



***METAdrasi's
observations and recommendations
on the Commission's Proposal for a
Regulation on Asylum and Migration***

METAdrasi – ACTION FOR MIGRATION AND DEVELOPMENT

[METAdrasi](#) was founded in December 2009 with the mission of facilitating the reception and integration of refugees and migrants in Greece. Believing that migration leads to development, METAdrasi is determined to uphold and protect the fundamental human rights of all those displaced and persecuted. The name METAdrasi is a synthesis of the Greek words “meta” and “drasi, meaning “then + action” and encapsulates our purpose and philosophy.”

Guided by the principles of consistency, efficiency, transparency, and the flexibility to adjust to emerging needs, METAdrasi is active in the following key areas:

- The provision of quality interpretation, enabling vital communication with refugees and migrants through the deployment of over 350 interpreters, trained and certified by METAdrasi in 43 languages and dialects – an activity that lies at the heart of any effective provision of humanitarian support;
- The protection of unaccompanied and separated children, through a comprehensive safety net of activities including accommodation facilities, escorting from precarious conditions to safe spaces and the pioneering activities of guardianship, foster families and supported independent living;
- The protection and support of other vulnerable groups through the provision of legal aid to asylum seekers, certification of victims of torture and deployment of humanitarian aid wherever needed;
- The education and integration of refugees and migrants through educational programmes, Greek language lessons, multilingual support guides and remedial education for children that enables access to the right to education, as well as soft-skills training, traineeship opportunities and work placements.

General observations

The proposed Regulation on asylum and migration management¹ serves to replace the Dublin III Regulation² and represents the long-awaited reform of the Dublin System. In reality however, the rules on responsibility are sustained; the only new element is the flexible solidarity infused into the system.

The Commission has acknowledged that *"the current Dublin system is not satisfactory, thus requiring changes aimed at streamlining it and making it more efficient"*³ and that it was not *"designed as an instrument for solidarity and sharing of responsibility"*.⁴ It goes further to assert that what is needed is a *"much more effective and comprehensive governance system that ensures that solidarity is effective in practice"*⁵ and that *"no Member State (MS) should shoulder a disproportionate responsibility and that all Member States should contribute to solidarity on a constant basis"*.⁶ However, these remain mere declarations without being translated into the wording and regulations of the proposal. Indeed, the Regulation maintains the Dublin System and at the same time introduces a dysfunctional, bureaucratic solidarity mechanism, which deflects from the fair distribution of asylum seekers and replaces it with a problematic scheme of "solidarity".

Comments on specific proposals:

Part III: Criteria and Mechanisms for Determining the Member State Responsible

Chapter I: General rules concerning the MS responsibility and safeguards (Art. 8):

- When no Member State can be designated on the basis of the criteria set in Chapter III, *"the first Member State in which the application for international protection was registered shall be responsible for examining it"* (par. 2).
- when the security check⁷ shows that there are reasonable grounds to consider the applicant a danger to national security or public order of the Member State carrying out the security check, that MS shall be the MS responsible.

¹ Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management, COM(2020) 610.

² Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

³ Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management, COM(2020) 610, page 100, under 1.4.3.

⁴ Idem.

⁵ New Pact on Migration and Asylum: Questions and Answers, https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1707.

⁶ Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions on a New Pact on Migration and Asylum, COM(2020) 609 final, Brussels, 23.9.2020, page 3.

⁷ carried out in accordance with Article 11 of Regulation (EU) XXX/XXX [Screening Regulation] or in accordance with the first and second subparagraphs of this paragraph.

Under Article 8(2), the “country of first arrival” principle is maintained and reinforced further in art. 21. The promise for a “fresh start” and the assurance that “Dublin would be put to bed” are circumscribed by these provisions which in essence preserves the current system and its flaws and thereby outlawing the fair distribution of asylum applicants in the EU.

