



European Economic and Social Committee

SOC/526
A European Agenda on
Migration:
Second implementation
package

Brussels, 10 December 2015

OPINION

of the
European Economic and Social Committee
on the

**Proposal for a Regulation of the European Parliament and of the Council
establishing a crisis relocation mechanism and amending 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**
COM (2015) 450 – final 2015/0208/(COD)

Rapporteur: **Cristian Pîrvulescu**

On 16 September 2015 and 21 October the European Parliament and the Council of the European Union decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on

Proposal for a Regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending 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 (COM (2015) 450 – final 2015/0208/(COD)).

The Section for Employment, Social Affairs and Citizenship, which was responsible for the Committee's work on the subject, adopted its opinion on 19 November 2015.

At its 512th plenary session, held on 9 and 10 December 2015 (meeting of 10 December), the European Economic and Social Committee adopted the following opinion by 152 votes to 6 with 13 abstentions.

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1. Conclusions and recommendations

- 1.1 The refugee crisis in the EU has reached the point at which the founding principles of human rights protection and democracy are being called into question. Despite the difficulties, EESC strongly believes that these principles must be upheld and properly implemented.
- 1.2 The EESC believes that the sovereigntist tendencies of some governments and the negative perceptions of migration and refugees held by a growing number of citizens can be limited through a broad and necessary effort to uphold core European values and the EU institutional achievements. In these exceptional situations, we need more Europe, more democracy and more solidarity.
- 1.3 The current refugee crisis, although foreseeable, occurred because of the absence of a common asylum policy, the delay of which was due to the absence of concerted European political action. In this context, the EESC urges the European Council, the European Commission and the European Parliament to implement Article 67(2) and Article 78 of the Treaty on the Functioning of the European Union, which lay down the conditions for the EU to create a genuine asylum policy.

- 1.4 The EESC has consistently highlighted the need for solidarity, responsibility and common action as well as the centrality of fundamental rights.
- 1.5 The EESC welcomes the efforts made by the European Commission to coordinate a common response to the refugee crisis, including the Leaders' Meeting on refugee flows along the Western Balkans Route.
- 1.6 The crisis relocation mechanism is a concrete example of cooperation based on solidarity and responsibility. However, the EESC wishes to have this relocation mechanism and other similar initiatives included as part of a general strategy in order to ensure coherence and efficiency. In particular, there is a need for robust, solidarity-based systems of burden-sharing, especially a permanent, fair and binding system for allocating those seeking protection between all EU countries.
- 1.7 The European Commission and the other EU institutions must actively support the governments of the Member States so as to provide proper conditions and prospects for integrating the relocated asylum applicants. In this context, it should, inter alia, be clarified that expenditure incurred by the Member States in connection with the reception and integration of asylum-seekers and refugees is not long-term, structural expenditure and should not, therefore, be included in the calculation of structural budget deficits.

2. **General comments**

- 2.1 The current refugee crisis represents both an administrative challenge – as the sheer scale of the phenomenon is unprecedented - and a legal one. The EU has reached the point at which the founding principles of human rights protection and democracy are being called into question. The willingness of the Member States to fully implement international treaties has been affected by increased international mobility, as a consequence of economic globalisation. The EESC believes that the sovereigntist tendencies of some governments and the negative perceptions of migration and refugees held by a growing number of citizens can be limited through a broad and necessary effort to uphold European core values and the EU institutional achievements. In these exceptional situations, we need more Europe, more democracy and more solidarity.
- 2.2 The European asylum system is under significant pressure, stemming from multiple crises. Some of these originate from the international politics of the 2000s, while others are perverse effects of the economic and financial crisis. The most recent ones, the "Arab spring", political instability in Libya and the civil war in Syria, have directly led to the considerable increase in the number of refugees.

- 2.3 The 47 member states of the Council of Europe are bound to apply the human rights provisions ensuring that, on the basis of Article 3¹ of the European Convention on Human Rights, all human beings are protected. In contrast, the 1951 Convention relating to the Status of Refugees only grants protection for a specific category of individuals, as defined in Article 1, and this protection can be more easily lost. However, the Convention considers individuals in need of international protection to be entitled to a set of rights. In some Member States, for example in Romania, constitutional provisions give primacy to international treaties over national legislation. Article 18² of the Charter of Fundamental Rights of the European Union, which became binding pursuant to Article 6 of the TFEU, sets out the right of people in need of international protection.
- 2.4 The Dublin system has disproportionately placed the burden of processing asylum applications on a number of "frontline" states (Malta, Italy, Cyprus, Greece, Spain and recently, Hungary). Under these conditions it has become increasingly difficult for some Member States to observe in practice the principles of non-refoulement and the principles enshrined in the European Convention on Human Rights, the Charter of Fundamental Rights and the directives stemming from it. Despite the difficulties, EESC strongly believes that these principles must be upheld and properly implemented.
- 2.5 Article 67(2) and Article 78 of the Treaty on the Functioning of the European Union lay down the conditions for the EU to build a genuine asylum policy. In the light of these articles, the focus is not on drafting minimal rules, but rather on creating a common system which includes uniform procedures. The current refugee crisis, although foreseeable, occurred because of the absence of a common asylum policy, the delay of which was due to the absence of concerted European political action. In this context, the EESC urges the European Council, the European Commission and the European Parliament to implement these Articles.
- 2.6 The EESC welcomes the efforts made by the European Commission to coordinate a common response to the refugee crisis, including the Leaders' Meeting on refugee flows along the Western Balkans Route. The meeting brought together Heads of State and Government, both EU and non-EU, in an effort to better coordinate action in the region in three key areas: providing shelter, managing the migration flows together and border management³.

