

The 2015 Refugee Crisis in the European Union

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Abstract

This year has seen an increasing number of people seeking refuge in the European Union. In this Policy Brief we examine the real issues regarding these arrivals, particularly for those coming from across the Mediterranean, and make concrete recommendations to alleviate the problems that both state authorities and refugees are encountering as a result.

Recommendations

What needs to be done? We propose the following:

- The EU, and not merely a few member states, needs to acknowledge that the Dublin system does not work and a new approach is urgently required.
- Find alternative tools for refugees to arrive safely in the EU without risking their lives in unseaworthy boats and paying their life savings to smugglers. This will require rethinking the visa requirements and carrier sanctions that ensure safe arrivals. Refugees, along with their possessions and resources, could then make safe, legal journeys and arrive anywhere within the EU.
- Ensure member states' first reception obligations are fulfilled, so that refugees are not forced to move to a second or third member state to be able to live in dignity while their asylum applications are processed.
- Exclude coercion from all EU mechanisms to allocate asylum seekers to member states. Voluntary mechanisms are the only ones that will work.
- Agree on a distribution key to share reception of refugees and determination of their claims in a way that is fair to the refugees and respects their preferences, and fair to member states by ensuring they all play a full part in hosting refugees.
- In the longer term, establish an EU Migration, Asylum and Protection Agency (EMAPA) to take responsibility for ensuring coherent and consistent determination of asylum claims across the EU.

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EU leaders are facing a European refugee crisis and must address it as a common European challenge, consistent with their collective and individual member state responsibilities to refugees. There has never been a time when the need for a common European response to refugee arrivals has been more urgent. That response is needed to meet the EU's collective obligations in international law, as reaffirmed in the EU legal order, in the EU Charter of Fundamental Rights, the EU Treaties and legislation.

Yet, even in the face of this pressing need, some EU leaders seem determined to insist on isolationist positions. For instance, most refugees are now arriving in the Greek islands, where humanitarian assistance is lacking, and basic needs are not being met. The Greek government should be taking responsibility, but as it cannot at the moment, the EU must step in, and offer safe passage and relocation. At present, those arriving via this route are being compelled to leave the EU again, and travel illegally across the Balkans, where they sometimes risk their lives once more. A coordinated humanitarian response is necessary, with safe passage to member states where asylum claims can be examined and protection provided, in line with international and European law.

What needs to be done? We propose the following:

- The whole of the EU, and not merely a few member states, needs to acknowledge that the Dublin system¹ does not work and a new approach is urgently required.
- Find alternative tools so that refugees can arrive safely in the EU without risking their lives in unseaworthy boats and paying their savings to smugglers – this will require rethinking visa requirements and carrier sanctions which enforce visa requirements.

¹ The Dublin Regulation establishes the member state responsible for the examination of the asylum application. For an analysis of why the Dublin system does not work effectively, see the most recent European Parliament Study on [Enhancing the Common European Asylum System and Alternatives to Dublin](#).

² UNCHR, 28 August 2015 (www.unhcr.org/55e033816.html).

Refugees, along with their possessions and resources, could then make safe, legal journeys and arrive anywhere in the EU.

- Ensure that member states' first reception obligations are fulfilled, so that refugees are not forced to move to a second or third member state in order to be able to live in dignity while their asylum applications are under consideration.
- Exclude coercion from all EU mechanisms to allocate asylum seekers to member states. Voluntary mechanisms are the only ones that will work.
- Agree on a distribution key to share reception of refugees and determination of their claims in a way which is fair to the refugees and respects their preferences and fair to member states by ensuring that all of them play a full part in hosting refugees.
- In the longer term, establish an EU Migration, Asylum and Protection Agency (EMAPA) to take responsibility for ensuring coherent and consistent determination of asylum claims across the EU.

What do we know about asylum applications in Europe? The media is awash with pictures of people seeking refuge in Europe, arriving on Greek islands in terrible situations. The lack of appropriate humanitarian response is shocking. Humanitarian relief and safe passage are needed.

According to the latest figures from UNHCR, more than 310,000 people have arrived in Italy and Greece this year.² Italy's reception facilities are overcrowded and its services stretched beyond capacity.³ The situation is worse in Greece, however, where 200,000 refugees have arrived from Turkey this year alone – a staggering increase from 43,000 in all of 2014.⁴ The distribution of asylum seekers across the EU is highly uneven:⁵

³ IRC interviews with humanitarian agencies in Italy (2-9 June 2015).

