



# **Jak by měla vypadat nová architektura azylové a migrační politiky EU?**

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## Abstrakt

Návrh vychází z faktu, že národní řešení v podobě restrikcí, plotů a protiprávního jednání v podobě refoulement (porušení článku 33 Ženevské úmluvy a článku 3 Evropské úmluvy) běžně používaného v členských státech EU ve střední a východní Evropě, může přinést pouze politické zisky domácím populistům a snad částečnou úlevu spočívající v nižším počtu nově přicházejících uprchlíků, ale nejedná se o řešení společné, odpovědné a solidární. Vede pouze k neúměrnému zatížení některých členských států EU, jako jsou Německo, Rakousko, Itálie, Řecko nebo Švédsko.

Navrhovatelé předkládají ideu skutečně společného CEAS<sup>1</sup> spočívající v **jednom azylovém řízení platném na celém území EU** s jednou odvolací instancí, které by vedly **společné týmy expertů** primárně v místech s výraznými počty nově přicházejících uprchlíků (Řecko, Itálie, Polsko, Malta, Maďarsko, Bulharsko, atd.) a které by byly koordinované **Azylovou agenturou EU (EUAA)**. Žadatelé o azyl by byli povinni setrvat v těchto zemích po celou dobu azylového řízení. V ostatních zemích EU by též působily národnostně smíšené rozhodovací týmy, to vše pod silnou autoritou EUAA, jež by sjednocovala postupy, kvalitu a délku rozhodování včetně používání jednotných informací ze zemí původu. Zaveden by byl **finanční mechanismus podpory pro více zatížené země EU**, kterého by se musely povinně zúčastnit všechny členské státy EU. CEAS by zahrnoval i **společně organizované** a viditelné **návraty**, společné vyjednávání readmisí a dobrovolných návratů se zeměmi původu uprchlíků, je-li samozřejmě bezpečný návrat do těchto zemí možný. **Jednotné by byly také formy mezinárodní ochrany** – časově omezená doplňková nebo dočasná ochrana pro oběti vnějších nebo vnitřních ozbrojených konfliktů (Syřané, Iráčané, Afghánci) a azyl pro individuálně pronásledované osoby z azylově relevantních důvodů. Důležitým prvkem je také vydávání **jednotného povolení k pobytu** pro všechny uznané azylanty a držitele doplňkové ochrany, které by umožnilo volný pohyb azylantů v rámci EU. **Jednotný** by měl být také **integrační program** a princip poskytnutí pouze minimálních dávek v nezaměstnanosti po absolvování integračního programu. Zranitelným osobám by byly garantovány zvláštní záruky. **Jednotný přesídlovací program** (resettlement) **a otevření pracovní a studentské migrace uprchlíkům** je rovněž důležité, protože umožnění legálních cest k mezinárodní ochraně je jediná cesta jak zabránit tragédiím na hranicích EU a obchodu s lidmi.

Návrh by měl vzejít ze zemí V<sub>4</sub> společně – tyto země nebudou zatíženy z důvodu jednotného povolení k pobytu, spíše finančně v rámci kompenzačního mechanismu, a budou se moci poprvé v historii prezentovat jako nositelé reálného řešení společného problému. Obavy tradičních cílových zemí lze mírnit jednak omezeným přístupem k dávkám, dále jednotným integračním programem, jednotným, často časově omezeným povolením k pobytu a jednotnými návraty. Návrh má mít formu nařízení EU, které je přímo závazné a nečeká se několik let na transpozici nebo „ne-transpozici“ do národních právních řádů. Celý návrh předpokládá masivní finanční podporu do budování nového CEAS v Řecku, Itálii, Bulharsku a Polsku. Opozici lze čekat od národních azylových úřadů, které ztratí své hlavní nástroje v podobě restrikcí, porušování práva na hranicích, nezákonných detencí, nekonečných průtahů v řízení, nízké kvality rozhodnutí, atd. V případě realizace by návrh přinesl rovnoměrnější rozložení odpovědnosti v EU (příp. finančně nebo zprocesováním žádostí) a zohlednil by také zájmy uprchlíků, kteří často z objektivních důvodů nemohou či nechtějí zůstat v některých zemích EU (rodinné důvody, jazyková bariéra, atp.) a umožnění volného pohybu po udělení azylu by je motivovalo k využívání a dodržování azylového systému.

