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on enhanced intra-EU solidarity in the field of asylum
(2012/2032(INI))

Committee on Civil Liberties, Justice and Home Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on enhanced intra-EU solidarity in the field of asylum

(2012/2032(INI))

The European Parliament,

- having regard to Articles 67(2), 78 and 80 of the Treaty on the Functioning of the European Union,
- having regard to the communication of 2 December 2011 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on enhanced intra-EU solidarity in the field of asylum - An EU agenda for better responsibility-sharing and more mutual trust (COM(2011)0835),
- having regard to its resolution of 25 November 2009 on the communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen – Stockholm programme¹,
- having regard to the communication of 6 April 2005 from the Commission to the Council and the European Parliament establishing a framework programme on solidarity and management of migration flows for the period 2007-2013 (COM(2005)0123),
- having regard to the conclusions of the Justice and Home Affairs Council of 8 March 2012 on a Common Framework for genuine and practical solidarity towards Member States facing particular pressures on their asylum systems, including through mixed migration flows, during the 3151st Justice and Home Affairs Council meeting,
- having regard to international and European human rights instruments including in particular the UN Convention relating to the Status of Refugees, the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR), and the Charter of Fundamental Rights of the European Union (the Charter),
- having regard to the Commission's Green Paper of 6 June 2007 on the future Common European Asylum System (COM(2007)0301),
- having regard to the Commission Policy Plan on Asylum of 17 June 2008: An integrated approach to protection across the EU (COM(2008)0360),
- having regard to Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof²,
- having regard to the 18-month programme of the Council of 17 June 2011, prepared by

¹ OJ C 285 E, 21.10.2010, p. 12.

² OJ L 212, 7.8.2011, p. 12.

the Polish, Danish and Cypriot Presidencies,

- having regard to the Commission proposal for a regulation of 15 November 2011 establishing the Asylum and Migration Fund (COM(2011)0751),
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Foreign Affairs (A7-0000/2012),
- A. whereas the European Union has committed itself to completing the establishment of a Common European Asylum System (CEAS) in 2012;
- B. whereas effective solidarity and responsibility-sharing must be perceived as a means to assist Member States in complying with their obligation to provide protection to those in need of international protection and assistance to third countries hosting the largest numbers of refugees, with the aim of strengthening the common area of protection as a whole;

Introduction

1. Welcomes the Commission communication on enhanced intra-EU solidarity in the field of asylum, which calls for the translation of solidarity and responsibility-sharing into concrete measures;
2. Recalls that the right to international protection is a fundamental right enshrined in international and Union law which is complemented by a series of additional rights and principles, such as the principle of *non-refoulement*, the right to dignity, the prohibition of torture, inhuman or degrading treatment, the right to an effective remedy and the right to private and family life;
3. Asserts that solidarity is not limited to Member States' relations with each other, but is also aimed at asylum seekers and beneficiaries of international protection;
4. Underlines the fact that there has been a sharp decrease in the number of asylum applications in the past decade in the EU; highlights that certain Member States face disproportionate asylum requests compared to others, and that asylum applications are unevenly spread across the EU; stresses that it is crucial to identify these inequalities by, inter alia, comparing absolute numbers and capacity indicators;
5. Stresses that a high level of protection for asylum applicants and beneficiaries of international protection cannot be achieved if the discrepancies in the proportion of asylum applications and in the technical and administrative capacities in different Member States are not redressed;
6. Takes the view that although the number of asylum applications is not constant, it is predictable to some extent, especially as regards EU entry points;
7. Notes that a significant gap remains between the actions Member States at the external

borders of the Union are expected to take under the CEAS and the support available to them to carry out those tasks adequately; points out that Article 80 TFEU requires the activation of existing measures as well as the development of new measures to assist those Member States when necessary;

8. Underlines the importance of collecting, analysing and putting in perspective reliable, accurate, comprehensive, comparable and up-to-date statistical data, in order to monitor and evaluate measures and acquire a sound understanding of asylum-related issues;
9. Regrets the rise of xenophobia and racism and of negative and misinformed assumptions about asylum seekers and refugees accompanying socio-economic insecurity in the EU; recommends that Member States undertake awareness-raising campaigns on the actual situation of asylum seekers and beneficiaries of international protection;