Obligations of the applicants (art. 9) and Consequences of non-compliance (Art. 10):

- Applicants should make an application in the Member State of first entry. Only if they are in possession of a valid resident permit or visa, the application should be made and registered in the Member State that issued the residence permit or visa. Where a third-country national or stateless person intends to make an application for international protection, the application shall be made and registered in the country of first entry.
- The applicant is required to be present in the Member State in which the application was registered pending the determination of responsibility and in the responsible Member States deemed responsible afterwards. They should further comply with transfer decisions.
- deprivation of reception conditions in case of “secondary movements” (to a MS not responsible).
- The applicant shall submit as soon as possible and at the latest during the interview all the elements and information available to him or her relevant for determining the Member State responsible. Where the applicant is not in a position at the time of the interview to submit evidence to substantiate the elements and information provided, the competent authority may set a time limit within the period referred to in Article 29 (1) for submitting such evidence (one or two months).

The consistent goal to prevent unauthorised movements has now been reinforced taking a punitive approach in case of onward movement to a country that is neither the Member State where they are supposed to be present nor the Member State which was deemed responsible. However, the automatic deprivation of reception conditions runs counter to fundamental rights principles and fails to take into account the factors that lead to unauthorised onwards movements, which may relate to deficiencies in the Dublin criteria per se -the failure to determine the MS responsible according to personal circumstances and links to a MS- and the inadequate reception conditions in many MS. Highly problematic is the obligation for the applicants to provide for all necessary evidence to **substantiate** the elements and information until the interview, (leaving the possibility for late submission to the competent authority),⁸ that coupled with the shortening of the deadline to send a

⁸ Art. 9 (3).

take charge request within two months⁹ may add additional obstacles to the applicants and increase the administrative burden of the competent authorities.

Right to information (art. 11)

According to art. 11 information should be *"drawn up in a clear and plain language and that where necessary, it shall also be provided orally. Information should be provided as soon as possible, at the latest when an application for international protection is registered"*. Despite these welcome additions and clarifications, it should be noted that access to information for applicants depends mainly on practical arrangements; within this context it is crucial that operational measures are taken that guarantee access to timely and accurate information. Experience shows that information provision remains a challenge and that the capacity of MS authorities' is insufficient, whereas at the same time legal aid is not guaranteed at this stage. The proposal seems to place more weight on information provision regarding the obligations of the applicants rather than their rights.

Guarantees for children (Article 13)

A positive element relates to the intention of strengthening the protection of unaccompanied children, in line with international law. Firstly, the role of the guardian/ representative is reinforced, whose involvement in the best interest assessment, the family tracing and in the collection of relative information is now explicitly prescribed. Furthermore, the best interest assessment procedure is now being formalised, based on the aspects enumerated in Article 13(4), (inter alia the assessment shall take into account the views of the child and the involvement of the representative) and required before any transfer of a minor takes place. However, this is circumvented by the proposal to transfer unaccompanied children back to countries where they first lodged an application for international protection (see below).

Chapter II: Responsibility criteria

Chapter II sets out the criteria for determining the member state responsible for examining an application for international protection. In substance, the Regulation does not relaunch the Dublin system -which would require the modification of the criteria- and not in the least presents a viable alternative to it so as to ease the pressure from the southern countries and to provide for a protection-based, durable solution for the persons concerned.

Hierarchy of the criteria¹⁰

The criteria for establishing responsibility are maintained almost verbatim as per the Dublin III Regulation with a few additions and amendments.

According to the proposal, these are in hierarchical order:

⁹ Art. 29 (1).

¹⁰ Art. 14-23.

1. family considerations (art. 15 on unaccompanied children, art. 16 & 17 on family members),
2. issue of residence documents or visas (art. 19. The responsibility shall cease if the application is registered more than three years after the date on which the person entered the territory),
3. possession of a diploma or qualification issued by an education establishment established in a Member State (art. 20, the new introduced criteria),
4. the Member State of irregular entry (art. 21, the responsibility shall cease after three years, opposed to the current rules according to which the responsibility ceases after one year).

It remains doubtful whether the new introduced criterion based on the prior obtaining a diploma in a MS will be of relevance and meaningful applicability. Overall, it is evident that ultimately, the “first state of arrival” is the decisive criterion, perpetuating in this way the longstanding deficiencies in the protection of the applicants.