<sup>1</sup> V<sub>4</sub> Revue, 26.2.2016, <http://visegradrevue.eu/the-v4-can-and-should-shape-a-common-eu-asylum-and-migration-policy/>



## Introduction

This proposal has been built upon previous article of the authors “The V<sub>4</sub> Can and Should Shape Introduction of EU Common Asylum and Migration Policy”, published in February this year.<sup>2</sup> In this article, authors tried to analyse how so-called Visegrad countries should actively shape common EU asylum and migration policy, develop progressive ideas and to effectively participate at joint EU migration initiatives. The authors are both lawyers and directors of leading NGOs providing aid to refugees in their respected countries. The proposal has been built on years of experience from working with refugees<sup>3</sup> and asylum seekers in countries who were self - perceived and perceived by others as transit countries for many years and in the same time required to change to destination countries by policy makers. This in itself is one major cause of misunderstandings between “old” and “new” member states when it comes to responses to European migration crisis in 2015.

As we understand the situation in the area of asylum and migration, disagreements between EU members regarding border protections and refugee assistance are at the core of the EU's slow response to the current migration crisis.<sup>4</sup> What we propose is the compromise solution, which – to some extent – accepts reservations and challenges of all parties in the systems – EU, MS and refugees as well. The solution should include the creation of a real Common European Asylum System, effective protection of the EU external border, respecting the right to asylum and the non-refoulement principle, as well as the introduction of a common European resettlement scheme in which the all EU countries would take an active part.

We understand concerns of some countries that their experience with integration of refugees and migrants is rather limited and short and position of refugees, for whom some countries are simply more attractive than others.

However, we believe that all those challenges could be overcome and trust of all stakeholders in the system could be reinforced. It should be noted that even the V<sub>4</sub> has good experience admitting refugees from culturally distant countries. Slovak and Czech civil society organizations have been helping Bosnian, Kosovar, Afghan, Iraqi, Somali and Burmese refugees integrate in their new homelands, and for months a number of volunteer initiatives have been assisting refugees on the Greek islands and in the Balkans. Church has also assumed an active part by mediating the resettlement of displaced Iraqis to Poland, Slovakia and the Czech Republic. Financial assistance for integration activities is available through EU funding annually. This could be the basis to overcome challenges faced by some countries when it comes to integration of refugees.

## Aims, Principles, Institutions

The **aim of the proposal** is to work within existing systems, proposed or agreed mechanisms within the EU, to provide recommendations for further improvements,

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<sup>2</sup> Rozumek, M., Številová, Z.: The V<sub>4</sub> can and should shape a common EU asylum and migration policy, 26 February 2016, available online: <http://visegradrevue.eu/the-v4-can-and-should-shape-a-common-eu-asylum-and-migration-policy/>

<sup>3</sup> In this article we use the term „refugee“ to include persons entitled to all forms of international protection available in EU – asylum, subsidiary protection, humanitarian asylum, etc.

<sup>4</sup> In this proposal we use the term “migration crisis” to describe the situation in the EU related to the arrival of over one million refugees and migrants in 2015. According to the authors, however, this is more a crisis of mutual understanding and agreement among EU member states. The authors are convinced that the arrival of such a number of refugees and migrants can be manageable in a dignified and organized manner, provided that an agreement was reached among EU member states on common solutions and procedures.



which would fairly distribute responsibilities among Member States, maintain legitimate interests of all – States and its societies, refugees and EU institutions. We would like to highlight the root causes of current deep differences among MS when it comes to migration and asylum, with special focus on perspective and realities of V4 countries and to propose mechanisms to address their concerns and problems in a way which will enable us to create real common EU asylum system and migration policy.

To start, the solution must recognize that migration and asylum policy differ substantially among various EU member states, that the system of forced refugee relocation does not work in practice and that MS and their societies have varied preparedness when it comes to admitting refugees. Also, we must acknowledge that refugees themselves simply find some countries more attractive than the others.

Nevertheless, international law must be observed. Particularly this means that refugees cannot be returned by force<sup>5</sup> and cannot be subject to torture, inhuman or degrading treatment.<sup>6</sup>

Importantly, it is inefficient and costly to have 28 different complicated asylum systems operating within the EU. In effect, these systems end up being a “race to the bottom,” each one trying enacting the strictest regulations to ensure that the burden falls on neighbouring states, and not their own.

The call for enhanced protection of the external border is legitimate, but at the same time those states must acknowledge that the arrival of refugees and migration, as such, will continue regardless of border controls. The underlying reasons are irrespective of the will and reach of EU members and any solution must include admitting refugees into their territory.