⁴ UNCHR, op. cit.; UNHCR, "Number of refugee arrivals to Greece increase dramatically", 18 August 2015 (www.unhcr.org/55d32dcf6.html).

⁵ First quarter 2015: Eurostat news release 112/2015 18 June 2015.

Table 1. The distribution of asylum seekers in the EU

	Number of first time asylum applicants in EU member states			Share in EU total (%)	Number of applicants per million inhabitants*
	Q4 2014	Q1 2015	Evolution (in %) Q1 2015 / Q4 2014	Q1 2015	Q1 2015
EU	184,200	184,815	0%	100%	365
Belgium	4,090	3,440	-16%	1.9%	307
Bulgaria	4,235	3,190	-25%	1.7%	440
Czech Republic	280	355	27%	0.2%	34
Denmark	3,700	1,505	-59%	0.8%	267
Germany	55,310	73,120	32%	39.6%	905
Estonia	40	50	25%	0.0%	38
Ireland	455	625	37%	0.3%	136
Greece	2,115	2,610	23%	1.4%	239
Spain	1,950	2,035	4%	1.1%	44
France	15,515	14,770	-5%	8.0%	224
Croatia	80	40	-50%	0.0%	9
Italy	21,285	15,245	-28%	8.2%	251
Cyprus	445	430	-3%	0.2%	501
Latvia	75	45	-40%	0.0%	23
Lithuania	160	45	-72%	0.0%	15
Luxembourg	320	265	-17%	0.1%	482
Hungary	27,925	32,810	17%	17.8%	3,322
Malta	315	345	10%	0.2%	811
Netherlands	4,375	2,425	-45%	1.3%	144
Austria	10,565	9,705	-8%	5.3%	1,141
Poland	1,655	1,440	-13%	0.8%	38
Portugal	140	180	29%	0.1%	17
Romania	360	335	-7%	0.2%	17
Slovenia	90	45	-50%	0.0%	22
Slovakia	90	50	-44%	0.0%	9
Finland	1,100	960	-13%	0.5%	176
Sweden	19,370	11,415	-41%	6.2%	1,184
United Kingdom	8,155	7,335	-10%	4.0%	114
Norway	2,565	1,520	-41%	-	298
Switzerland	5,135	4,125	-20%	-	507

Source: Eurostat, News release 18 June 2015.

It is worth remembering that in 2014 there were a total of 624,000 people who applied for asylum in the EU, but over 109 million people who entered the EU as tourists or visitors.⁶ Despite some claims to the contrary, the EU has a Common European Asylum System (CEAS) that comprises common refugee law contained in a number of interlocking legislative instruments. The problem is, first, that some member states fail to apply its binding standards properly (or at all); and, second, when they do properly apply them, they do not come to consistent conclusions. In order to ensure member states fulfil their EU obligations a new EU agency is needed which is given the power and duty to determine asylum applications across the EU and review the procedures of all member states.

Why is there a crisis in the Mediterranean, particularly in Greece and Italy? The problem is twofold: the lack of safe (and legal) access to the EU, and the inconsistent reception and uneven distribution of asylum seekers. The most important thing a person fleeing persecution or civil war requires is some means to safely access a place of protection, such as the EU ought to be.⁷ On arrival in the EU, refugees need immediate and adequate reception facilities. Notwithstanding an EU directive that requires all member states to meet minimum standards on reception conditions for asylum seekers, several member states are failing abysmally to meet their obligations. In fact, Greece has so manifestly failed to provide adequate reception facilities for refugees (despite the very substantial funds made available to it under the European Refugee Fund for exactly this purpose) that the Court of Justice of the EU and European Court of Human Rights (ECtHR) have determined that conditions

are inhuman and degrading in that country, thus preventing Dublin removals there.⁸ The ECtHR has also ruled out returning individuals to Italy without specific, individual guarantees of suitable reception conditions, in particular for families with children.⁹ Access to protection and adequate reception conditions do not exclusively relate to sea arrivals. Very substantial problems exist in the management of 'green' borders, which prevent access for asylum seekers to the EU. One example is the wall currently under construction in Hungary to keep asylum seekers out,¹⁰ and lethal incidents occurring in the Spanish enclaves of Ceuta and Melilla.¹¹

Why, then, are asylum seekers not able to enter the EU and, if they do make it, why are appropriate reception facilities not available?