A problematic amendment relates to the possibility to apply the first entry criterion on unaccompanied children, “in the absence of a family member or a relative, unless it is demonstrated that this is not in the best interests of the minor”, which represents a regress in the current system, since the provision reverses the burden of proof. The provision also runs counter to the MA ruling (CJEU – Case C-648/11), according to which “where an unaccompanied minor with no member of his family legally present in the territory of a Member State has lodged asylum applications in more than one Member State, the Member State in which that minor is present after having lodged an asylum application there is to be designated the Member State responsible”.

Regarding family unity, a positive step marks the broadening of the notion of family, which is redefined, so as to include siblings, element that opens the possibilities for reuniting families.¹¹

Chapter III: Dependent persons (art. 24)

The proposed article is amended, introducing both positive and negative elements. On one side, the definition of family is narrowed down, leaving out of scope siblings - and limiting the scope of application to child-parent relationships- and on the other side is broadened so as to include family formed in transit countries.

Chapter V: Procedures

Section II: Procedures for Take Charge Requests

Time limits

The time limits for submitting a take charge request are reduced to two months from the registration of the application or one month from a Eurodac hit (Article 29(1)). The requested MS must reply within one month from receipt of a take charge request or two weeks in the case of a Eurodac of VIS hit. the deadlines for making requests

¹¹Art. 2 (g).

are not met then the responsibility will lie with the Member State of registration (Article 29(1)).

Notwithstanding the need for a swift determination of the responsible MS, this shortening of time limits will in reality pose further difficulties to the applicants and restrict the realisation of family reunification, taking into account the complications in the gathering of the necessary evidence and the constant rejection of the applications on the grounds of the insufficient proof submission. Apart from that, as stated above, it will increase significantly the workload of the MS responsible for applying the criteria. Ultimately, applicants may be unable to exercise their rights and be reunited with their families due to restraint and inability to cope with the strict deadlines.

Finally, given that first entry countries will become responsible if they fail to meet the deadlines, this may lead to a high number of applicants staying in that MSs and to unauthorised onwards movements.

Although it is welcome that the proposal introduces the extension of the time limits in case of unaccompanied children[art. 29 (1)], this is left at the discretion of MS, leaving questions as to its practical significance and application.

Evidence requirement

Art. 30 (par. 3- 6) in combination with recital 49 aim at lowering the evidential requirements, by stating that *"formal proof, such as original documentary evidence and DNA testing, should not be necessary in cases where the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility for examining an application for international protection."* To this aim the Commission shall, by means of implementing acts, establish, and review periodically, two lists, indicating the relevant elements of proof and circumstantial evidence [art. 30 (4)].

The unwillingness of Member States to accept take charge requests according to the rules on family unity that has been observed in the last years is evident in the imposition of heightened evidentiary standards, in the increasement of formalities such as the necessity to provide translated documents and in therequirement for provision of formal proof so as to establish and corroborate family links. In this context it should be noted that even DNA tests conducted in laboratories based in Greece were not accepted from Germanyas sufficient proof.Divergent practices of MS regarding the necessary evidence are also apparent, which result in unclarity and bureaucratic obstacles that in the end affect the fair process of the applications and obstruct realisation of family unity. This stance has been translated in the significance increase in the rejections of the respective applications. In this regard, the European Commission acknowledged the necessity to transform the rules on the elements of proof and circumstantial evidence, however it is not certain whether the proposed amendment is able to modify the current situation and bring to an end to the arbitrary and unjustified refusal to accept take charge requests by other MS and increase the number of the acceptance of take charge requests, [according to art. 30 (6) "the requested Member State shall acknowledge its responsibility if the

circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility”].

Section III: Procedures for take back notifications

Take back requests have been transformed into simple take back notifications, given that the *“responsible Member State will be evident from the Eurodac hit”*.¹² The MS that considers that another MS is responsible than the Member State in which the person is present shall make a take back notification without delay and in any event within two weeks after receiving the Eurodac hit. The procedure applies to an applicant or a third-country national or a stateless person in relation to whom another MS Member State has been indicated as the Member State responsible based on a Eurodac hit [art. 26 (b)], a beneficiary of international protection based on a Eurodac hit [art. 26 (c)] or a resettled or admitted person who has made an application for international protection or who is irregularly staying in a Member State other than the Member State which accepted to admit him or her [art. 26 (d)].