Practices aimed at discouraging refugee arrivals complicate the search for a common solution. A complete border shutdown of the EU or member states is technically impossible and would contradict the essential values upon which the EU has been built. It would also create a legal vacuum for refugees, with no state assuming responsibility for their protection.<sup>7</sup> We are convinced that it is in the interest of all EU countries to actively cooperate on the creation of a common EU system.

Our proposal is based on **following principles:**

International obligations and human rights:

- States must ensure compliance with their international obligations, inter alia 1951 Geneva Refugee Convention, principle of non-refoulement and other human rights instruments such as European Convention on Human Rights and U.N. Convention on Rights of Child;
- In this respect, jurisprudence of European Court on Human Rights (ECHR) related to right to life, dignity, protection from torture, freedom of liberty, right to family and private life and other basic rights and jurisprudence of the Court of the European Union (CJEU) on common EU asylum and migration law must be respected and taken into account when designing new provisions, including identification mechanisms and detention. EU as such shall not lower the human rights standards, but to lead and provide positive example to other blocs and states.

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<sup>5</sup> Article 33 of the Geneva Convention explicitly prohibits refoulement (forced return of refugees to the country of origin where they run risk of persecution)

<sup>6</sup> Article 3 of the European Convention on Human Rights, which applies to the return of both refugees and other migrants.

<sup>7</sup> In asylum law this phenomenon is called “refugee in orbit” – when a refugee is denied entry to any and all countries because no state has assumed responsibility under international law to accept their asylum request. One of the goals of the Dublin Regulation was to prevent such situations from happening in the EU.



#### Main EU principles and cooperation:

We believe that principles of shared responsibility and mutual cooperation are basic and core principles of European integration and shall be maintained. Therefore, each Member State must contribute fairly to common system.

Also, we acknowledge that in several Member States there are systemic deficiencies preventing those States to provide adequate protection to refugees and maintain asylum system with rule of law (Greece, Italy). Some Member States showed unwillingness to fully comply with their obligations. Such Member States shall be massively assisted by other Members States in order to overcome their problems and create conditions to become full and trustworthy members of CEAS.

#### Building of CEAS:

- Harmonization of asylum systems and building of Common European Asylum System is necessary in order to maintain free movement within EU and this process shall be maintained and further developed in order to learn from mistakes and dead-ends and to react to new challenges.
- We acknowledge that although CEAS has been introduced and built within EU, we still have 28 different complicated asylum systems operating within the EU. In effect, these systems end up being a “**race to the bottom**,” each country enacting stricter regulations in order to ensure that the burden for refugee care falls on neighbouring states, and not their own – V4 countries included.<sup>8</sup> Having 28 different systems is inefficient European system with harmonized conditions. In fact, by allowing such varying systems to exist, we actively encourage refugees to so-called „asylum shopping“.<sup>9</sup>
- The calls for better external border protection and maintaining internal security are legitimate and State’s primarily function is to ensure security of its inhabitants.

#### Refugee and migrant perspective:

Finally, it must also be acknowledged that refugees (and migrants) themselves simply find some countries more attractive than the others, that migration and asylum policy differs substantially among various EU member states that the system of Dublin transfers and forced refugee relocation does not work sufficiently in practice and those EU members and their societies have varied preparedness and will when it comes to admitting refugees.<sup>10</sup>

If policies are designed to be used by people, they shall take into account the legitimate interests of their users. Asylum and migration policies are no exceptions. Therefore, functioning asylum and migration systems must address

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<sup>8</sup> See: Defying EU, Hungary suspends rules on asylum seekers, <http://uk.reuters.com/article/uk-europe-migrants-austria-hungary-idUKKBN0P31ZB20150623>, published on 23 June 2016

<sup>9</sup> To further illustrate the problem, current situation with Hungary serves as a good example. On 21 July 2016, the Ministry of Interior of Slovakia confirmed that all Dublin returns from Slovakia to Hungary have been suspended as of 15 June 2016. The suspension was based on the Hungarian government’s decision not to accept Dublin requests. Last Dublin return has been exercised on 9 May 2016 (information available here: <http://us1.campaign-archive2.com/?u=8e3ebd297b1510becc6d6d690&id=5ca43981e5#5>). Such situation clearly encourages asylum seekers to leave Hungary and try to get to their destination countries, knowing that if they would be apprehended in one of the transiting countries, eventually they would have to be released due to inability of exercise Dublin returns to responsible country (HU). In this respect, Slovakia’s response has been to release migrants once the maximum period for Dublin detention is expired and thus de facto allowing them to continue further. In fact, by allowing such practices, we can observe asylum shopping on the side of asylum seekers and reluctance of Member States to take responsibility for asylum cases, both attitudes seriously undermining trust in functioning of CEAS.

