

Sharing responsibilities in the Common European Asylum System

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Abstract

In recent years, mass inflows of asylum seekers have put the asylum systems of several EU Member States under significant pressure. Due to the unequal distribution of these flows, calls have emerged urging the need to share responsibilities related to these asylum claims among EU MS. This paper departs from the most recent discussion on the Dublin reform proposal by the Presidency of the Council, which establishes a number of ways to share responsibilities. By listing and describing them, we further map the efforts undertaken by EU Member States in each of the fields related to the Common European Asylum System. While a number of responsibility sharing measures coordinated by the European Commissions and EU agencies are already in place, efforts towards a distribution mechanism have been less successful.

Keywords: Responsibility sharing, burden sharing, solidarity, Common European Asylum System, asylum, relocation

1. Introduction

Responsibility sharing in the European Union is established in Article 80 of the Treaty of the Functioning of the European Union:

“The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.”

When it comes to interpreting and applying these provisions, agreements between EU Member States (MS) are often difficult to achieve and less successful in its implementation. Although financial instruments exist to alleviate pressure on overburdened MS in the field of asylum, and operational and technical assistance is ever more accessible through the different EU Agencies, the distribution of asylum applicants among the MS remains a source of inequality in the EU.

MS at the external border like Greece and Italy bear the main burden of providing reception to arriving asylum seekers. Further on, secondary movements led in the past to significant pressure on asylum systems of other central and northern European countries which received the bulk of asylum applications from 2015 onward. Already in 2015, a somehow ambitious responsibility-sharing mechanism was established, the EU Relocation Scheme. The mandatory character of the scheme was opposed by some countries. Still, relocation showed remarkable results, albeit at only moderate numbers compared to the initially planned figures.

In 2016, the European Commission proposed a reform of the Common European Asylum System, most notably through a further harmonisation of the asylum procedure and the proposal for a new Dublin Regulation which included a relocation-like corrective allocation mechanism to the benefit of countries experiencing mass inflows.

This paper departs from the most recent discussion on the Dublin reform proposal by the Presidency of the Council, which establishes a number of ways to share responsibilities. By listing and describing them, we further map the efforts undertaken by EU Member States in each of the fields related to the Common European Asylum System.

Sharing responsibilities is nothing new in the Common European Asylum System. However, often it is the “usual suspects” participating in the EU-organised schemes and the physical relocation of asylum applicants as the most radical form of responsibility sharing remains heavily contested by MS.

2. Responsibility sharing in the proposals for a recast Dublin Regulation

The Dublin Regulation establishes the criteria and mechanisms for determining the Member State responsible for examining an application for international protection. Since 2016, when the European Commission brought forward a proposal for a recast of this instrument sometimes depicted as the “cornerstone” of the Common European Asylum System, the discussion on how to redesign it by rendering it effective, fair for overburdened frontline Member States and fostering solidarity among the EU MS has been ongoing for already two years, involving European Commission, Parliament as well as many other actors involved.¹ Only recently, a draft proposal elaborated by the Bulgarian

¹ For an overview of the Dublin proposals’ evolution see ICMPD (2018 and 2017)

Presidency of the Council leaked² to the public in May 2018, ahead of the June European Council 2018. Art 34(2) of the compromise proposal for a Dublin Regulation lists a number of measures in response to challenging circumstances and severe crises. Among them, the main element of the preceding proposals can be found, namely a mechanism for the distribution of asylum applicants across Europe. Nevertheless, this means of sharing responsibility does not quite prominently feature this list, but only after several other – rather quite traditional - measures. Surprisingly, many of the responsibility sharing measures named as alternatives by the proposal are currently already in place, although they have not been closely linked to the Dublin Regulation yet.

The following measures are listed by the recent Dublin proposal as response to challenging circumstances and crises:

- Technical and operational assistance at the **external borders**,
- Operational and technical assistance by the **European Union Asylum Agency**,
- **Financial support** by the EU,
- Assistance and cooperation in the field of **return**,
- Union support for **external dimension**,
- **Allocation** of applicants from one MS to another,
- **Resettlement** of refugees from third countries,
- Assistance provided by the **EU Civil Protection Mechanism**, and
- **Financial contribution** to the Union budget.