The notified Member State shall confirm receipt of the notification to the Member State which made the notification within one week, unless the notified Member State can demonstrate within that time limit that its responsibility has ceased pursuant to Article 27 (cessation of responsibilities). Failure to act within the one-week period shall be tantamount to confirming the receipt of the notification.

Once again it is evident that the proposal lays the emphasis on the prevention of unauthorised movements¹³ and establishes the necessary tools to that purpose, by introducing the one-sided character of the take back notification procedure and the legal obligation to take a person back, intended to *“give Member States the necessary legal tool to enforce transfers back, which is important to limit unauthorised movements”*,¹⁴ while in this way subverting the cooperation and mutual trust among MS. Moreover, the introduction of the legal obligation seems to downgrade the unwillingness of the first entry countries to accept persons back and the practical issues that will arise. Finally, the significant shortening of deadlines in combination with the limited grounds to substantiate an objection makes it almost impossible to object to a notification.

Section IV: Procedural safeguards

Remedies: Art. 33 limits the right to an effective remedy, prescribing that an appeal or review is only available against a transfer decision in take back procedures, as per art. 26 (1) (b), (c), (d) and in addition it limits the scope of the appeal, prescribing that the remedy will only assess *“...whether the transfer would result in a real risk of*

¹²Explanatory Memorandum to the Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management, COM (2020) 610, page 26.

¹³Explanatory Memorandum to the Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management, COM (2020) 610, page 25.

¹⁴Explanatory Memorandum to the Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management, COM (2020) 610, page 26.

inhuman or degrading treatment for the person concerned within the meaning of Article 4 of the Charter of Fundamental Rights or whether art. 15-18, art. 24 for applicants of international protection have been infringed. Lastly, it reduces the time limit for filing an appeal to two weeks and further provides for a suspensive effect only upon request of the person concerned.

Apart from the limitations introduced, the proposal does not include the right to an effective remedy when no transfer decision has been issued in cases of family unity.

Freedom of movement of beneficiaries of international protection

The proposal amends the long-term residence directive, so that beneficiaries of international protection can obtain a long-term residence permit in three years instead of five (art. 71). However, this does not introduce significant improvements, since the intra-EU mobility depends on acquiring the status of the long-term resident and so long as beneficiaries of international protection can be subjected to take back procedures.

Recommendations

- ❖ Abolition of the first entry criterion and replacement by meaningful links of applicants with other countries, so as to facilitate their allocation to MS according to individual circumstances that support their integration; this would in effect make punitive provisions and sanctions for non-compliance regarding “unauthorised secondary movements” unnecessary while ensuring fundamental rights, human dignity and adequate reception conditions.
- ❖ Limitations on provisions of evidence for the establishment of family links until the first interview should be removed, since such a deadline poses a disproportionate burden on the applicants to gather and collect all the necessary information and elements in a short period of time. In addition, the time-limit to submit a take charge request should be extended, otherwise applicants entitled to move to other MS on the basis of art. 14-25 may not be able to be transferred, in violation of the right to family unity.
- ❖ Cooperation among MS should be further enhanced, to facilitate the collection of necessary data, so that the relative burden of proof is not placed only on the applicants.
- ❖ Criteria establishing links based on family unity should be practically implemented, respected by the MS and actually applied; in this regard, it is essential to introduce binding, clear, precise and homogenous rules that prioritise circumstantial evidence, so as to limit recourse to formal documentary proof, which is crucial for persons coming from war-torn countries but has however a prerequisite in most cases.
- ❖ The rules on proof should be harmonised among MS, to reduce existing uncertainty and ambiguity on the required proof. A single simplified procedure for submitting an application for family reunification should be introduced for all MS together with a unified list of legal documents required. Currently, each