<sup>10</sup> In this article we use the term „refugee“ to include persons entitled to all forms of international protection available in EU – asylum, subsidiary protection, humanitarian asylum, etc..



and incorporate the interests of all, including refugees and migrants, to some extent. This is the only way how to create user – friendly system, which will be used and respected by all – refugees (migrants) and Member States.

## Common European Asylum System and how to reform

An internal reform of the EU's existing asylum policy toolbox and the creation of a true common EU asylum system, with standardized procedures for all EU territories and a single set of rights for both asylum-seekers and those already granted refugee status or subsidiary protection, is at the core of our proposal.

The core of our appeal regards an internal reform of the EU's existing asylum policy toolbox<sup>11</sup>, and the creation of a real common asylum system in the EU.<sup>12</sup> We need a **standardized asylum procedure** valid for all EU territories and a **single set of rights** for both asylum-seekers and people who have already been granted refugee status or subsidiary protection.<sup>13</sup>

Among the reasons why some EU countries are more attractive than the others, there are reasons related to economy, standard of living and existence of already established communities, which are absent in “new” EU countries. These reasons could not be overcome in short time.

However, other reasons include factors such as **length and quality of asylum procedure**, reception standards, recognition rates, different recognition for different groups of refugees in different states and various length and *type* of protection granted as well as rights attached to it. These are factors, which can be influenced relatively efficiently by standardizing the procedures and establishing **single sets of rights for asylum seekers**. Single set of rights means that for example, in each MS the required length of asylum seeker's staying in order to be able to enter labor market will be the same, similarly to e.g. type of residence acquired when subsidiary protection is granted or asylum is granted, duration of protection, etc. This will enable us to create real basis for less-attractive countries to develop its conditions to become destination countries for refugees and enable us to work with the information with which refugees operate and on which they make their decision to settle. Therefore, we recommend supporting the proposal of European Commission to reform CEAS by **introducing asylum regulations** instead of directives<sup>14</sup>, which would mean the creation of **system of common standards** instead of minimum standards.

The common system should include the establishment of **EU asylum agency** that would carry out a fast and simple asylum procedure based on a single set of rules making use of EASO<sup>15</sup> capacities and UNHCR resources. Decision-making teams could be placed at the EU's external border, in EU cities with large international

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<sup>11</sup> Information from the European Commission regarding the measures adopted, which aim to address the refugee crisis, press release from 23 September 2015: [http://europa.eu/rapid/press-release\\_IP-15-5700\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5700_en.htm)

<sup>12</sup> Press release of European Commission published on 13 July 2016 “Completing the reform of the Common European Asylum System: towards an efficient, fair and humane asylum policy”, [http://europa.eu/rapid/press-release\\_IP-16-2433\\_en.htm](http://europa.eu/rapid/press-release_IP-16-2433_en.htm)

<sup>13</sup> Similar proposals were handed to the EU for instance by the Parliamentary Assembly of the Council of Europe: <http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=22016&Lang=EN>

<sup>14</sup> Press release of European Commission published on 13 July 2016 “Completing the reform of the Common European Asylum System: towards an efficient, fair and humane asylum policy”, [http://europa.eu/rapid/press-release\\_IP-16-2433\\_en.htm](http://europa.eu/rapid/press-release_IP-16-2433_en.htm)

<sup>15</sup> European Asylum Support Office (<https://easo.europa.eu/>)



airports, and dependent on need, in countries with extraordinarily high numbers of arriving refugees.<sup>16</sup>

Creation of EU Asylum Agency is necessary in order to maintain the common standardized procedure. Currently we face situation when each national state has its own decision-making office resulting in different outcomes and different recognitions around EU, which further stimulates secondary movements of asylum seekers. Also, asylum procedure as created and developed over the years in EU is one of the most complicated in the world. The procedure is hard to navigate for any non-lawyer person, especially for asylum seekers and in some cases can last long months or years.

As lawyers we believe the room for simplification of the asylum procedure is there. Establishment of EU Asylum Agency<sup>17</sup>, whose country of origin information reports and guidelines would become binding for Member States is a step in the right direction. The establishment shall be followed by ambitious reform of decision-making processes in coming years in order to get simple, predictable procedure with similar outcomes in different EU member states. Such reform would translate as motivation factor for asylum seekers to stay in the first country of entry as by moving they would not gain any different situation and together with the measures aimed to enforce compliance and prevent abuse and secondary movements, could contribute to actual increase of obedience.

