

# Enhanced intra-EU solidarity in the field of asylum

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**PURPOSE:** to enhance intra-EU solidarity in the field of asylum.

**BACKGROUND:** solidarity is one of the fundamental values of the European Union and has been a guiding principle of the common European asylum policy since the start of its development in 1999. It is now enshrined in Article 80 of the Treaty on the Functioning of the European Union.

Solidarity has been recognised as an essential component of the Common European Asylum System (CEAS) since the outset. The need to translate solidarity into concrete measures flows from practical realities since the asylum systems of all Member States are interdependent. An overburdened or malfunctioning system in one Member State has a clear impact on all the others, including through secondary movements. Asylum flows are not constant, nor are they evenly distributed across the EU. They have varied from a peak of 425 000 applications for EU-27 States in 2001 down to under 200 000 in 2006, with a large increase expected this year.

Increased asylum flows can stretch the capacity of some Member States to cope. It is fundamental to increase trust to strengthen solidarity. Implementing the principle of solidarity requires a real commitment by Member States. The tough economic situation for the EU and its Member States makes this even more demanding.

The EU has already developed a series of solidarity tools that constitute a solid basis.

To this end, the Commission proposes reinforcing intra-EU solidarity on asylum around four axes:

- practical cooperation and technical assistance,
- financial solidarity,
- allocation of responsibilities,
- improving tools for governance of the asylum system.

**CONTENT:** many practical cooperation measures have been undertaken in recent years, latest through the creation of the European Asylum Support Office (EASO), which will further strengthen practical cooperation in the field of asylum.

**(1) Strengthen the European Asylum Support Office (EASO):** the EASO will further strengthen practical cooperation in the field of asylum. The support office will ensure that practical cooperation can become a major supporting pillar to the asylum system of the Union. The impact of the EASO will depend on the Member States' willingness to use the possibilities it offers and on their commitment to engage in such collaboration. Being able to deploy EASO Asylum Support Teams based on operating plans in requesting Member States will be a new asset for solidarity in the field of asylum. Other operational measures are envisaged in this context, and in coordination with Frontex and Europol.

During the recent events in the Mediterranean (Arab Spring and the war in Libya), the Commission examined the possibility of using the Union's Civil Protection Mechanism to assist Member States facing exceptional migration flows that overwhelm national response capacities:

- Member States to contribute to EASO's activities and assets and make best use of EASO mutual tools;
- Member States to set in early 2012 a quantitative target for their asylum officials to be trained using the European Asylum Curriculum by 2014;
- EASO to provide technical support to Member States in fully implementing the asylum legislation;
- EASO to review in 2012 procedures that will facilitate the secondment of officials to help Member States facing particular pressures on their asylum systems, and to create a pool of experts, case handlers and interpreters that can be mobilised at short notice in crisis situations.;
- EASO to improve the efficiency of deployment of experts by evaluating Operating Plan methodology and the initial experience of Asylum Support Teams in Greece;
- The Commission to evaluate in 2013 the EASO's impact on practical cooperation on asylum and on the CEAS and to propose possible additional measures deemed necessary to ensure effective solidarity and sharing of responsibilities;
- The EASO and Frontex to agree in 2012 clear cooperation arrangements to maximise analysis, technical assistance and deployment of means and experts to improve EU's capacity to act in emergency situations.

**(2) Enhancing the added value of financial solidarity instrument:** the Commission should maximise the use of the European Refugee Fund until 2013. From 2014, Member States will have a new [Asylum and Migration Fund \(AMF\)](#) at their disposal. This shall make a number of important evolutionary improvements that should help achieve EU policy objectives and generate more significant EU added value (please refer to [COM\(2011\)0751](#) for details of the proposal).

Key action points to financial solidarity are the following:

- Member States to make **best use of the ERF 2011, 2012, 2013 programmes**, including the emergency measures;
- in 2013, programming must be more strategically used, e.g. to support transposition and implementation of legislation adopted within the framework of the 2012 asylum package;
- co-legislators to agree quickly on the **MFF specific instruments** supporting asylum policy;
- Member States to ensure coordination and **complementarity with other EU financial instruments** to enhance their capacity to manage asylum flows;

**(3) Allocation of responsibilities:** a number of measures are proposed:

**a. The Dublin Regulation needs reform:** the objective of the Dublin Regulation, to assign responsibility for each asylum seeker to a Member State, remains at the core of the CEAS. However, the evolving case-law has posed fundamental questions about how to effectively operate the Dublin system in all circumstances and to ensure that measures taken in the application of the Dublin Regulation fully respect fundamental rights. In order to safeguard its integrity, **improvements must be made to the Dublin system's efficiency** and the level of safeguards for applicants. Negotiations on the Commission's 2008 proposal revealed the **need to enhance mutual trust in the Dublin system**. One of the solutions could be to step up monitoring and problem resolution measures to intervene at earlier stages with evaluation and early warning devices. This should now be given priority in the last phase of the negotiations with a view to meeting the 2012 deadline.

**b. Further developing relocation of beneficiaries of international protection:** relocation consists of transferring beneficiaries or applicants for international protection from one Member State to another, with the receiving Member State assuming responsibility for examining the application or for integration measures. The idea of relocating applicants for international protection before their protection needs are assessed is contentious. Many questions remain as to how such action would interface with the Dublin system, its practical usefulness and cost-effectiveness compared to other forms of solidarity, and the impact on applicants themselves.