Practical cooperation and technical assistance

10. Stresses that the establishment of the European Asylum Support Office (EASO) has the potential to promote closer cooperation among Member States in order to help reduce significant divergences in asylum practices, with a view to creating better and fairer asylum systems in the EU;
11. Recalls the need for EASO to provide technical support and specific expertise to Member States when implementing the asylum legislation, and to identify potential shortcomings in Member States' asylum systems;
12. Calls on EASO, taking into account both its duties and its limited budget, resources and experience, to optimise its available resources by engaging in close dialogue and cooperation with international organisations and civil society with a view to exchanging information and pooling knowledge in the field of asylum, collecting data, exchanging best practices, developing training and creating pools of experts, case workers and interpreters who could be mobilised at short notice to provide assistance; further recommends EASO to ensure a broad representation of organisations participating in the consultative forum;
13. Takes note of the recommendation of the Commission and Council regarding inter-agency cooperation between EASO and Frontex, and stresses that the full and swift implementation of Frontex's Fundamental Rights Strategy is a *sine qua non* for any such cooperation in the context of international protection; emphasises that any cooperation must be viewed in the context of increasing protection standards for asylum seekers;

Financial solidarity

14. Welcomes the creation as from 2014 of a simpler and more flexible Asylum and Migration Fund (AMF) and underlines the need to allocate substantial and sufficient resources to support the protection of beneficiaries of international protection and asylum seekers; stresses, in this respect, the importance of including safeguards within the AMF, in order to prevent excessive allocation of funds to only one policy area at the expense of the CEAS as a whole;

15. Welcomes the home affairs policy dialogues with individual Member States on their use of the funds preceding multiannual programming; recommends reinforcing the partnership principle by including civil society, local authorities and relevant stakeholders;
16. Believes that the establishment of a clearer and more effective system of financial incentives for Member States participating in relocation activities and proactive strategies aimed at improving the infrastructures of national asylum systems, will have a long-term positive effect on the convergence of standards in the EU and the quality of the CEAS; recommends that Member States make use of the financial incentives available through the funds for relocation activities;
17. Underlines the importance of financial responsibility-sharing in the field of asylum, and recommends creating a well-resourced mechanism to compensate Member States receiving higher numbers of asylum seekers and beneficiaries of international protection, in either absolute or proportional terms, and to help those with less developed asylum systems; considers that further research is required to identify and quantify the real costs of hosting and processing asylum claims;
18. Underlines the problems currently linked to the funding of activities in terms of obstacles to access to accurate information and funding, the setting-up of realistic and tailored objectives and the implementation of effective follow-up measures;
19. Stresses the importance of strict oversight with regard to the funds' use and management, on the basis of specific indicators and criteria, in order to avoid the misallocation of human and financial resources; welcomes, in this respect, the setting-up of a common evaluation and monitoring system;

Allocation of responsibilities

20. Welcomes the Commission's commitment to performing a comprehensive evaluation of the Dublin system in 2014, reviewing its legal, economic, social and human rights effects;
21. Considers that the Dublin Regulation, which governs the allocation of responsibility for asylum applications, while placing a disproportionate burden on Member States constituting entry points into the EU, does not provide the means for them to respond adequately to the administrative and financial demands involved; notes that the Dublin system as it has been applied so far has led to the unequal treatment of asylum seekers across the EU while also having an adverse impact on family reunification and integration; stresses, moreover, its shortcomings in terms of efficiency and cost-effectiveness, since more than half of agreed transfers never take place and multiple applications are still the rule;
22. Stresses that the relevant case-law suspending transfers under the Dublin Regulation, while providing an answer to individual cases, fails to overcome the structural shortcomings of the Dublin system as a whole; welcomes, therefore, the efforts to include additional criteria in Dublin II in order to mitigate the system's unwanted adverse effects;