Simplification of asylum procedure is not contrary to 1951 Geneva Refugee Convention as it does not include any provisions on asylum procedures. In fact, majority of countries do apply much simple procedure to establish if someone is a refugee. UNHCR supports refugee recognition on *prima facie* basis<sup>18</sup>, which means recognition of refugee status on the basis of readily apparent, objective circumstances in the country of origin. A *prima facie* approach acknowledges that those fleeing these circumstances are at risk of harm that brings them within the applicable refugee definition and is useful in situation of group departure, where the refugee character of a group of similarly situated persons is apparent. This approach has been used by states and UNHCR for over 60 years and according to UNHCR, majority of world refugees are recognized on *prima facie* basis.<sup>19</sup>

Such application and simplification would certainly ease the pressure put on the asylum systems of certain member states in 2015. This is just one example of possible simplification of asylum procedure without lowering the procedural standards. We believe that in the coming years, more ambitious reform would be needed in order to further harmonize and simplify the asylum procedure, including transforming national asylum decision-making bodies into entities under direct supervision of EU asylum agency with joint asylum decision making teams. We believe that this is the only way how to ensure real common asylum system.

In the meantime, having **mixed EU teams** (EU asylum agency) processing asylum applications in the countries located on the EU border (including Slovakia, Poland and Hungary) would be a step in the right direction. This brings us to the necessary reform of the Dublin system.

The current system authorized by the Dublin Regulation requires that asylum seekers stay in the first EU country they enter. Yet events of the last years showed that Dublin is not working. Problems with functioning of the Dublin system have been firstly famously confirmed by European Court of Human Rights (ECtHR) in *M.S.S.* case<sup>20</sup>, followed by many other decisions, including those of national courts and resulting in full suspension of all Dublin returns to Greece for the reasons

<sup>16</sup> We explain the idea of mixed EU teams and processing centers at the external border below.

<sup>17</sup> [http://europa.eu/rapid/press-release\\_IP-16-1620\\_en.htm](http://europa.eu/rapid/press-release_IP-16-1620_en.htm)

<sup>18</sup> <http://www.unhcr.org/558a62299.pdf>

<sup>19</sup> *Ibid*

<sup>20</sup> *MSS vs. Belgium and Greece*. Application no. 30696/09



of systemic deficiencies. Similar judgments were taken in case of Italy<sup>21</sup>, Hungary<sup>22</sup> and other MS, however so far, they have not yet materialized in full suspension of returns to any other MS. Similarly, reports<sup>23</sup> of expert organizations highlighted many challenges to the Dublin system as well. As a result, in May 2016 EC published a proposal on reform of Dublin system, which shall introduce system on fair distribution of asylum seekers among member states, which will be activated automatically, shall the arrival of new asylum applicants exceed 150% of reference share thus putting the asylum system of particular MS under disproportionate pressure.<sup>24</sup>

As we have argued above, Dublin system does not work for various reasons and two major reasons we have identified are: 1. unwillingness of member states to be responsible for asylum applications and lack of trust; and: 2. preferences and ties of refugees (and lack of trust in the system as well). Both of the reasons could be solved, but what we need to start is to re-build the trust in functioning Dublin system among Member states and refugees (who are actually users of the system).

This, *inter alia* means that on the side of MS, all countries in the system would come to terms with the fact that they have to be **destination countries** for refugees. This specifically applies to countries like Slovakia and Czech Republic, who have built their asylum and migration policy on the idea of being transit countries for asylum seekers and refugees. Such thinking has no place in the Dublin system, which precludes that country, to which responsibility for asylum application is attributed shall be destination country for an individual asylum seeker.

On the other hand, more “attractive” MS must support other MS in such transition, must reinforce mutual trust in functioning asylum systems among Member States and must **swiftly return asylum seekers who disobey Dublin** rules to responsible country with full respect to human rights. Responsible countries have to respect their responsibility and **avoid policies which aim to discourage asylum seekers** from applying for asylum and staying.

However, this is **just a first step**. System we propose **recognizes that refugees have different motivations and different ties** to different countries and that currently preparedness and attractiveness of countries varies significantly. We believe that any functional system must respect interest of all users to some extent. Interest of refugees to settle in “un-known” countries has to be built as well as their trust that system -if obeyed –will provide quick and effective solutions to their legitimate interests.