EU country has its own requirements depending on the policies it wants to pursue, most of which involve complex steps and significant administrative hurdles. The procedures should be simplified in the interest of the success of applications. Especially for unaccompanied children, it is necessary to reduce bureaucratic obstacles, the extended documentation requirements and lengthy, extensive best interest assessments, which ultimately run against the best interest of the child and pose obstacles to the realisation of family unity. The bureaucratic challenge is considerable, and the Greek authorities, and in particular the Greek asylum service, are not in a position to deal with these hurdles, as they are already overloaded with many other types of cases. Civil society organisations, and in particular METAdrasi with its guardianship network, provide as much help as possible, but bottlenecks remain, which means that children living in dangerous conditions experience long and discouraging delays at best, and at worst they miss deadlines and irrevocably lose the right to reunite with their relatives. For UAMs to submit an application for family reunification from Greece, it is essential to prepare a BIA (Best Interest Assessment) file, which must contain the research and all communication with the relatives, various legal documents, in some cases DNA tests and finally a complex text (often 30-40 pages long) to explain why it is in the best interest of the child to be reunited with his/her relative. The certification of the suitability of the relative requires not only the written consent of the relative and the child, but also a copy of the relative's legal status, his or her rental contract, bank account number, employer's certificate (if it is an employee), etc. If the relative has a health problem, he or she must be able to prove with medical examinations and certificates that his or her problem does not prevent him or her from taking over the child. Information on the social status of the relative must be provided, as well as the degree of kinship between the child and the relative, and all identity documents from the country of origin must be attached - in the original language and translated into English.

- ❖ The notion of family should be further broadened to include extended family and family formed in the country of origin, taking into account cultural considerations and the need to keep families together, especially for unaccompanied children.
- ❖ the practice of Switzerland could serve as an example, which took the initiative to speed up the Dublin procedure for all reunification cases of UAMs from Greece but also to accept requests for UAMs from Greece with extended family ties in Switzerland
- ❖ The best interest of the child should be of primary consideration; this excludes the possibility to return UAMs to the country of first entry and implies that UAMs are to be exempted from take back procedures
- ❖ effective legal remedies should be guaranteed against all transfer decisions and in cases in which no transfer decision has been taken, especially in cases of family unity. This is indispensable especially taking into account the high

number of rejections of transfer requests according to family unity criteria, since there are countries that do not even reply to the question within the prescribed time limit, and there have been cases where the question has not been answered at all.

- ❖ The amendment of rules on take back requests should be revised, to ensure a fair process for the applicants, the cooperation of MS and adequate reception conditions
- ❖ The mobility of beneficiaries of international protection should not depend on the long-term resident status and should be facilitated by introducing additional possibilities to move to another MS, taking into account the different social and economic situations in each MS and the various labour prospects.

Part IV: Solidarity mechanisms

The failure to reach consensus on the restructuring of the Dublin system is trying to be compensated by the institution of a flexible solidarity mechanism. It remains doubtful, whether the unfairness of the existing rules for sharing responsibility of asylum applicants across the EU can be reversed through the proposed mechanisms, according to which MS will be required to show solidarity but will be free to choose their way of contribution and may opt for other instruments of 'solidarity' instead of relocating applicants of international protection in their countries. The proposed provisions are of no surprise, taking into account the political background and the lessons learned from the ad hoc mandatory relocation based on the 2015 Council Decisions and the voluntary exercises of relocation following search and rescue (SAR) operations as well as the relocation exercise of vulnerable and unaccompanied minors from the Greece.

Forms of solidarity

Forms of solidarity for MS under migratory pressure or subject to disembarkations following search and rescue operations [art 45, (1) a-d]:

- relocation for applicants not subject to border procedure,
- relocation of beneficiaries of international protection who have been granted international protection less than three years prior to adoption of an implementing act,
- return sponsorship: under Article 55(4) the activities include providing counselling on return and reintegration to the persons concerned; providing logistical, financial and other material or in-kind assistance, including reintegration, to persons willing to depart voluntarily; leading or supporting the policy dialogue and exchanges with the authorities of third countries for the purpose of facilitating readmission; contacting the competent authorities of third countries for the purpose of verifying the identity of third-country nationals and obtaining a valid travel document; and organising on behalf of

the benefitting Member State the practical arrangements for the enforcement of return, such as charter or scheduled flights or other means of transport to the third country of return. Where a Member State commits to provide return sponsorship and the illegally staying third-country nationals do not return or are not removed within 8 months, the Member State providing return sponsorship shall transfer the persons concerned onto its own territory,

→ capacity-building measures in the field of asylum, reception and return, operational support and measures aimed at responding to migratory trends affecting the benefitting Member State through cooperation with third countries.¹⁵

In addition, apart from the above instruments, two further forms of solidarity contribution are foreseen as voluntary contributions, independent of the situation of a MS and operating out of the context of SAR and migratory pressure. These are [art. 45 (2) a & b]:

- relocation for applications who are subject to the border procedure,
- relocation of illegally staying third country nationals.