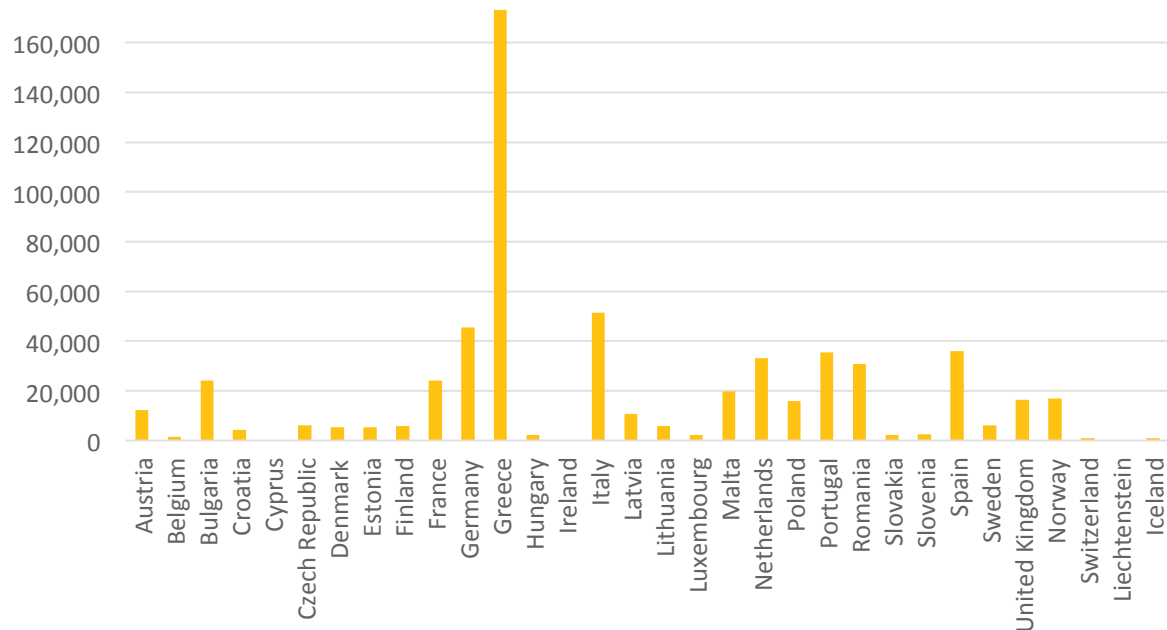
3. External borders

The Regulation (EU) 2016/1624 on the European Border and Coast Guard stipulates that Member States may request the European Border and Coast Guard Agency's assistance in implementing its obligations with regard to the control of the external borders. The Agency shall also carry out measures in situations requiring urgent action at the external borders.

The European Border Coast Guard Agency is already supporting frontline Member States, with deployments in Greece, Italy, Bulgaria and Spain as well as in the Western Balkans, with approximately 1,350 members of the European Border and Coast Guard Team as of May 2018. Between 1 January and 31 December 2017, all Member States (excluding Ireland, which is not a contributor of the EBCGT), as well as Norway, Switzerland and Iceland, contributed over 597,000 man-days (European Commission, 2018a, Annex 3).

² The leaked draft proposal is accessible at <http://www.statewatch.org/news/2018/may/eu-council-dublinIV-Presidency-compromise-8895-18.pdf>

Figure 1: Man-days deployed to European Border and Coast Guard Team (EBCGT) in 2017



Source: own elaboration based on European Commission (2018, Annex 3). Data includes internal deployment by frontline states Bulgaria, Greece, Italy and Spain.

Germany, Portugal, the Netherlands and Romania are the main contributors to the EBCGT, apart from the MS benefitting from it and providing internal deployment (i.e. Greece, Italy, Spain and Bulgaria).

MS are currently pooling resources in the field of rapid border reaction capabilities: 14 MS and Switzerland have contributed to a “Rapid Reaction Equipment Pool” by offering equipment like buses, coastal patrol boats, patrol cars and aircrafts, and most MS have nominated border guards available for deployments from the Rapid Reaction Pool (European Commission, 2018a, Annex 3).

4. European Union Asylum Agency (EUAA)

Furthermore, the BG proposal refers to the proposal for a Regulation on a European Asylum Agency (European Commission, 2016a) which – once established – will provide operational and technical assistance to overburdened MS. Expanding the mandate of the European Asylum Support Office (EASO), the EUAA will turn into a fully-fledged Agency equipped with the necessary tools to enhance cooperation, ensure greater convergence and provide increased operational and technical assistance to MS.

According to Article 16 of the EC proposal for a European Union Asylum Agency, Member States may request the Agency for assistance in implementing their obligations with regard to asylum, in particular when their asylum and reception systems are subject to disproportionate pressure.

The Agency shall deploy asylum support teams to Member States to provide operational and technical assistance. The asylum support teams shall consist of experts from the Agency's own staff, experts from Member States or experts seconded by Member States to the Agency.

The Agency shall – according to the proposal - organise and coordinate the following operational and technical measures:

- assist Member States with the identification and registration of third-country nationals;
- facilitate the examination of applications for international protection that are under examination by the competent national authorities;
- provide assistance to competent national authorities responsible for the examination of applications for international protection;
- facilitate Member States' initiatives of technical cooperation in processing of applications for international protection;
- assist with the provision of information on the international protection procedure;
- advise and coordinate the setting up or provision of reception facilities by the Member States, in particular emergency accommodation, transport and medical assistance;
- assist with the relocation or transfer of beneficiaries of international protection within the Union;
- provide interpretation services;
- assist Member States in ensuring that all the necessary child rights and child protection safeguards are in place;
- form part of the migration management support teams at hotspot areas.

As of today, EASO is already performing most of these measures, often with the support and direct involvement of other MS and seconded national experts. In 2017, EASO provided operational support to Bulgaria, Cyprus, Greece and Italy.