Therefore, the common EU asylum system we propose **would maintain the asylum-seekers’ obligation to stay in their first country of EU entry prior to their asylum decisions**. Such a solution would mean that those countries located on the EU border (Greece, Italy, Spain, Slovakia, Poland or Hungary) would initially be responsible for asylum-seekers, and that asylum applications be processed by **mixed EU teams** (under the EU Agency on Asylum) on their territories. Here, asylum seekers would go through identification procedures and security checks, while awaiting their final asylum application decisions. Whole system could be based on currently implemented “hot spots approach”<sup>25</sup>, amended and re-build to be in line with fundamental human rights and EU standards on reception and procedure, in order to avoid current challenges such as automatic prolonged detention and inhuman or problematic conditions inside the camps as repeatedly widely

<sup>21</sup> Tarakhel vs. Austria, application no. 29217/12,

<sup>22</sup> UK High Court, Ibrahim & Abasi v SSHD [2016] EWHC 2048 (Admin), 5 August 2016

<sup>23</sup> Dublin II. Regulation. Lives on hold. European Comparative Report, February 2013, available online: [http://picum.org/picum.org/uploads/file\\_/The%20Dublin%20II%20Regulation%20Lives%20on%20Hold\\_Full%20Comparative%20Report\\_Final.pdf](http://picum.org/picum.org/uploads/file_/The%20Dublin%20II%20Regulation%20Lives%20on%20Hold_Full%20Comparative%20Report_Final.pdf)

<sup>24</sup> European Commission, Press Release. Factsheet: the Reform of the Dublin System. Published on 4th May 2016, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/20160504/the\\_reform\\_of\\_the\\_dublin\\_system\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/20160504/the_reform_of_the_dublin_system_en.pdf)

<sup>25</sup> European Commission. Fact Sheet: Questions and Answers on the European Agenda on Migration, 13 May 2015, available online: [http://europa.eu/rapid/press-release\\_MEMO-15-4957\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-4957_en.htm)



reported by UNHCR, NGOs or media. MS responsible for processing of asylum applications would receive massive support from the EU funds in order to create conditions in line with human rights and EU standards.

The greatest change to the current system which we propose is the single **EU wide permit for recognized refugees and subsidiary protection holders**. This means that once successful refugees were granted asylum or subsidiary protection, this would be accompanied with granting of EU wide residence and they would be entitled to legally, freely and safely choose their places of residence within the EU. This would include the obligation to register their place of residence with the authorities of the particular MS. In relation to integration, the proposal provides for many different options, based on the agreement of MS. Granting of EU wide permit could be conditioned by completing integration program in the country which processed asylum application and granted the protection. Or, the obligation to pass the integration program could be applied when refugee registers in other MS. A uniform integration program should be also part of the new system. The integration program will be limited in time and after the completion of the program only life minimum social benefits will be provided in all EU member states.

We believe that by implementing this ambitious proposal we would tackle several problems. Firstly, this would weaken countries' motivation to discourage refugees from entering and settling within their jurisdictions, while allowing societies of these countries who self-perceive themselves as transit to adapt to refugees' increased presence overtime, adjusting their integration policies accordingly.

Secondly, refugees would be motivated to await their asylum decision in the first country of entry with the prospect that once being granted the permit, this **will enable them to settle in the EU country**, in which they already have family members or offer of a job or other ties. Labour rights and self-employment rights would be part of the residence permit and single EU database of registered refugees will be created (or could be part of existing Eurodac database). We are confident that such possibility has a potential to motivate majority of asylum seekers to avoid irregular secondary movements and respect the system.

Thirdly, this plan simultaneously addresses the fact that most refugees do not see the "front-line" states as their eventual host countries, and concerns that some states are assuming too much responsibility when they are not the refugees' final destinations. EU wide asylum residence permit would motivate refugees to stay in their first country of entry (or relocation<sup>26</sup>) prior to asylum decisions, because based on protection granted it would entitle them to freedom of movement and labor rights once they'd registered their place of residence in a single EU database.

To further encourage this, **an EU-wide financial compensation mechanism** could be established for the EU member states that assume higher numbers of registered refugees (such as Germany). Such EU member states would benefit from the establishment of a financial compensation mechanism that all EU member states would participate in. And border states would receive the EU's regular robust support, since the creation of necessary infrastructure cannot fully be dependent on the national budgetary capacities of affected member states. Such financial mechanism shall be created as part of EU budget with contribution calculated based on participation of each MS on responsibility-sharing system. The money in the mechanism could be allocated directly to the state(s) affected and also to the *Asylum Migration and Integration Fund (AMIF)* in order to support specific actions and priorities.