The first problem is that refugees' dangerous journeys to the EU are a result of EU visa policies and carrier sanctions. While nationals from refugee-producing countries require visas to reach the EU (Visa Regulation 539/2001), visa-issuing criteria include proof of willingness and ability to return to the country of origin or provenance (Art. 21 Visa Code). On the other hand, refugees are legally defined under EU and international law as persons in need of protection, they thus are unable to return to those very same countries (Art. 1(A)2 Refugee Convention and Art. 2 Qualification Directive). At the same time, commercial air and shipping companies have been required to make sure they transport only duly documented migrants into the EU, under penalty of sanction (Directive 2001/51). As a result, left with no means of legal access, refugees are pushed into illegality, obliged to turn to smugglers (or fall prey to traffickers) to reach the EU via unsafe routes.¹²

⁶ 2014 statistics: EUROSTAT news release 53/2015 20 March 2015; tourist statistics: FRONTEX, First Quarter 2015 Risk Analysis.

⁷ According to the Commission, "Europe should continue to be a safe haven for those fleeing persecution". See A European Agenda on Migration, COM(2015) 240 final, 13 May 2015, at 2.

⁸ ECtHR, *MSS v. Belgium and Greece*, 21 January 2011; and CJEU, Joined Cases C-411/10 and C-493/10 *NS & ME*, 21 December 2011.

⁹ ECtHR, *Tarakhel v. Switzerland*, 4 November 2014.

¹⁰ "Hungary begins work on border fence to keep out migrants", *The Guardian*, 13 July 2015 (www.theguardian.com/world/2015/jul/13/hungary-begins-work-on-border-fence-to-keep-out-migrants).

¹¹ "Spanish police summoned over Ceuta migrant deaths, camp raided near Melilla", *Deutsche Welle*, 11 February 2015 (www.dw.com/en/spanish-police-summoned-over-ceuta-migrant-deaths-camp-raided-near-melilla/a-18250675).

¹² V. Moreno-Lax (forthcoming), *Assessing Asylum in Europe*, Oxford: Oxford University Press, chs 3, 4 and 5.

According to the UN Office on Drugs and Crime, people pay between US\$2,000 and US\$10,000 to get to Europe, primarily via neighbouring countries.¹³ Yet anyone who does not need a visa or who has a valid Schengen visa can cross the Mediterranean safely by ferry for approximately €35, on one of the many commercial ferry companies. There are dozens of crossings a day between Greece and Turkey, Morocco and Spain, and Tunisia and Italy. In summer, many ferries carry up to 1,000 passengers per crossing.¹⁴ EU legislation against smuggling of persons does not simplify or resolve the problem.¹⁵ This legislation has been in effect for over ten years but criminalising the irregular movement of people across the Mediterranean seems only to have increased both the risk and costs involved for refugees. As boats can only be used once – they are confiscated on arrival – the full cost of the boat must be covered by the refugees. As captains of smuggling boats will be arrested and prosecuted if they arrive in EU waters, refugees are left in boats without sailors to drift towards EU waters as best they can.

Alternative means of **ensuring safe and lawful access to the EU** are urgently needed¹⁶ to prevent those seeking refuge from dying on their way to Europe, whether by sea or by land. This is what the EU and member states have explicitly committed to providing, in Council statements and policy documents over recent months, following the large-scale losses of life among asylum seekers and migrants. Moreover, providing safe and lawful access is necessary for compliance with fundamental rights obligations, as established in the EU Charter and related international instruments. Such access would greatly reduce the demand for the services of smugglers, and thereby enhance trust between asylum seekers, refugees and the authorities in

EU member states. It would lead to more effectively planned and orderly arrivals on the territory of the member states, as they would not be concentrated on the beaches of Italy and Greece but spread across the airports and ferry terminals of the EU. It would thus avoid placing external border states under strain.