In case of relocation, MS will receive a financial contribution of 10,000 euros per relocated person and of 12,000 euros for an unaccompanied minor.

Vulnerable persons

Vulnerable applicants fall within the scope of the solidarity mechanism regardless of how they arrived in the country. In case the annual migration management report published by the Commission shows that a Member State may face challenges arising from the presence of vulnerable persons on its territory, then the solidarity pool for search and rescue operations can also be used for the relocation of asylum applicants who are vulnerable.

The three main solidarity tools are implemented differently depending on the specific situation faced by one (or more) Member States.

Situation 1: Search and Rescue Operations (Art. 47-49)

Eligibility criteria:

Relocation: Persons who have applied for international protection and are excepted from border procedures (if they do not pose a threat to national security or public

¹⁵ Examples of such support include assistance with putting in place enhanced reception capacity (e.g. infrastructure), financial or other assistance for the infrastructure and facilities necessary to better enforce returns, as well as material or means of transport for return operations. Contributions can also include measures intended to support a specific Member State on external aspects of migration management, for instance through engagement with non-EU countries of origin or transit or financing directed at managing the asylum and migration situation in a non-EU country from where arrivals are taking place.

order of that member State) and the MS is not the one responsible according to the responsibility criteria set out in Articles 15 to 20 (family considerations, issue of residence documents or visas, possession of a diploma or qualification issued by an education establishment established in a Member State) and 24 (dependency clause), with the exception of Article 15(5).

For return sponsorship are “illegally staying third-country nationals” (Article 45(1)(b)).

Procedure:

Stage 1: At first, the Commission shall specify the solidarity measures needed to assist countries faced with search and rescue operations that generate recurring arrivals in the annual Migration Management Report (MMR)¹⁶; these may consist of relocations and capacity building measures [art. 47 (2)]. Accordingly, MS shall indicate the contributions they intend to make within two weeks of the adoption of the MMR[art. 47 (3)]. The Commission may if requested determine the relocation numbers expected from the Member States based on the distribution key [(a) the size of the population (50% weighting); (b) the total GDP (50% weighting)][art. 47 (3)]. Within one month of the adoption of the MMR, MS shall submit the Solidarity Response plan, indicating their contributions[art. 47 (4)]. If Member States do not indicate their contributions, these are determined by the Commission.

When the Commission estimates that these are sufficient, it shall adopt an implementing act with the measures indicated by the MS; these measures shall constitute a solidarity pool[art. 48 (1)].

Stage 2: If those are deemed insufficient, the Commission shall convene a Solidarity Forum so that MSs adjust their contributions and submit the revised Solidarity Response Plans, so as to meet the expected needs[art. 47 (5)]. Such measures shall constitute a solidarity pool.

Stage 3: If these are still insufficient, in that there is no “foreseeable basis of ongoing support”, then solidarity contributions are rendered compulsory: the commission shall set the total numbers of persons to be relocated (determined by the distribution key) and/or the necessary capacity building measures (according to the offers of the MS in stage 1), if these are available according to the MMR. In this case, the other measures have to be proportional to the relocation numbers needs (as determined in the MMR)[art. 48 (2)].

Stage 4: If the relocations fall 30% short of the target set by the Commission, a critical mass correction mechanism will apply: Member States will have to offer 50% of their contribution as either relocation or return sponsorship or both (instead of other measures)[art. 48 (2)].