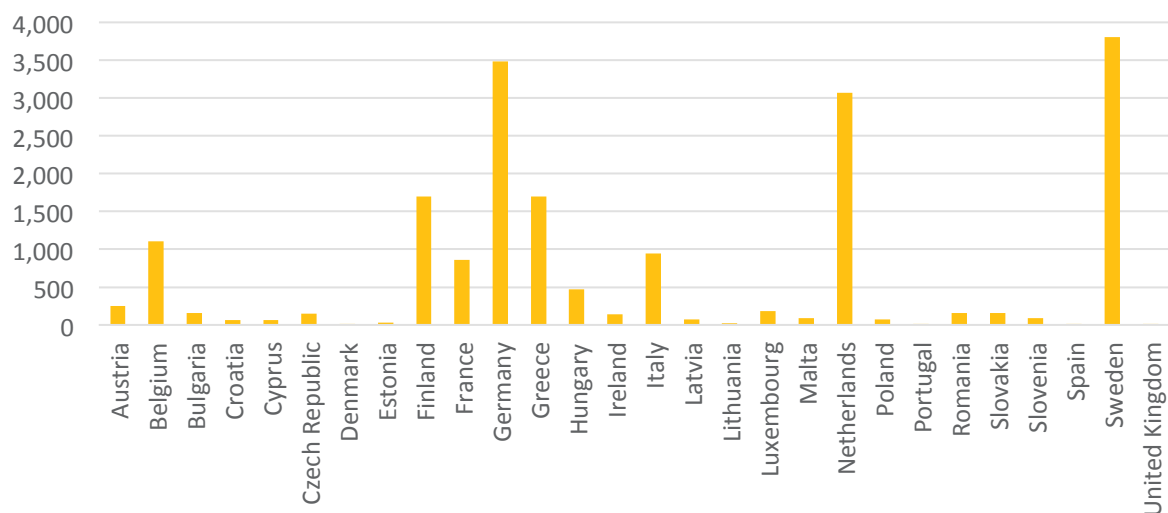
In Greece, which has been supported since 2011, EASO focuses on support to the implementation of the EU relocation programme, support to the operationalisation of the EU-Turkey Statement and capacity building of national authorities. Approximately 27,000 applicants were registered in the course of the EU Relocation Programme. More than 300 Member State experts, interpreters and interim caseworkers were deployed to the islands to support with the implementation of the EU-Turkey statement and enhancement of the Asylum and Reception system. EASO Asylum Support Teams (AST) performed asylum interviews and drafted concluding remarks under the border procedure. EASO caseworkers conducted 9,134 interviews, i.e. almost 68% of the total interviews conducted at the five hotspots under the border procedure in 2017 (EASO 2018a, p. 108).

In Italy, 371 experts were deployed in 2017, apart from interim staff and interpreters made available by EASO. They supported by providing potential applicants for international protection with relevant information on relocation, pre-identification and handling registrations of applicants for international protection, in view of the relocation procedure and Dublin procedures. Almost 44, 000 migrants arriving in Italy via the Central Mediterranean route were informed about the relocation scheme and the Dublin procedure by EASO asylum support teams. 10, 726 candidates have been registered for relocation, the Dublin procedure or the national asylum procedure (EASO 2018a, p.110).

Whereas EASO's technical assistance and operational support is primarily provided to frontline MS under significant pressure of increased arrivals, other MS do benefit from EASO activities as well, e.g. by participating in EASO-organised trainings.

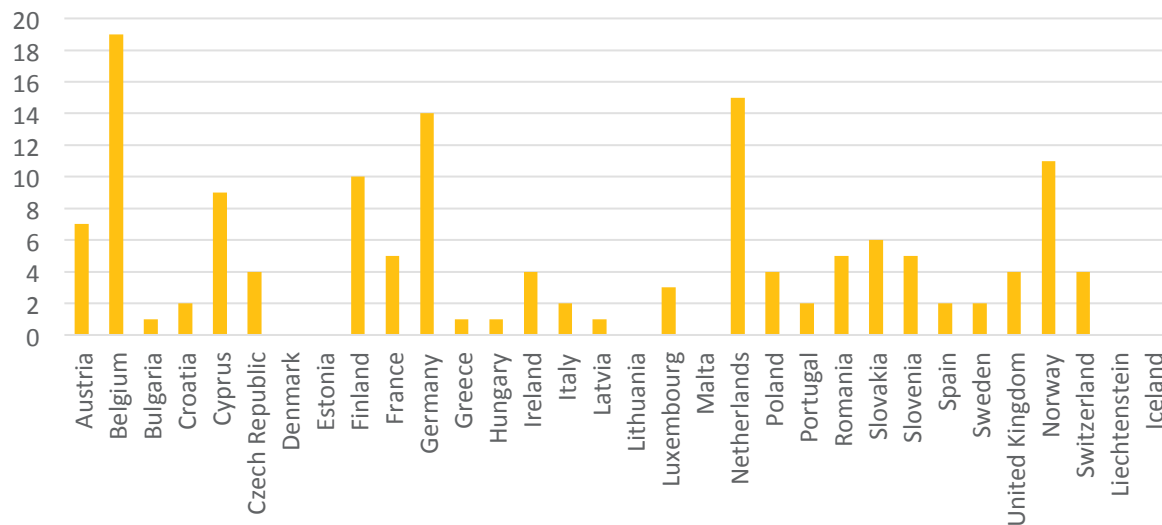
As Figure 2 shows, the MS participating in and benefitting most from EASO-organised trainings are main destination countries like Sweden, Germany and the Netherlands. Furthermore, MS of first arrival like Italy and Greece did benefit greatly from EASO trainings and train-the-trainers sessions since 2012.

