



REFUGEE POLICY IN EUROPE – NO TO THIS DUBLIN IV REGULATION!

On 4 May 2016 the European Commission submitted a proposal to change the Dublin III Regulation, which sets out competences for asylum procedures within the European Union. The proposal is part of a complete revision of the Common European Asylum System (CEAS).

The signatory organisations advocate for cohesion within the European Union (EU) and the safeguarding of the individual right to asylum for refugees. However, the current proposals of the Commission aggravate the problems of the existing Dublin Regulation and provide for a systematic externalisation of refugee protection to countries outside the EU. This is a blatant infringement of the basic principles of our European community of values, which is based on human rights.

Owing to current refugee movements, the states of first entry to the EU are primarily Greece, Italy and the southeast European Member States. The Commission's proposals will burden these countries even more heavily with the sole responsibility for refugees. On the one hand, it holds to "first entry" as the essential criterion for responsibility. On the other, it excludes, even in cases of hardship, existing discretionary clauses and other ways of changing responsibility, e.g. through the expiry of transfer time limits.

One of the essential innovations is the introduction of an admissibility procedure prior to the Dublin procedure, with the aim of determining whether an applicant has entered the EU from a non-EU state regarded as safe (first country of asylum or safe third country). Should this be the case, this preliminary examination provides for the transfer to a "safe third country" or a "first country of asylum". Individual grounds for asylum are then no longer examined in the EU. Priority is given to processing the application outside the EU. Responsibility for granting protection is thereby handed over to third states.

The country of first entry alone remains responsible for transfers to third countries. What is more, the criterion of bringing family members together is no longer applied. This infringes the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union, along with the constitutional right of safeguarding family unity. In addition, there is a danger of serious human rights abuses in the case of transfers back to countries that do not offer the rights-based protection guaranteed under European law.

In response to the requested sharing of responsibility within the EU the new proposal contains a "fairness mechanism" providing for a redistribution of asylum seekers to other Member States. This is to happen if a country has received over 150% of the asylum-seekers for which it would be responsible according to a proportional distribution key. This mechanism would click in much too late, i.e. in a situation of extreme overcrowding, and in many situations of over-burdening it would not have any effect at all. Such redistribution does not reflect the long-called-for consideration of refugees' individual interests. This will

again create a situation in which countless asylum seekers live in the European Union without access to a fair procedure and humane reception conditions.

Our basic points of criticism of the Commission proposal:

1. Externalising refugee protection outside Europe

The new Dublin Regulation introduces a compulsory inadmissibility check for asylum applications. The purpose of this new procedure is to check whether applicants can be removed to a third safe country. That means that mainly the states on the EU external border will be responsible for checking for admissibility and transferring those rejected to a third country.

The inadmissibility procedure leads to a situation where the actual grounds for fleeing will no longer be examined. Instead, the examination will go over to a third country outside the EU that does not fulfil the procedural and reception guarantees. That will undermine the individual right of asylum. There are likely to be human rights violations of refugees if the existing criteria for “first country of asylum” or “safe third country” are disregarded in practice and refugees are removed to countries in which they receive no effective protection and are not taken charge of appropriately.

Further, the EU would thereby withdraw from its obligation to engage in refugee reception. Already the poorest states worldwide have assumed the most responsibility. According to the UNHCR, 86% of worldwide refugees live in ‘developing’ countries. However, the EU continues to bear responsibility for receiving refugees and offering them protection within its own territory.

2. Continuing lack of solidarity within Europe

The Commission’s proposal fundamentally undermines the EU’s aim to create a common area of protection. In spite of broad public criticism, it is sticking to the criterion of “first entry” to determine responsibility. Again the Member States whose borders refugees first cross to enter the EU will be mainly responsible taking charge of refugees. The new “fairness mechanism” will not fundamentally change anything. The key is based on a purely statistical quota, and compulsory inadmissibility procedures will make it even more difficult for states such as Greece or Italy to guarantee asylum procedures based on the rule of law. Moreover, some EU Member States are not willing to take responsibility. This will remain an issue, despite the adoption of new Regulations for the asylum procedure system.

3. Restriction of discretionary clauses to ease difficult humanitarian situations

Abolishing arrangements to change responsibility between the Member States will exacerbate the existing over-burdening of countries on the EU’s external borders. So far the EU Member States have had the option of processing asylum applications on humanitarian or political grounds, for which they were originally not responsible according to the Dublin rules. Thanks to the discretionary clauses, EU Member States were able to respond flexibly to extreme situations and grant refugees needing protection access to an asylum procedure. For example, in the past the Federal Office for Migration and Refugees (BAMF) made use of a discretionary clause in the case of especially vulnerable asylum seekers registered in Bulgaria. The European Commission is limiting discretion to “bringing together” any family members and thus preventing an appropriate, humane response to humanitarian emergencies. Germany and Austria reacted to such a situation

in Hungary in September 2015. The legal basis for that was Art. 17 of the Dublin Regulation, which is now to be greatly restricted.

4. Access to refugee protection prevented

The Dublin system was introduced to prevent asylum applications from not being dealt with for months and years, with no Member State regarding itself as responsible. The goal was speed up procedures to determine the country responsible for examining the substantive asylum application. According to existing practice, the state in which the asylum seeker is de facto staying has to transfer the applicant to the other (responsible) Member State within a set period of time, or, if it has elapsed, conduct the asylum procedure itself. These binding time limits are now to be definitively abolished.

With the abolition of time limits in the case of failed transferrals, asylum seekers will in future still have no opportunity, in the country of their whereabouts, to gain access to an asylum procedure in which their grounds for fleeing are substantively checked. The country determined to be the responsible will remain so – even if it does not observe EU standards regarding reception conditions and procedural guarantees. Already many administrative courts in Germany are prohibiting transfers to Bulgaria, Hungary or Italy in specific circumstances on human rights grounds. Those in Germany who successfully appeal against that will, according to the proposals of the Dublin IV Regulation, have no access to the asylum procedure in future and at most obtain a stay of deportation (*Duldung*).

A further problem is that refugees who have moved on to another country (“secondary movement”) will not have access to a regular asylum procedure even after being transferred back to the Member State responsible. Rather, their need for protection will at most be examined in an accelerated or subsequent procedure. This entails the risk that there will be no checking of the actual grounds for protection. Furthermore, it could lead to non-compliance with the prohibition of *refoulement* in the Geneva Refugee Convention.

5. Transferring unaccompanied minors is against their best interests

Unaccompanied refugee minors are highly vulnerable. The European Court of Justice (CJEU) ruled on 6 June 2013 that, as a matter of principle, unaccompanied children must not be transferred to another Member State in order to carry out the asylum procedure. The procedure to determine a country responsible should not take longer than absolutely necessary, since unaccompanied children or young persons are especially vulnerable persons. Taking into account the “child’s best interests” requires holding the asylum procedure in the state in which the unaccompanied young person is actually present, according to the case law of the European Court of Justice. The European Commission wants to remove this requirement as well, which would entail a risk of transferring the refugee group in greatest need of protection. This amendment of the Dublin IV Regulation infringes the principle of priority for children’s best interests and CJEU case law.

6. Exclusion from material benefits

The proposals also include an exclusion from receiving material benefits. If asylum seekers are not present in the country to which they have been allocated, they are to be excluded from “material reception rights” with the exception of “medical care”. These sanctions are intended to force asylum seekers to stay in the responsible Member State regardless of the reception and procedural conditions. Even the physical subsistence level is not to be granted. This proposal is a breach of human rights and contradicts the case law of Germany’s Federal Constitutional Court. It is inhumane treatment.

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