¹ "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". Not only Article 3 is related to the asylum and international protection. Expulsion of persons who filed an asylum application which was rejected can be problematic in relation with Article 2 (Right to life), Article 5 (Right to liberty and security), Article 6 (Right to a fair trial), Article 7 (No punishment without law), Article 3 of the Protocol no. 4 (Prohibition of expulsion of nationals), and Article 4 of the same Protocol (Prohibition of collective expulsion of aliens). Other articles also invoked: Article 8 (Right to respect for private and family life), Article 13 (Right to an effective remedy), Article 16 (Restrictions on political activity of aliens).

² The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

³ See the Leaders Statement issued after the meeting.

- 2.7 The EESC hopes that the crisis relocation mechanism will help the EU move, on the basis of a consensus, towards a system that is robust and flexible enough to meet the challenges of migration in its different forms.
- 2.8 The EESC has consistently highlighted the need for solidarity, responsibility and common action as well as the centrality of fundamental rights. It has also insisted that serious efforts must be made to facilitate the integration of migrants and refugees.
- 2.9 The crisis relocation mechanism is a concrete example of cooperation based on solidarity and responsibility. However, the EESC wishes to have this mechanism and other similar initiatives included as part of a general strategy in order to ensure coherence and efficiency. In particular, there is a need for robust, solidarity-based systems of burden-sharing, especially a permanent, fair and binding system for allocating those seeking protection between all EU countries. The European Commission's "European Agenda on Migration" is a positive step in this direction.

3. **Specific comments**

- 3.1 Any Member State that does not take part in the mechanism should explain its reasons. If the motivation is primarily financial or due to lack of preparation for receiving the asylum applicants, provision should be made for some advance financial support.
- 3.2 EU support for the civil society organisations dealing with the refugee crisis and the integration of migrants is still insufficient. Bureaucratic rules and procedures hamper their capacity to act effectively on the ground.
- 3.3 To determine that a crisis exists, the EC would look at whether the situation is such that a Member State with a "well prepared asylum system" is still unable to handle the situation. How is this defined? What are the criteria for describing an asylum system as "well prepared"? The proposal gives some criteria the EC might consider, however they are flexible and are described as "inter alia".
- 3.4 The proposal is not specific enough as regards matching the preferences of the beneficiary Member State, the Member State of relocation and the applicants. It is not clear how it will work in practice.
- 3.5 It is recommended that relevant information and counselling be available to the applicants, provided by the authorities in beneficiary Member States and the liaison officers of the Member State of relocation.
- 3.6 It is not clear how the Member State of relocation is encouraged to properly receive and integrate the relocated applicants. The state of infrastructure, the availability of services, e.g. medical or educational, and financial allocations will influence the willingness of the

applicants to be relocated to a specific country. The European Commission and the other EU institutions must actively support the governments of the Member States so as to provide the proper conditions and prospects for integrating the relocated applicants.

- 3.7 The proposal needs to be more specific in this respect and outline a procedure for evaluating and encouraging the development of asylum infrastructure and services in all Member States.
- 3.8 The system must to some extent accommodate the preferences of asylum seekers for specific Member States of relocation. The preferences must be linked to clear and demonstrable prospects for successful integration (resident family members, knowledge of language, and previous links to the country such as studies or business).
- 3.9 "Cultural ties" are mentioned as a factor to be taken into account when relocating a person to a Member State. The EESC considers that this criterion should not be used to justify the rejection of asylum seekers on the basis of their religion.
- 3.10 The proposal fails to specify how the scheme will work for countries like Serbia and the former Yugoslav Republic of Macedonia (FYROM), which have clear accession prospects and are experiencing a significant influx of migrants and asylum seekers.

Brussels, 10 December 2015

The President
of the
European Economic and Social Committee

Georges Dassis