Figure 2 Number of participants in national trainings and EASO train-the-trainers sessions 2012-2017



Source: Own elaboration, data from EASO (2018b)

The EASO Trainers and Experts pool contains 143 individuals nominated by 26 EU+ States. The following graph depicts the number of experts currently nominated by each of the MS. Belgium, the Netherlands, Germany and Norway offered the largest numbers of experts for the EASO Trainers Pool. However, also smaller MS like Cyprus, Slovakia and Slovenia are showing solidarity by providing national experts.

Figure 3: Number of experts nominated by EU+ as EASO trainers

Source: Own elaboration, data from EASO (2018b)

5. Financial support by the EU

The Dublin proposal by the Bulgarian presidency envisages a complex scheme of financial support for MS overburdened and for those taking over the responsibility of processing asylum applications from another MS.

The proposal of the Presidency foresees several ways of compensating or rewarding MS which are overburdened or which take over the responsibility of processing asylum requests. The compensation shall be covered through the Union budget. The proposal plans to reward MS with EUR 10,000 in two cases: 1) for each applicant they become responsible once the MS has exceeded 120% of their fair share, or 2) for each applicant taken over from another MS. If those applicants receive a positive asylum decision, a further EUR 20,000 is dedicated to support the implementation of integration measures. When the decision is negative, the MS will receive EUR 10,000 once the return has been carried out.

Furthermore, MS benefitting from distribution/allocation are to be refunded a lump sum of EUR 500 for each applicant transferred.

However, a very similar scheme is already in place in the framework of the Asylum, Migration and Integration Fund (AMIF): Funding for resettlement and relocation is provided to MS via 'lump sum' payments per person resettled/relocated and financial support for developing resettlement programme activities and infrastructure (Article 7 and 17-18, Regulation 516/2014).

The AMIF aims to contribute, through financial assistance, to the efficient management of migration flows and to the implementation and development of a common EU approach to asylum and migration. The Fund reflects efforts to simplify and streamline the implementation of the EU budget in the area of home affairs, since it replaces three separate funding programmes that operated during the 2007-13 period under the umbrella of the general programme SOLID (Solidarity and

Management of Migration Flows): the European Refugee Fund (ERF), the European Fund for the Integration of third-country nationals (EIF) and the European Return Fund (RF) (D'Alfonso 2015).

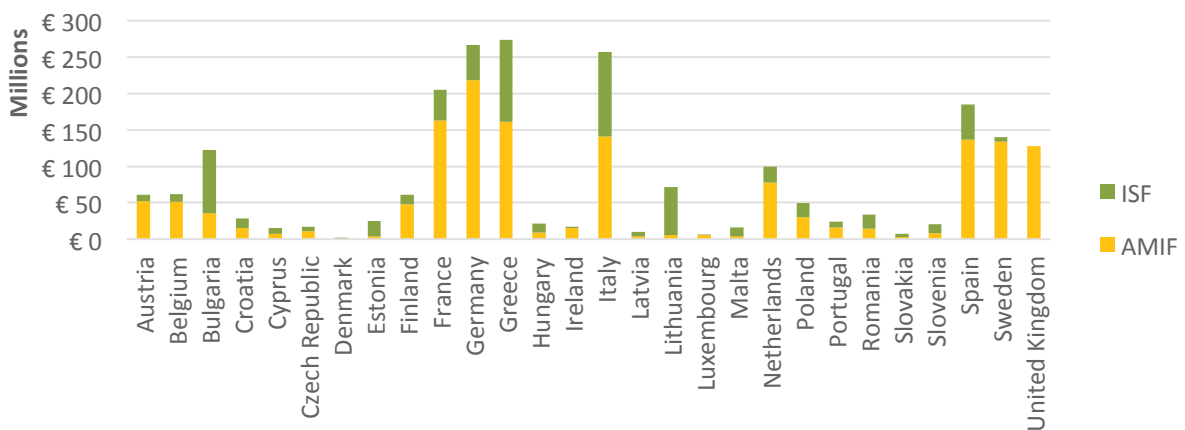
And indeed, one of the four common specific objectives is particularly increasing solidarity and responsibility-sharing between the MS, with particular focus on those most affected by migration and asylum flows.³

Out of its EUR 3.1 billion resources initially foreseen for the period 2014-2020, the AMIF endows resettlement, relocation and specific actions with EUR 360 million for 2014 to 2020. In addition to the national AMIF allocation, Member States receive a lump sum for each person resettled on their territory from a third country under the Union Resettlement Programme (Article 17 of Regulation (EU) No 516/2014). Along the same lines, a Member State accepting the transfer of beneficiaries of international protection from another EU country (relocation) is entitled to receive a lump sum for each person relocated (Article 18 of the Regulation).

