receiving third country nationals, whereas it is the regional authorities that are called upon in the first instance to deal with the issue;

22. consequently plans to directly draft positions and proposals calling for local and regional authorities to be able to be actively involved in the arrangements for relocating refugees and in operating the mechanisms for delivering help, support and solidarity for people seeking the right to asylum or who have been granted it; indeed, in some Member States, legislative measures have already been adopted which recognise this type of responsibility for regional governments;

23. points out that local authorities play a major role in informing their citizens and that, with their long and remarkable history of cooperation with NGOs and civil society organisations they can help raise awareness regarding questions of asylum and international protection, thereby positively influencing the way the local community receives and accepts incomers;

Better shared responsibilities and governance for asylum

24. stresses the need to thoroughly overhaul the Dublin Regulation, within the framework of the European Commission's 2008 proposal⁽³⁾. To date, merely the fact of implementing the criterion of the first point of entry in the Union has helped to increase tensions in certain Member States' asylum systems and means that implementing this regulation is simply a matter of geographic location, which makes a mockery of the concept of solidarity. The Committee therefore urges Member States, the Council and the European Parliament to draw up a new procedure for crisis management and examine some positive solidarity measures likely to mitigate the harmful consequences these arrangements have so far had;

25. recalls that in a previous opinion⁽⁴⁾, it had welcomed the European Commission's proposal that transfers of those seeking international protection under the terms of the revised Dublin Regulation should be temporarily suspended when a Member State is faced with a particularly urgent situation which might place an increased burden on its reception facilities or asylum infrastructure. However, it completely understands the difficulty involved in gaining acceptance for and implementing such a measure and appreciates the relevance of the counter-proposal advocating

the creation of an early warning and assessment mechanism that would cover all operational aspects of the Member States' asylum systems;

26. given the comments above, considers it appropriate to emphasise that the effectiveness of this proposed early warning and assessment mechanism will depend to a large extent on the availability of reliable and up-to-date information, sound cooperation between the Member States and the EU's ability to make good any shortcomings and rectify as quickly as possible any potential problems flagged up. Moreover, the Committee draws attention to the invaluable help that might be provided by organisations such as the European Asylum Support Office (EASO), the United Nations High Commission for Refugees (UNHCR) and national refugee councils, together with other NGOs and, above all, local and regional authorities;

27. believes that the proposal to extend the voluntary relocation of recognised refugees, using the pilot programme operated in Malta as a model, is a positive step towards enhancing solidarity. The Committee therefore calls on the European Commission and the Member States to consider the possibility that such relocation might become mandatory under certain circumstances (for example, when requested by the Member State in question, or when a conclusion to this effect has been reached previously in the context of the early warning mechanism and the European Asylum Support Office has given its opinion on the matter, or even when the persons in question agree to the measure). It calls on the European Commission and the Member States to seriously consider whether those seeking international protection might also be the subject of relocation and, accordingly, calls on the European Commission to review the legal, economic and technical study that has been carried out⁽⁵⁾;

28. notes that practical and legal difficulties have been observed with regard to relocation due to the lack of a system for the mutual recognition of international protection decisions; for this reason calls on the European Commission to consider the necessary measures to address the situation;

29. agrees with the UNHCR's proposal for establishing a 'formula' for ensuring that a relocation system works and takes account of aspects such as the GDP of the country concerned, its surface area, its natural and other resources, its population, reception facilities, the total number of arrivals requesting asylum and its resettlement commitments, to list just a few criteria⁽⁶⁾;

⁽⁵⁾ Study on the feasibility of establishing a mechanism for the relocation of beneficiaries of international protection, point 27, JLS/2009/ERFX/PR/1005 – 70092056: http://ec.europa.eu/home-affairs/doc_centre/asylum/docs/final_report_relocation_of_refugees.pdf.

⁽⁶⁾ The challenges of mixed migration, access to protection and responsibility-sharing in the EU – UNHCR non-paper, paragraph 28: <http://www.unhcr.org/4a44dd756.html>.

⁽³⁾ COM(2008) 820 final.

⁽⁴⁾ CdR 90/2009, The future Common European Asylum System II.