Apart from this process, additional provisions [art. 48 (1)]regulate the case in which 80% of the solidarity pool has been used for one or more of the benefitting Member

¹⁶ Where the Migration Management Report referred to in Article 6(4) indicates that one or more Member States faced with the situations referred to in paragraph 1, it shall also set out the total number of applicants for international protection referred to in Article 45(1), point (a) that would need to be relocated in order to assist those Member States. The report shall also identify any capacity-building measures referred to in Article 45(1), point (d) which are necessary to assist the Member State concerned.

States. In this instance, the Commission convenes the Solidarity Forum, so that MS provide for additional contributions in order to refill the solidarity pool (the procedure further differs according to the stage in which the solidarity pool is found to be used out).

Furthermore, it is also foreseen that the solidarity pool may be used for supporting MS under migratory pressure insofar as this does not jeopardize the functioning of the pool for the Member States facing situations of SAR[art. 49 (3)].

Situation 2: Migratory pressure (art. 50-53) [*migratory pressure' means as defined in the regulation a situation where there is a large number of arrivals of third-country nationals or stateless persons, or a risk of such arrivals, including where this stems from arrivals following search and rescue operations, as a result of the geographical location of a Member State and the specific developments in third countries which generate migratory movements that place a burden even on well-prepared asylum and reception systems and requires immediate action*]

In the case of "migratory pressure" the Commission shall conduct an assessment, either on its own motion or upon notification by a MS that considers itself to be in migratory pressure[art. 50 (1)], based on wide range of criteria¹⁷ taking into account the situation of the preceding six months.¹⁸ This mechanism can be triggered at any time (as opposed to the SAR mechanism). At the same time, the Commission informs the Parliament, the Council and (other) Member States that the assessment is taking place[art. 50 (2)].

Afterwards the Commission shall draw up a report, to be submitted also to the European Parliament and Council[art. 50 (1)]. The report determines whether or not the MS is under migratory pressure[art. 50 (2)], and if positive, identifies the capacity of the MS for the management of asylum and return, the measures to be undertaken by the MS under migratory pressure, and the solidarity measures by other MS[art. 50 (3)].

In this context, contributions are obligatory and each MS's quota is determined according to the distribution key. Nonetheless, MS can choose between relocation (of applicants and/or beneficiaries of international protection), return sponsorship and capacity building measures to discharge their duties.

Eligibility

In this case beneficiaries of international protection also become eligible for relocation [art. 51(3)], so long as they consent thereto and are automatically granted the same status in the relocation State [Articles 57 (3) and 58 (4)].

Procedure

¹⁷ The assessment is based on eleven factors, with a further ten factors to be taken into account as per art. 52.

¹⁸ the situation in the Member State in question is to be compared with the overall situation in the EU.

Stage 1: After the report and within two weeks the Member States shall indicate the contributions that they intend to make and which may consist of relocation of applicants, return sponsorship or relocation of beneficiaries of international protection by completing the Solidarity response plan[art. 52 (1)]. If the report also identifies other measures, then MS may offer contributions in this form, only if the contributions for relocation and/or return sponsorship do not fall below 30% of the total contributions identified in the Report[art. 52 (2)].

The MS may request a deduction of 10% in their share of contributions, where it indicates in the Solidarity Response Plans that over the preceding five years it has examined twice the Union average per capita of applications for international protection [art. 52 (5)].

If Member States do not specify their contributions, they are determined by the Commission. If the contributions are sufficient, then the Commission adopts an implementing act.

Stage 2: If the Commission considers that the contributions are not sufficient, then it convenes the Solidarity Forum, so that MS review their solidarity response plans and provide additional contributions [art. 52 (4)]. If the contributions are sufficient, then the Commission adopts an implementing act.

Stage 3: If the contributions offered for relocation and return sponsorship still fall short by more than 30% of the total needs (in relocations and return sponsorships) as identified in the report, then the Commission adjusts the contributions offered as capacity-building measures by the Member States, so that MS cover 50% of their share (according to the distribution key) in the forms of relocation and return sponsorship. The other half of the 'fair' share remains in the form of capacity building[art. 53 (2)].

Situation 3: Voluntary contributions (Art. 56)

Apart from the two cases, the possibility for a MS to make voluntary contributions, either in response to a request for solidarity support by a Member State¹⁹, or on its own initiative, including in agreement with another Member State is also foreseen. In this case, contributions may also include relocation for applications who are subject to the border procedure and relocation of illegally staying third country nationals.