Following the high numbers of arrivals in 2015, the AMIF was continually bulked up until currently including more than double the initial amount foreseen for the period 2014-2020, namely EUR 6.8 billion. For the period 2021-2027, the European Commission proposed to further increase the resources dedicated to this fund to EUR 10.4 billion.

The Internal Security Fund (ISF) is another financial instruments which supports national and EU initiatives in related areas. It is composed of two instruments, Internal Security Fund Borders and Visa and Internal Security Fund Police. The ISF Borders and Visa particularly aims at achieving a uniform and high level of control of the external borders by supporting integrated borders management, harmonising border management measures within the Union and sharing information among EU States, and between EU States and the EBCGA.

Figure 4: Financial Support to Member States under AMIF and ISF



Source: Own elaboration, data from the European Commission (2017)

³ The other common specific objectives are 1) strengthening and developing the establishment of the Common European Asylum System (CEAS); 2) supporting legal migration to the EU and integration; and 3) enhancing fair and effective return strategies.

Germany, as the main destination country in recent years, has also been the main receiver of AMIF money.

6. Return

Measures in the area of return shall be focused in particular on strengthening the assisted voluntary returns, enhancing return operations to countries of origin, readmission to third countries and transit and reinforcing the cooperation with the neighbouring third countries, including through EU migration liaison officers and EU delegations in these countries.

The EU's return policy does already rely heavily on operational cooperation between EU States. This allows them to avoid duplicating work. Such operational cooperation includes assistance in cases of transit for the purposes of removal by air, organisation of joint flights for removals, mutual recognition of decisions on expulsion, and implementation of guidelines on forced return.

The EBCGA plays a key role and has a strong mandate to support Member States to organise and coordinate returns. Three pools of return specialists, escorts and monitors are fully operational and available for immediate deployment to support Member States. The number of persons returned in operations supported by EBCGA increased from 3,500 in 2015 to 12,000 in 2017.

Furthermore, the Commission has provided practical and financial support to Member States for the development of Assisted Voluntary Return and Reintegration Programmes (AVRRs).

7. Resettlement

Resettlement is depicted in the recent Dublin proposal as substitute for the distributive allocation mechanism. The proposal specifies that where a Member State decides to receive fewer applicants than corresponds to its share, it shall engage in resettlement (or humanitarian admission) schemes or contribute financially to the Union budget (see “10. Contribution to the Union budget” below).

In July 2015, the Justice and Home Affairs Council agreed to resettle 22,504 displaced persons in clear need of international protection from outside the EU.⁴ In September 2017, the European Commission recommended a new EU resettlement scheme to bring at least 50,000 of the most vulnerable persons in need of international protection to Europe over a period of two years.⁵ For this objective, the Commission has set aside €500 million to support Member States' resettlement efforts.

Most EU MS have pledged resettlement places in recent years. Since 2015, the two EU resettlement programmes have helped over 32,000 of the most vulnerable find shelter in the EU. Under the EU-Turkey Statement, another 13,000 Syrians have been resettled to EU MS.

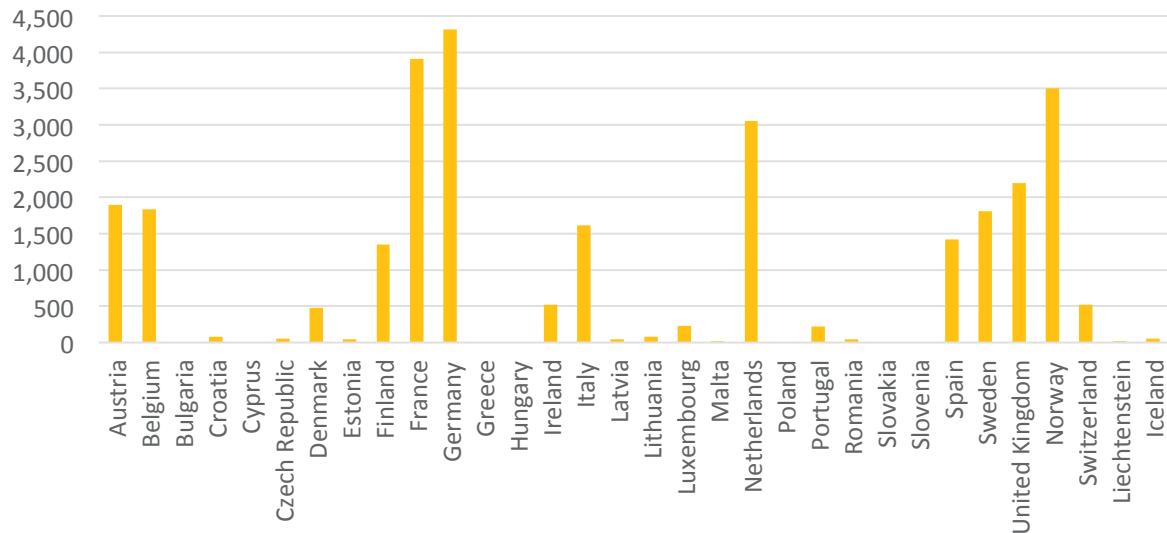
Surprisingly, some of the countries receiving large numbers of applications from spontaneously arriving third-country-nationals were as well the most active ones engaging in resettlement.