Joint processing of asylum applications

23. Deems it essential to engage in further dialogue with regard to responsibility-sharing towards asylum seekers and beneficiaries of international protection, including on the use of tools such as the joint processing of asylum applications (hereafter ‘joint processing’) and relocation schemes;
24. Considers that joint processing could constitute a valuable tool for solidarity and responsibility-sharing in preventing or rectifying capacity problems, reducing the burdens and costs related to asylum processing, and ensuring a more equitable sharing of responsibility for the processing of asylum applications;
25. Welcomes the feasibility study launched by the Commission to investigate the legal and practical implications of joint processing on Union territory, since clarification is needed with respect to a series of issues;
26. Notes that joint processing does not necessarily entail a common decision, but could involve support and common processing with respect to other aspects of the asylum procedure, such as identification, preparation of first-instance procedures, interviews, or recommendations with regard to asylum decisions;
27. Stresses that a joint processing scheme should fully respect the rights of the applicants and contain strong guarantees to that end; insists that joint processing must in no circumstances be used to accelerate the asylum procedure at the expense of its quality;

Relocation of beneficiaries of international protection and asylum seekers

28. Stresses that, under certain conditions, the physical relocation of beneficiaries of international protection and asylum seekers is one of the most concrete forms of solidarity and can make a significant contribution to a more equitable CEAS;
29. Stresses the importance of projects such as the European Union’s Relocation Project for Malta (EUREMA), which relocates beneficiaries of international protection from Malta to other Member States, and advocates developing more initiatives of this kind; welcomes the Commission’s commitment to undertake a thorough evaluation of the EUREMA project and submit a proposal for a permanent EU Relocation Scheme;
30. Calls on the Commission to include strong procedural safeguards and clear criteria in its proposal for a permanent EU relocation scheme, in order to guarantee potential beneficiaries’ best interests; recommends involving the host community, civil society and local authorities from the outset in relocation initiatives;
31. Underlines that while relocation can both offer lasting solutions for beneficiaries of international protection and alleviate Member States’ asylum systems, it must not result in responsibility shifting; insists that relocation should include strong commitments from Member States benefiting from relocation to effectively address protection gaps in their asylum system and to guarantee high levels of protection for those remaining in the sender Member States;
32. Welcomes the funding possibilities provided under the AMF for relocating asylum seekers, and encourages Member States to engage in voluntary initiatives, while fully

respecting asylum seekers' rights and the need for their consent; calls on the Commission to investigate the feasibility of developing an EU system for relocating asylum seekers, and to submit a proposal for a viable and sustainable programme for the internal relocation of asylum seekers;

Mutual trust at the heart of a renewed governance system

33. Stresses the importance of laying solid foundations for mutual trust among Member States, since this is quintessentially linked to the development of the CEAS and to increased solidarity;
34. Acknowledges that while compliance with international protection obligations enhances mutual trust, this cannot result in developing policies on the basis of conclusive presumptions of compliance, given that the interpretation and application of international and EU asylum law still varies widely among Member States, as is clear from the recent ECHR and CJEU case-law relating to the Dublin Regulation;
35. Stresses that while infringement proceedings can be appropriate under certain circumstances to ensure the proper functioning of a Member State's asylum system, they should be considered a measure of last resort and must be accompanied by support measures, operational plans and oversight mechanisms, in order to yield results and not overwhelm already burdened systems;
36. Notes that the Dublin system is based on mutual trust and that its implementation amounts to a mutual recognition of rejection decisions among Member States, given that an asylum claim can only be considered in the EU once; considers, nevertheless, that this is not mirrored by the mutual recognition of decisions recognising international protection needs, and that this gives rise to legal obstacles, administrative problems and legal uncertainty, as well as overall imbalance and human costs; calls on the Commission to submit a communication on a framework for the transfer of protection of beneficiaries of international protection and mutual recognition of asylum decisions by 2014, in line with the Action Plan Implementing the Stockholm Programme;
37. Underlines that migration management can increase mutual trust and solidarity measures only if coupled with a protection-sensitive approach under which border measures are carried out without prejudice to the rights of refugees and persons requesting international protection;
38. Notes that restrictive visa regimes and enhanced border controls can have adverse effects on access to international protection in preventing persons in need from reaching the EU and reiterates the need to apply measures in a protection-sensitive manner;
39. Considers that a significant effect of a protection-sensitive application of visa policies would be a reduction in the numbers of asylum seekers subject to procedures under the Dublin II geographical distance and travel facilities;
40. Welcomes the Commission's commitment to adopt a "Communication on new approaches concerning access to asylum procedures targeting main transit countries" by 2013;

41. Instructs its President to forward this resolution to the Council, the Commission, the Parliaments of the Member States, and the Council of Europe.