30. welcomes the recent decision of the European Parliament leading to the conclusion of the common European resettlement programme, which it feels will help enhance the external dimension of solidarity, and calls on Member States to honour the commitments they have entered into as part of the UNHCR's programmes in the meantime;

31. welcomes the prospect of a joint examination of asylum applications involving as many Member States as possible, the EASO and possibly the United Nations High Commission for Refugees, whilst nevertheless pointing out that this must be done in compliance with the principle that those requesting international protection must be examined individually. The Committee therefore calls on the European Commission to carry out a legal, economic and technical study and to inform it of the findings;

32. also considers that Directive 2001/55/EC, which provides for a specific and exceptional solidarity measure to give temporary protection in the event of a mass influx of displaced persons and to ensure a balance of efforts between Member States, is of the utmost importance, even though it has not been implemented to date. The Committee therefore considers it appropriate to revise the Directive so that it is easier to determine, on the basis of objective and quantitative criteria, that a mass influx of displaced persons is actually taking place, and to consider, moreover, whether the system might be triggered by a request to this effect from one or several regions;

33. welcomes the fact that Directive 2003/109/EC concerning the status of long-term residents has been amended so that it also covers beneficiaries of international protection. In practice, this extension will mean that after a five-year residence period and subject to certain conditions, recognised refugees will be able to settle in a Member State other than that which first conferred international protection. Although this does not, strictly speaking, constitute a solidarity measure, this decision could conceivably help to reduce pressure and improve integration. The Committee accordingly calls on Member States to swiftly transpose amending directive 2011/51/EU (?) into their national legislation;

Cooperation on the ground

34. notes that practical cooperation is a basic pillar of the CEAS and welcomes the substantial contribution made by EU bodies, one of the foremost of which is the EASO, and also Frontex, which helps to deal with certain practical situations of an exceptional nature, for example in the cases of Malta and Greece, whilst pointing out that the actions of these specialised bodies must be accompanied by guarantees for maintaining the rights of those seeking international protection;

35. believes that it is particularly important to avoid practices that result in making it impossible to exercise the right to apply for asylum. The Committee consequently calls on Frontex to focus more clearly on respect for human rights when undertaking the tasks conferred on it in terms of protecting the EU's external borders. It considers that a first step has been taken in this direction with the recent amendment of the regulation establishing Frontex, which makes it compulsory for this body to draw up a fundamental rights strategy, set up an advisory forum and create a post with responsibility for fundamental rights (?). In this respect, it recognises the role likely to be played by the European Agency for Fundamental Rights (FRA), which has already looked into the human rights situation at the EU's external borders (?), and encourages it to broaden its investigations in this area and to allow Frontex and the EASO to benefit from its advice and know-how;

36. underlines the need to enhance the EASO's operational capabilities in order to render it more effective in assisting local and regional authorities with its immediate support, expertise and technical know-how and calls for a closer involvement of LRAs in the EASO's consultative forum; welcomes the European Commission's stated intention to assess the effects of the EASO's activities in 2013 and expresses its desire to be involved in this initiative;

37. deems education to be of supreme importance as a more specific practical cooperation measure on the part of the EASO and insists on the possibility of greater practical harmonisation that will finalise and comprehensively implement the European asylum curriculum. With this in mind, the Committee proposes that the EASO create training programmes that could be useful for officials in local and regional administrations when they are involved in receiving those seeking international protection;

Economic and financial solidarity

38. recognises that the EU has created a range of useful instruments over the past few years, the foremost of which is the European Refugee Fund, which enables Member States to implement European asylum policy more effectively;

39. welcomes the proposed simplification in the architecture of the European funding mechanisms for asylum and migration through the proposal to create a Fund for migration and asylum, which will have a budget of EUR 3,87 billion for the integrated management of migratory flows and will cover various aspects of the common asylum and migration policy over the period 2014-2020. The Committee hopes that this development will go hand in hand with a streamlining of procedures;

(?) Regulation (EU) 1168/2011, OJ L 304, 22.11.2011, p. 1.

(?) Report on Coping with a fundamental rights emergency – The situation of persons crossing the Greek land border in an irregular manner.

(?) OJ L 132, 19.5.2001, p. 1.

40. stresses the need for sufficient funding to be allocated to measures to enhance solidarity, which could involve supporting the efforts agreed for improving the basic conditions of asylum systems when necessary, giving practical assistance to Member States and regions under exceptional pressure or implementing relocation or resettlement programmes;

41. emphasises that it is essential that the funding allocated to asylum and international protection match the EU's international commitments so that a due and proper balance may be created between expenditure on security and border management and spending on areas such as reception conditions for asylum seekers, which are areas in which local and regional authorities can provide significant added value;

42. urges the European Commission and the Member States to do their utmost to fully implement the principle of partnership on which the operation of the Fund is based, so as to guarantee that all local and regional stakeholders are involved in identifying funding priorities and assessing the initiatives undertaken; this implementation should adhere to the implementing framework laid down in Chapter IV of the proposed regulation laying down general provisions on the Asylum and Migration Fund (COM(2011) 752 final);

43. therefore calls on each Member State to make provision for representatives from their local and regional authorities to be involved in the political dialogue for establishing the Fund's annual priorities⁽¹⁰⁾.

Brussels, 18 July 2012.

*The President
of the Committee of the Regions*

Mercedes BRESSO

⁽¹⁰⁾ Article 13 of the proposal for a regulation laying down general provisions on the Asylum and Migration Fund, COM(2011) 752 final.