Another aspect of our proposal concerns the situation of disproportional pressure on asylum system of one member state in the case of mass arrival of asylum

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<sup>26</sup> In the case of mass arrival of asylum seekers into a single country, swift relocation of asylum seekers to other EU border countries in order to proceed with their claims may be used as an effective tool to share the responsibility for processing the asylum claims by other EU border states, whereas by existing EU wide residence permit and allocated funds for processing, both refugees and border states will be motivated to participate.



seekers. In such case, all EU member states must provide robust resources to this country and **all Member States will be obliged to make available their reception capacities and coordinate the work of mixed EU teams doing the refugee status determination in their territories.**

## Returns

Inherent part of sustainable asylum and migration policies are returns. We recommend to continue in building the return policy based on already existing rules (Returns directive) and to include proposals for its improvement fully respecting human rights obligations including limiting detention to minimum, principle of *non-refoulement* and promotion of voluntary returns that are much more effective and sustainable than forced deportations. **Fast returns of rejected asylum seekers** to their home countries using joint EU flights or return operations are crucial for the sustainability and public support of the new system. Effective and swift returns policy, including reintegration support provided in the case of voluntary return, with logistical support of all member states will be part of the system.

## Regular Migration

### Resettlement and other schemes

Another goal of this proposal is to re-establish control over migration arrivals into the EU. This means, above all, **replacing irregular migration with accessible legal and secure avenues** to the EU, and also **robust support to countries that host the largest refugee populations on their territories** (Turkey, Jordan etc.).<sup>27</sup> Refugees' unorganized arrivals, the chaos that ensues due to their current freedom to choose a host state, and their forced marches through Europe in unacceptable conditions, which claim hundreds of lives every month and leads to the loss of unaccompanied minors, are in direct violation of human dignity, and undermine citizens' faith in the functionality and security of the EU.

We are convinced that even though **unorganized irregular arrivals** of asylum seekers and refugees would continue to be a reality, we have **enough resources and possibilities to significantly lower their numbers and provide opportunities** for safe accessible legal avenues, which would top irregular entries.

Therefore we believe that EU Member States must not only improve their internal management of asylum (CEAS), but massively invest into **joint EU resettlement scheme**, which will provide ambitious number of places available every year to ease the pressure put on first countries of asylum and international organizations and to ensure access to fair, flexible and fast legal ways how to resettle.

Further programs, such as the humanitarian visa program, or sponsor and student programs, would be established to enable the legal arrival of refugees. For example Slovakia has offered 33 scholarships to Syrian refugees living in camps through UNHCR and such examples of solidarity could be translated into fully functioning systemic solutions.

The system would require that all MS would take part in; otherwise the mutual trust would not be re-established. In these programs, governments can join forces with civil society and the Church in order to come up with a refugee admission system that would best reflect the needs and possibilities of both the country and the refugees. Such schemes can be built on successful pre-existent models from abroad (e.g. the Canadian model of public and private co-financing of refugees'

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<sup>27</sup> Robust humanitarian aid and development cooperation offered to the countries hosting the largest refugee populations should be part of the common solution. Since the authors are not experts in this fields, they do not deal with the matter further in this article.



arrival) and be adapted to the conditions in a given society via the addition of new innovative components.<sup>28</sup>

Here, decision on the level of EU Council shall be taken to determine the precise number of resettled refugees for each year, with the allocation for each MS. The decision may contain priority regions of allocations. Emergency (or early warning) mechanism shall be introduced to react on changed situation during the implementation. Participation at the program shall be mandatory and resettlement shall be facilitated mainly through UNHCR.

For refugees from other regions, other legal options shall be available as well. Special study schemes and special work, scholarship or training schemes shall be established to enable refugees to access them even if they are living in the country of their asylum. For visa obtaining purposes the system in which states will enable UNHCR or selected NGO to facilitate visa requests shall be part of it for the reasons that refugees may not have access to embassies. Documents issued by UNHCR shall be accepted (e.g. passport).

By creating robust number of legal ways for refugees, we would prevent escalation of refugee arrivals such as in 2015 and would better react and ease the pressure that is currently being put on first countries of asylum, refugees and humanitarian system.

## Regular Economic Migration

Complex solution to migration at the EU level should include the management of legal economic migration in order to discourage such people from using irregular routes and misusing asylum procedures. The **simplification of legal economic migration** is a precondition for the enhancement of the EU's competitiveness as a whole, as it will serve as a tool allow member states to flexibly respond to their own labour markets' requirements and demographics.