⁴ <http://www.consilium.europa.eu/media/22985/st11097en15.pdf>

⁵ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170927_recommendation_on_enhancing_legal_pathways_for_persons_in_need_of_international_protection_en.pdf

Germany led this group of countries, in which also Norway, Austria or Belgium can be highlighted (see Figure 5). Nevertheless, when compared to the number of asylum applications in the same period, resettlement at the European level is currently only carried out on a tiny scale.

Figure 5: Resettled persons under EU schemes (2015-2018)



Source: own elaboration, data from European Commission (2018, Annex 5)

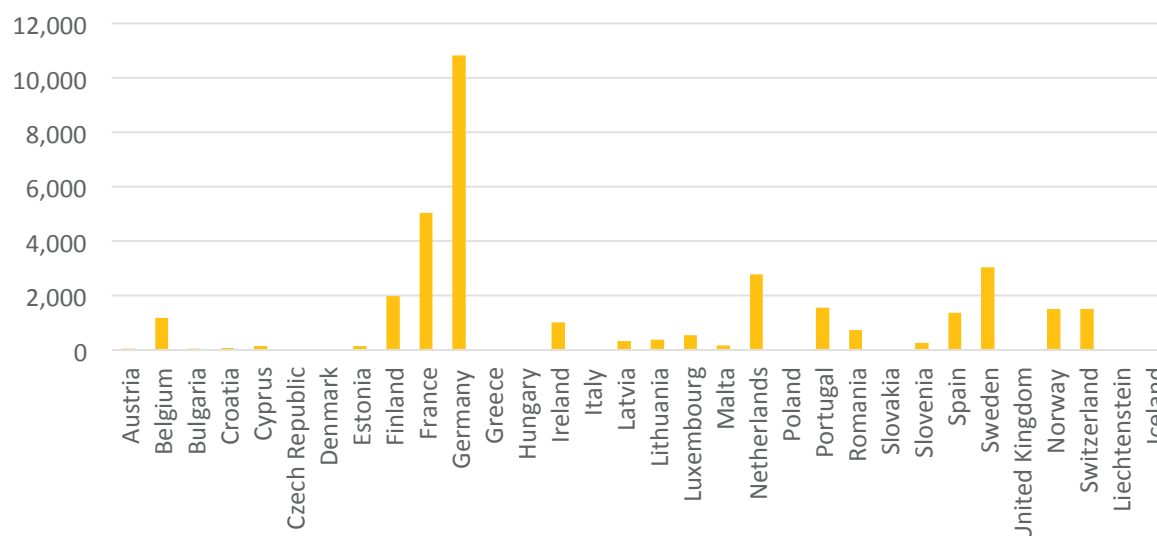
8. Allocation and Relocation

Distribution of asylum applicants from one MS to another has been a key element of each of the recently discussed proposals for a new Dublin Regulation. Whereas the Commission's 2016 proposal referred to a "corrective allocation mechanism", the recent Presidency paper is simply talking about "allocation".

Each of the proposed mechanisms resemble the relocation scheme, brought forward by the Commission in summer 2015 and agreed upon by the Council in two decisions in autumn 2015 (Council Decision (EU) 2015/1523 of 14 September 2015 and Council Decision (EU) 2015/1601 of 22 September 2015). The disproportionate numbers of people arriving in some countries at the EU external borders led to a first Council Decision aiming to relocate 40,000 people, followed by a second Council Decision adding an additional 120,000 applicants for international protection to be relocated from Greece and Italy. These two Council Decisions established a temporary and exceptional relocation mechanism for a period of two years from the frontline Member States Italy and Greece to other Member States.⁶

So far, 35,000 applicants have been relocated from frontline states Greece and Italy to other EU MS. Although most MS failed to fulfil the quota of relocated persons assigned to them in the 2015 Council decisions, due to its novelty and ability to effectively relocate on a larger scale, the Relocation Scheme has been considered successful by many (ICMPD, 2017).

⁶ The EUREMA pilot project served as a small-scale example of a first relocation scheme introduced successfully in Malta, achieving the relocation of a total of around 250 people from Malta to nine voluntarily participating countries over a period of about three years.

Figure 6: Applicants relocated by EU+ states from Greece and Italy, 2015-2018

Source: own elaboration, data from European Commission (2018c)

Just like in the case of resettlement, Germany led the efforts in the field of relocation by relocating almost 11,000 applicants from Greece and Italy. France, Sweden and the Netherlands were further main contributors to the EU Relocation Scheme. At the same time, nine other EU MS relocated less than 100 applicants or did not participate at all.