**The Commission does not consider it useful to propose an EU mechanism for relocating applicants for international protection for the moment.** Such co-financing could also be useful in an emergency. By contrast, there is a consensus that relocating beneficiaries of international protection can be both useful and appropriate. In June 2009, the Commission proposed an EU-wide pilot, the EUREMA (EU Relocation Malta Project), co-financed by the ERF. The pilot project was an important experience for all actors involved. During the project, Member States were creative in finding solutions to many legal and practical issues concerning, for example, granting appropriate status or effective integration measures. The Commission has strongly supported relocation by initiating and driving the pilot project. Based on the experience of the two phases of the project, and taking into account the EASO's future support for relocation activities, the Commission will propose a **voluntary**, permanent scheme, subject to a further impact assessment. It would allow Member States to request assistance through relocation, including in an emergency.

**c. Joint processing of applications on the Union's territory:** there are many aspects of joint processing that need to be clarified. The essential questions include an assessment of the type of situations where joint processing could be useful. Legal and administrative issues to be considered include compatibility with EU law, legal basis in the Treaties, the question of effective remedy, the status of persons subject to joint processing, who would have the competence to take decisions, the link to transfer of protection and /or mutual recognition of asylum decisions, and reconciliation with the Dublin system. **Joint processing on the Union's territory could become a useful solidarity tool.** It could assist Member States under pressure in reducing backlogs of cases, thus accompanying the Dublin system. It could be a way of disseminating best practice and sharing techniques, again with a view to harmonising asylum systems by increasing trust in each others' asylum systems. The Commission will launch a study to consider these questions in depth. The outcome could be available at the end of 2012.

**(4) Ensuring adequate allocation of responsibility in exceptional circumstances:** apart from the emergency component of a future permanent relocation scheme, in the event of a mass influx of displaced persons, the Commission will always consider activating the mechanism of the Temporary Protection Directive when the conditions are met. This Directive is a useful tool in an exceptional situation. The events of 2011 in the Southern Mediterranean have not led to an influx of persons into the EU of a comparable scale. Large numbers of asylum seekers and irregular migrants arriving at the EU's southern external border often give rise to search and rescue situations. Member States are bound by obligations under international law to assist any person in distress at sea and to ensure disembarkation in a place of safety as soon as possible. The principle of *non-refoulement* must be fully respected. These obligations also apply to third countries of departure. The Commission encourages Member States to ensure the closest possible cooperation and coordination between them in meeting their obligations.

In this context, the following is proposed:

- co-legislators to speed up negotiations to reform the Dublin Regulation to meet the 2012 deadline and the Commission should launch a 'fitness check' of the Dublin Regulation in 2014;
- the Commission to propose in 2012 a **voluntary, permanent relocation scheme for beneficiaries of international protection;**
- the Commission to launch a study on the feasibility and legal and practical implications to establish joint processing of asylum applications, as foreseen in the Stockholm Programme, for results before the end of 2012.

**(5) Renewed governance system:** following allegations that Greece had not implemented the EU asylum legislation correctly and certain aspects of its asylum system were very poor, including inhumane conditions at detention centres, the Commission launched an infringement procedure against Greece in 2009. However, the Commission recognised that it was necessary to provide various forms of assistance

to Greece to improve the situation, given the humanitarian aspect of asylum. It also helped Greece develop a National Action Plan on Asylum and Migration Management. It coordinated assistance by experts from other Member States. It also provided ERF emergency funding, complemented by other sources of EU financial support.

**a. Strengthening the resilience of the Dublin system:** the Commission, the European Parliament and the Member States have recently discussed how to ensure the proper functioning of the asylum systems of all Member States and how to detect and address emerging problems before they lead to crises and infringement proceedings. The idea of an evaluation and early warning mechanism seems to present a way forward. In practice, an evaluation and early warning process could cover different aspects of governance of each Member State's asylum system. The Commission believes that such a process could substantially improve mutual trust between Member States and with civil society organisations that are often critical of the Dublin system.

**b. Building mutual trust through other areas of migration management:** although the objectives of each migration-related policy are different, better migration management in the form of better border management and **visa policy can also have a positive impact** on improving mutual trust between Member States in asylum matters. The Commission proposed a number of changes to Schengen governance on 16 September 2011, aimed at safeguarding freedom of movement by improving mutual trust among Member States. The proposals would improve the common management of Schengen by revising the Schengen evaluation mechanism.

On visa policy, one of the amendments to the Visa Regulation may also contribute to the efficiency of Member States' asylum systems. The introduction of a **visa safeguard clause**, as a last-resort measure, would make it possible to suspend visa-free movement from a third country where there is evidence that it has led, *inter alia*, to abuse of the asylum system. This mechanism would in particular allow the Union to maintain a balance between better managing the movement of third-country nationals and ensuring that visa-free travel does not lead to irregularities or abuse.

**Key action points are proposed:**

- Member States to implement EU law and the Commission to evaluate regularly and pursue infringements;
- Greece to actively pursue implementation of its Action Plan, making full use of the available solidarity measures, to meet every deadline set in the Plan;
- co-legislators to finalise negotiations on the Dublin Regulation with reinforced provisions to support mutual trust between Member States and early warning to detect early problems;
- co-legislators to approve the [Schengen package](#) to improve the governance of border management;
- co-legislators to approve the [amendment to the Visa Regulation](#) proposed by the Commission on 24 May 2011.