To large extent, migration policy of EU has been harmonized already as functioning common migration system is necessary to maintain the free movement of persons, goods and services. We have established joint visa system, common rules on long-term residence and rights of EU citizens and their family members, rules on seasonal workers, transfers of employees, high skilled workers, etc. We propose to maintain existing rules and systems, but at the same time to simplify access to visa and residence permits and to establish flexible and accessible visa schemes. Currently, many countries impose deterrent strategies (such as Visapoint in the Czech Republic or systemic requirement of verification of invitation for certain nationalities, which is exempt from scrutiny as in Slovakia), which only allow for corruption to benefit. Migration systems in many countries are so non-navigable for ordinary persons that they are indirectly forced to rely on assistance of paid intermediaries, who have established large business.

Creation of flexible and **accessible schemes** would prevent creation of "shadow market" where business for so-called intermediaries, corruption and smugglers flourish. In our opinion, if we allow for flexible arrival/departure schemes for workers and other non-EU citizens, we will enable processes to flexibly react on the needs of markets, businesses and workers as well as to motivate people to use legal routes predominantly.

<sup>28</sup> See e.g. a proposal of the "matching system" tabled by Jones and Teytelboym: <http://www.fmreview.org/destination-europe/jones-teytelboym>;



Within existing rules, we propose that reform of **Blue Card**<sup>29</sup> currently completely dysfunctional, would be finalized. Blue Card does not work because of administrative burden, high costs for employers and rigidity for prospective workers. Current proposal includes provisions, which will allow holder of Blue Card to apply for long-term residence after 3 years already (reduction from 5 years, which are required otherwise) and would be open for refugees as well. Simplification and accessibility shall include the **low-skilled workers** as demand for low-skilled work has been on the rise in the EU.

The **competency** in this area shall remain divided. EU and Commission shall continue to define areas in which harmonization of migration policies is necessary and to propose procedural measures. However, national states shall preserve the competency to decide of the slow-down or stop of harmonization for the reasons of their own legitimate interests depending on their economic, demographic, internal security, labor market and other national particularities.

## Policy Recommendations

- In general, the reform of asylum and migration as proposed by EC is a step in the right direction, but some additional proposals shall be considered to fully achieve aim of having functioning CEAS.
- Mutual trust in system and fair share of responsibilities among MS must be re-established. Politics aimed to discourage asylum seekers from applying for asylum at one MS and thus leaving the burden on other MSs shall be avoided.
- EU asylum agency that would carry out a fast and simple asylum procedure, with decision-making teams, shall be established.
- Common European Asylum System requires standardized rules and single set of rights for asylum seekers, refugees and subsidiary protection holders.
- Processing centres shall be introduced in countries which are entry points for arrival of asylum seekers and such countries shall be responsible for proceedings of the asylum applications, with robust support of other MS and EC. Dublin returns shall be enforced swiftly and in line with law and human rights.
- Obligation for asylum seeker to stay in first country of entry shall be maintained.
- EU wide compensation mechanism would be established for the EU member states that assume higher numbers of registered refugees

<sup>29</sup> "Reforming the EU Blue Card as a Labor Migration Policy Tool?": <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=19246&n0=2>



- EU wide resettlement scheme would be introduced with participation of each MS. Annually, resettlement plan with numbers and regions of origin of refugees would be approved by Council and implemented by MS. The numbers resettled would provide a real accessible alternative to irregular routes.
- Recognized refugees and subsidiary protection holders shall receive EU wide residence permit, enabling them to settle down and register in any MS.
- Returns will be part of coherent migration and asylum policy, exercised in line with human rights, already developed standards and swiftly.
- Other targeted arrival schemes for refugees would be introduced (scholarship, work schemes, sponsorship, etc.).
- Legal means for entry/exit of migrants would be simplified in order to maintain flexible circular migration to/out of EU in order to react swiftly on different national needs and interests.
- Reform of Blue Card would be maintained in order to make Blue Card a real tool to support arrival of high-skilled migrants and refugees.



## Asociace pro mezinárodní otázky

AMO je nevládní nezisková organizace založená v roce 1997 za účelem výzkumu a vzdělávání v oblasti mezinárodních vztahů. Tento přední český zahraničně politický think-tank není spjat s žádnou politickou stranou ani ideologií. Svou činností podporuje aktivní přístup k zahraniční politice, poskytuje nestrannou analýzu mezinárodního dění a otevírá prostor k fundované diskusi.



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