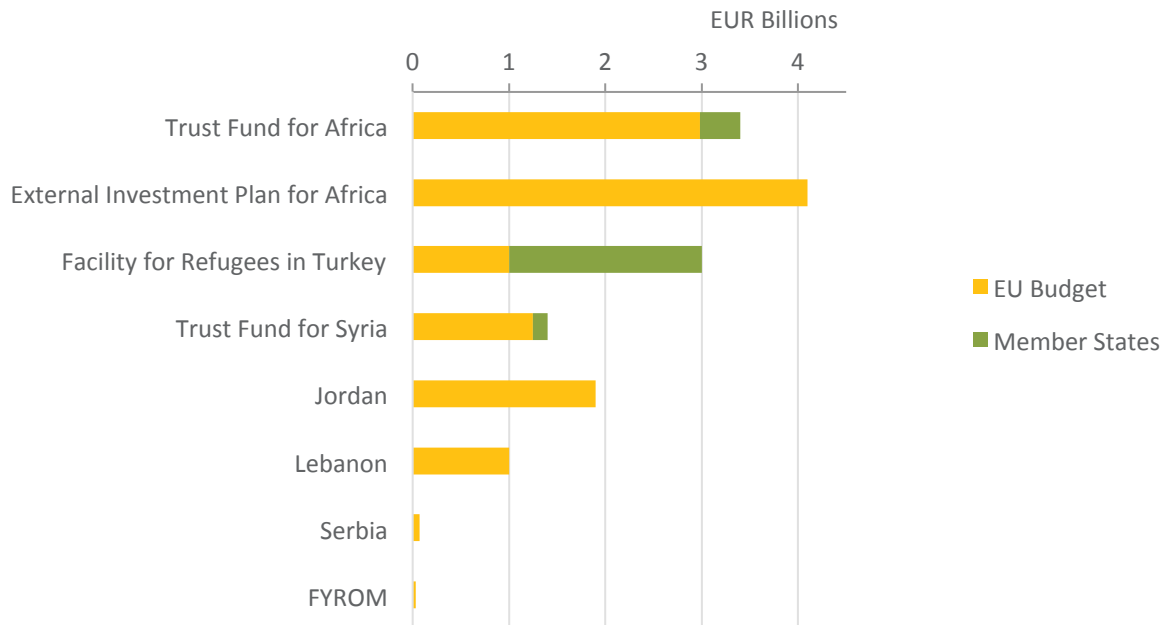
8. External Dimension

According to the Bulgarian Presidency proposal for a new Dublin Regulation, Union support for external dimension should include measures in the areas of return, resettlement and cooperation with third countries.

Measures for reinforcing the cooperation with third countries of origin and transit, including first countries of asylum and neighbouring countries may also include measures at Union and bilateral level aiming at capacity building and training in areas such as border management, asylum and migration management as well as other measures to strengthen the cooperation of these third countries. Measures in the area of resettlement shall be focused in particular on the third countries generating migration flows.

The EU has worked with countries of origin and transit, using a wide range of measures: the EU-Turkey Statement, the Partnership Framework, increased EU funding, as well as cooperation with the Western Balkans countries are all efforts towards addressing the root causes of irregular migration. To help refugees where they are and reduce the incentive for irregular migration, the EU put in place innovative funding solutions such as Trust Funds to leverage funding beyond the limits of the budget.

Figure 7: Contribution to Trust Funds supporting countries of origin and transit by EU and its MS



Source: own elaboration, data from European Commission (2018b)

As observed in Figure 7, the majority of EU MS direct contributions are directed towards the EU Facility for Refugees in Turkey. Its main focus areas are humanitarian assistance, education, migration management, health, municipal infrastructure, and socio-economic support. The operational funds of €3 billion for the Facility have been already committed and contracted, with 72 projects rolled out. More than €1.94 billion has been paid out by June 2018, with the balance to be paid in the course of implementation of Facility projects through to mid-2021.⁷

9. EU Civil Protection Mechanism

The EU Civil Protection Mechanism⁸ was set up to enable coordinated assistance from the participating states to victims of natural and man-made disasters in Europe and elsewhere. The European Commission supports and complements the prevention and preparedness efforts of participating states, focusing on areas where a joint European approach is more effective than separate national actions. These include improving the quality of and accessibility to disaster information, encouraging research to promote disaster resilience, and reinforcing early warning tools.

Similar to the years before, in 2017, EU Civil Protection and Humanitarian Aid gave more than €2 billion, or 90% of its annual budget, to projects helping the forcibly displaced and their host communities in 49 countries (Turkey, Greece, Syria, Somalia and Lebanon being the top 5). The objective is to meet the most pressing needs of these extremely vulnerable populations, protect and

⁷ See https://ec.europa.eu/neighbourhood-enlargement/news_corner/migration_en

⁸ Council decision 1313/2013/EU <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013D1313&from=EN>

support displaced people during their displacement and when returning to their homes, and increase the self-reliance of displaced people and reduce their dependency on aid.

Over 800,000 items such as blankets, mattresses, beds and tents as well as teams and equipment, shelter and medical supplies have been channelled through the EU Civil Protection Mechanism to the most affected countries.