Against this background, the EU needs a fundamental rethink premised on the **ethical and practical importance of avoiding excessive coercion of asylum seekers and refugees**. Any reforms should reflect the importance of avoiding coercion, in order to foster trust between asylum seekers and refugees and the authorities, and to ensure that **fundamental rights are respected, protected and fulfilled**. Avoiding coercion is also crucial to delivering the **workability** of asylum systems and any responsibility-allocation mechanisms that are developed to replace or complement the Dublin system.

Thus, as set out in the 2014 and 2015 European Parliament Studies,¹⁷ **root and branch reform of the Dublin system is long overdue**.

Several options need to be explored, including the possibility of instituting an **EU Migration, Asylum and Protection Agency (EMAPA)** with powers to make centralised, EU-wide decisions on asylum applications; a **'free choice'** approach, as supported by the UN Special Rapporteur on the Human Rights of Migrants, with the advantage of reducing complexity and maximising asylum seekers' agency and trust; the possibility of **decoupling disembarkation and allocation of responsibility**, suspending Dublin rules vis-à-vis coastal member states, eliminating incentives to non-rescue; **post-recognition relocation**, following the EUREMA model, as an option to mitigate *ex post* some of

¹³ www.unodc.org/toc/en/crimes/migrant-smuggling.html.

¹⁴ www.balearia.com/wps/portal/balearia/planifica/viajaConNosotros/rutasHorarios.

¹⁵ Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence; Council Framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence.

¹⁶ The European Parliament has acknowledged the need for new safe forms of access to the territory for asylum seekers in April 2015, www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B8-2015-0381+0+DOC+XML+V0//EN.

¹⁷ [www.europarl.europa.eu/RegData/etudes/STUD/2014/509989/IPOL_STU\(2014\)509989_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/509989/IPOL_STU(2014)509989_EN.pdf).

Dublin's shortcomings; or a system of **distribution keys**, for the distribution of persons, resources or both, aimed at **enhancing the overall protection capacity of the EU** through a more efficient and transparent system of allocation of responsibilities.

Financial support, available under the Asylum, Migration and Integration Fund (AMIF),¹⁸ could be used to support initiatives to replace (or mitigate) Dublin.

In all cases, the dignity and agency of all migrants, asylum seekers and refugees should be respected. In practice, this requires that all transfers avoid coercion, offer a reasonable range of options, and disseminate reliable information. Mechanisms to ensure their participation in relocation decisions are also essential to their making well-informed decisions.

The Commission's Relocation Proposal of May 2015 should be analysed in light of this ethical and practical commitment. **Some notable shortcomings** should thus be noted and avoided in subsequent legislation: the limited territorial and temporary remit of the proposal; its reduced personal scope of application; the use of numerical indicators to select the beneficiaries of the scheme, which could obscure protection needs of specific groups and fail to reflect changing circumstances in countries of origin; and limited appeal rights, which risk incompatibility with effective remedy standards. The most striking factor is the **lack of any input from asylum seekers in transfer decisions**, especially given that coercive transfers have contributed to the failure of Dublin.

Conclusions

Creating legal and safe avenues to access protection in the EU is essential to avoid life-threatening journeys and deaths in transit, whether at sea or by land. Safe access would also diminish the burden on coastal member states for search and rescue (SAR), reception, and processing of claims.

Dublin should be replaced with a non-coercive, solidarity-based, fundamental rights-compliant system of responsibility allocation for asylum claims. A legally binding EU distribution key must ensure that asylum seekers are received across the EU in a manner that is fair in terms of both the dignity of asylum seekers and the solidarity of the member states. But a distribution key without reception facilities in all member states for asylum seekers who meet EU norms will fail, just as the Dublin system has failed. The central issue for member states is the fair distribution of asylum seekers; the key issue for asylum seekers is access to acceptable reception facilities and a fair asylum procedure. These two issues must go hand in hand – no distribution key will work if asylum seekers find themselves in abject conditions with no access to housing, water, food, etc., as is currently the case in some member states. Further, no distribution key will work if it is based on forcing asylum seekers to go to places where there are no acceptable reception facilities available. The EU legislature must accept the interconnected nature of the refugee crisis and fulfil EU and member state obligations to provide protection to refugees in conditions that respect their dignity.

¹⁸ The EU's Asylum, Migration and Integration Fund.