

Solidarity and asylum seekers: member states agreed to disagree

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At the June 2015 European Council, European leaders were meant to come to an agreement in order to help Italy and Greece cope with the increasing number of migrants and asylum seekers arriving on their shores. They were invited to give their agreement on a proposal from the European Commission to set up a mandatory relocation scheme, i.e. a scheme defining the precise number of asylum seekers that should be relocated to each member state over the next two years.

Due to the increasing migratory pressure, in the Mediterranean Sea and on the Balkan route, the political climate was particularly tense before the Summit. France and Italy were engaged in difficult discussions regarding the situation of migrants and asylum seekers at the Franco-Italian border. Hungary announced it will build a fence along its border with Serbia and stop implementing the Dublin Regulation. In reaction to these developments, Austria announced it will stop processing asylum requests.

After a long and heated debate at the meeting, one could say that, on the relocation issue, member states agreed to disagree. While they agreed on a target to relocate 40,000 asylum seekers over the next two years, they disagreed on the distribution key. Postponing the decision, the how many asylum seekers from Italy and Greece each member state will accept on its territory.

Reasons for abandoning the distribution key

According to the Commission's proposal, asylum seekers would be redistributed on the basis of a calculation taking into consideration the population of the country, its GDP, the number of spontaneous asylum applications registered and the number of refugees resettled over the period 2010-2014 and, finally, the unemployment rate. Two main elements could explain why states disagreed on the criteria presented by the Commission.

The first one is of course the fierce opposition of several member states to accept a mandatory relocation system. With the exception of the UK, which has an opt-out position in this field, the opponents were mainly located in Eastern Europe. Their opposition was strengthened by the President of the European Council, Donald Tusk. Before the Summit, his staff issued background papers recalling that the April extraordinary meeting agreed that the distribution of asylum seekers should be voluntary. Hence, he gave weight to the arguments of the opponents of a mandatory scheme, leading to a compromise whereby EU leaders decided to set a target, but without a mandatory distribution key.

A second element that could have had an impact on the decision to refuse the distribution key were the criteria put forward in the Commission's proposal. While objective, these criteria were rejected, most probably because of the forthcoming discussions regarding the modification of the Dublin III Regulation (which could be on the agenda in 2016). If heads of state and government had agreed on these criteria, it would have created a precedent and constituted a ground for the European Commission to use this new distribution key as a model for the forthcoming modification of the Dublin III Regulation. As a majority of member states opposes the revision of the existing criteria in the Dublin III regulation, they have refrained from being 'trapped' by a new mechanism.

Uncertain negotiation ahead

In practical terms, it is now the responsibility of Ministers to agree on the number of asylum seekers they accept to relocate to their own country over the next two years. The Luxembourg Presidency, which will take office on 1 July 2015, will try to find acceptable solutions through bilateral and collective discussions. However, it is also very likely that discussions may revive tensions between states.

One danger would be that member states in favour of mandatory relocation schemes, mainly older member states that are taking their responsibility with respect to border management (Italy and Greece) and asylum seekers (Germany, France, the Netherlands), would remind newer member states reluctant to this mechanism (Baltic states, Poland, the Czech Republic, Hungary, etc.) about the strong financial support they received before joining the EU through pre-accession financial support and so-called Schengen facilities. In other words, some states may remind others that solidarity is not a one-way-street and put strong pressure on others on this basis.

Paradoxically, there is a chance that, in this complex negotiation, the Commission's proposal could act as a framework, as it has objective criteria and sets out clear figures. In the end, a country's GDP, the size of its population and the number of asylum seekers and resettled refugees could be the baseline for further discussions and the final result may not be so far removed from the Commission's original proposal.

Despite the agreement reached at the level of the European Council to relocate 40,000 asylum seekers, there is no certainty that Ministers will find a compromise by the end of July. A new European Council may have to convene again very soon.

The need to move beyond disagreement

The June 2015 European Council was not able to cool down tensions over the migration issue. And tensions are likely to rise even further as the arrival of asylum seekers and migrants on Europe's shores and in EU states will not stop overnight; on the contrary, their numbers are expected to increase, so the issue will remain high on the agenda.

In this context, it is crucial for member states to agree on the distribution of 40,000 asylum seekers that have already arrived or will arrive in Italy and Greece. If they fail to do so it is likely to severely undermine two main pillars of EU policy.

First, it will show that solidarity between states is a concept that only exists in Article 80 of the Treaty and not in practice. Second, further disagreement is likely to fuel unilateral decisions in the field of immigration and asylum. States may refuse to fulfil their obligations under EU law, such as taking migrants' and asylum seekers' fingerprints, implementing the Dublin Regulation or returning unauthorised migrants. If this were to happen, this would heavily damage the mutual trust between member states.

Member states are of course aware of these concerns so they should avoid 'playing with the fire'. At a time when the EU is facing great difficulties and challenges, in- and outside of its borders, the temptation of isolationism is high. However, coping with the unprecedented humanitarian situation at Europe's borders calls for unprecedented actions based on solidarity and mutual trust. Aligning the EU's action with national agendas and debates, fuelled and set by anti-EU and anti-immigrant parties, is the worst solution.

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