EXPLANATORY STATEMENT

2012 is the year during which the European Union has committed to complete the establishment of a Common European Asylum System (CEAS), setting up a common area of protection and solidarity based on a common asylum procedure and uniform status for people who have been granted international protection. The CEAS is underpinned by three pillars: harmonisation of standards of protection, by further aligning the Member States' asylum legislation; effective and well-supported practical cooperation; as well as increased solidarity and a sense of responsibility, not only among EU Member States but also between the EU and non-EU countries.

Harmonisation of standards of protection is underway through the modification of Member States' legislation and practical cooperation is to be enhanced through the European Asylum Support Office (EASO); it is now important to tackle head on the third pillar of the CEAS by giving substance to the notion of solidarity and responsibility-sharing, enshrined in Article 80 TFEU, which constitutes an essential horizontal component of the CEAS.

The Rapporteur believes that establishing a solidarity framework will not absolve Member States from complying with their international as well as their EU obligations in terms of asylum, but that rather it will equip the CEAS with specific instruments and procedures aimed at supporting and assisting those Member States facing disproportionate pressures and costs in the field of asylum, mainly due to their geographical or demographical situation. In other words, a comprehensive solidarity framework wherein Member States would be assisted to improve the quality of their asylum systems in order to ensure the full respect of asylum seekers' rights would ensure by the same token the proper implementation of the asylum *acquis* and therefore the very functioning of the CEAS.

Ensuring the good functioning of the CEAS is particularly important in times when migration flows are most often mixed, including migrants, asylum seekers, refugees and vulnerable persons such as unaccompanied minors. The Rapporteur wants to stress that asylum and migration flows have respective specificities that can under no circumstances be neglected or amalgamated. He regrettably recalls the unprecedented number of people who drowned in the Mediterranean throughout 2011 in an attempt to reach the EU to find protection.

The Rapporteur emphasises that the allocation of responsibilities established by the Dublin Regulation places disproportionate expectations on those Member States constituting entry points into the EU thereby weakening the whole CEAS. In situations where a Member State cannot cope adequately with the asylum applications lodged on its territory, the Rapporteur suggests a number of courses of action in order to address challenges in the field of asylum in a holistic way throughout the EU. Following the Commission's Communication on intra-EU solidarity in the field of asylum - an EU Agenda for better responsibility-sharing and more mutual trust, the rapporteur organised his remarks, proposals and recommendations in 4 main parts, focusing on (a) practical cooperation and technical assistance; (b) financial solidarity; (c) allocation of responsibilities; and (d) mutual trust at the heart of a renewed governance system.

In the Rapporteur's view, in an efficient CEAS:

- Member States, local authorities and civil society should be informed about the different EU funds which can be used for asylum purposes, including information related to eligibility criteria and application formalities;
- Member States' asylum systems should be regularly and frequently evaluated to identify best practices as well as deficiencies and to facilitate the elaboration of targeted situation-specific solutions;
- Member States should demonstrate solidarity towards one another and share responsibility, including through measures such as joint processing of asylum applications and the relocation of beneficiaries of international protection.

In this context, the Rapporteur stresses the crucial role of the EASO in identifying shortcomings in Member States' asylum systems as well as in coordinating, monitoring and following-up the practical assistance which should be provided to Member States underlining the usefulness of the deployment of Asylum Expert Teams.

Making the best use of complementarities between the different EU funds available is another essential element in translating solidarity into concrete action. The introduction of financial incentives for relocating beneficiaries of international protection is particularly relevant in this respect.

Each proposal and recommendation enclosed herein aims at establishing a genuine area of protection wherein the rights of asylum seekers and beneficiaries of international protection are duly respected and promoted. This is why some suggestions are horizontal touching also upon other areas of EU policy, such as border or visa policies, since every EU policy must be applied in a protection-sensitive manner.