Member States which have contributed or plan to contribute with solidarity contributions in response to a request for solidarity support by a Member State, or on its own initiative, shall notify the Commission thereof by completing the Solidarity Support Plan. The Solidarity Response Plan shall include information on the scope and nature of the measures and their implementation.

Concerns

- First of all, the perplexity and the bureaucratic character is self-evident, leaving no room for an estimation of how they will be implemented in

¹⁹ request of solidarity support from other to assist it in addressing the migratory situation on its territory to prevent migratory pressure. In this case, the MS shall notify the Commission of that request.

practice. The procedures seem rather complex and difficult to be set into practice, even less with notable results.

- The need for a “more comprehensive, effective and sustainable relocation system” remains another theoretical declaration; in the scenario of SAR, it is obvious that MS can discharge their duties by offering capacity building measures rather than relocations and for situations of pressure or risk of pressure, Member States can choose to contribute through either relocation and/or return sponsorship.
- It is also not clear what the “capacity-building” measures entail, which will be later on be specified. However, the current reality shows that the operational support offered from EASO in the reception and asylum has not brought about the expected results. On the opposite, it has undermined the efficiency and quality of the asylum procedures.
- Capacity building measures are weighed against relocations and return sponsorships. How this measurement will be implemented remains uncertain and how the measures can be gauged against each other is a question. The proposed solidarity mechanisms will not bring about any change to the current situation, where other (northern) countries fund the countries at the EU’s external borders, without any real improvement apparent in the reception systems of the latter countries.
- It is rather dubious to include in the solidarity forms the return sponsorship (and even more the relocation of illegally staying third country nationals, when they are transferred from one MS to another to be eventually deported) and it is questionable whether this contribution fits into the notion of solidarity. The strong focus on returns, which is evident throughout the Pact, provides the only plausible explanation.
- The operationalisation of the provisions makes apparent that frontline countries will still have to conduct the screening procedures, the registration of the applicants and the determination of the MS responsible, which involve administrative and financial costs.
- It is regretful that the role of NGOs, which possess expertise and knowledge in various fields, has not been taken into account in this context, whereby the role of EUAA and Frontex are strengthened and reinforced.
- The procedures also fail to take into account factors that cause the onward movement of applicants, such as employment opportunities, family or other links, providing that only “meaningful links” with the relocation country may be considered. They also fail to incorporate the views of the applicants and their preferences regarding their transfer to another MS (consent is foreseen only in cases of relocation of beneficiaries of international protection).

Recommendations

- ❖ The processes should be clearer and simpler, so as to provide for a constant effective and sustainable solidarity mechanism that guarantees the fair share of responsibility of MS.
- ❖ Return sponsorship should be removed from the prescribed solidarity contributions.
- ❖ The forms of solidarity and incentives for relocation should be expanded and enhanced.
- ❖ Relocation should be prioritised based on the preferences and ties of the applicants to a particular MS; to this aim it is also necessary to establish clear eligibility criteria on the persons to be relocated, their identification and to ensure their consent.
- ❖ For unaccompanied children it is necessary to regulate their automatic relocation if the capacity of each MS to provide adequate protection and reception is insufficient; the lengthy and bureaucratic obstacles of the family reunification proceedings according to Dublin coupled with the limited and inadequate reception capacity of the border MS requires an efficient solution that will provide much safer conditions for the children. METAdrasi has advocated for the automatic relocation of UAM in the form of temporary admission to another MS to provide good temporary care for unaccompanied minors until family reunification. First and foremost, this would benefit the children by providing urgent support to the children affected, but also the overburdened Greek authorities. This procedure of provisional admission could also greatly relieve the Greek state and provide further children and young people with appropriate accommodation and support structures. The AMMR regulation offers the legal basis for this solution, since it is stated that in case of relocation, after the transfer, the State of relocation will run a Dublin procedure and, if necessary, transfer again the applicant to the State responsible (see Article 58(2)).
- ❖ The role of the civil society should be given due weight and CSOs should have a formal role in the procedures.