10. Contribution to the Union budget

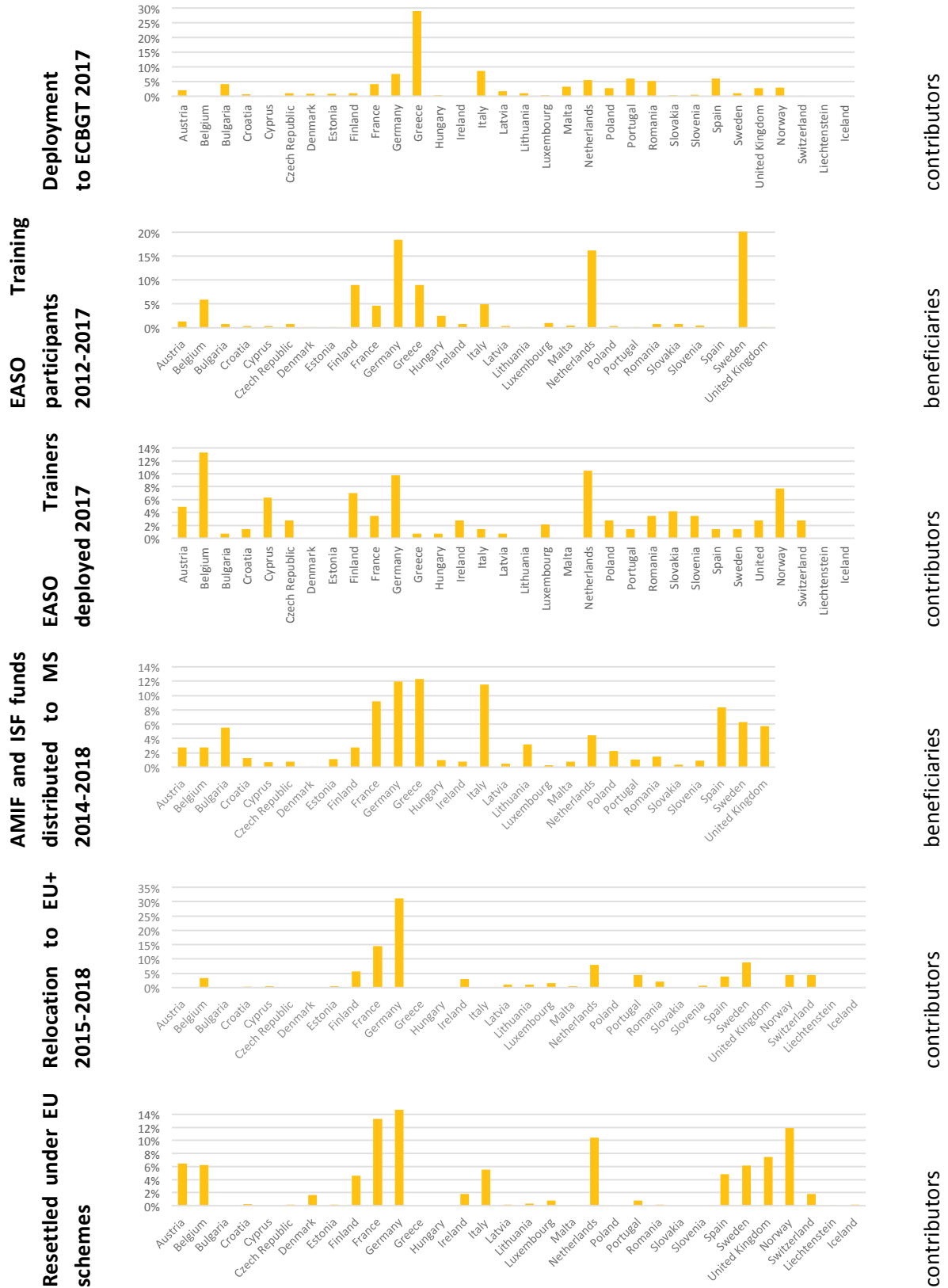
Where a Member State decides to receive fewer applicants than corresponds the number of applicants for which that Member State shall become a Member State of allocation, it shall take alternative measures. Apart from resettlement or humanitarian admission schemes, the proposal by the Bulgarian Presidency allows for the possibility to financially contribute to the Union budget.

For each applicant a MS is not willing to take over by allocation from an overburdened fellow MS, a financial contribution of EUR 25,000 to EUR 35,000 would have to be paid into the Union budget.

Financial contributions to the Union budget as a further means of responsibility-sharing, or – interpreted from a different perspective – a fine or sanction for the lack of showing solidarity or even a “buy-out option”, have been already discussed in previous attempts to formalise a framework of physical responsibility sharing. An initial proposal for a European Relocation Scheme envisaged a financial contribution to the AMIF of 0.002 percent of the GDP for any MS failing to fulfil its relocation quota. However, this provision was eventually not reflected in the relocation decisions taken by the Council. The recast Dublin Proposal by the European Commission (2016b) included a EUR 250,000 contribution as a financial solidarity measure for MS temporarily suspending the corrective allocation mechanism.

This feature of the Bulgarian Presidency proposal is hence not a new idea, but one that has repeatedly lacked support within the European MS. It remains questionable whether it will eventually be included in a recast Dublin Regulation.

Annex – EU+ contributing to and benefitting from responsibility sharing



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Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC

REGULATION (EU) No 516/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC



The research project CEASEVAL (“Evaluation of the Common European Asylum System under Pressure and Recommendations for Further Development”) is an interdisciplinary research project led by the Institute for European studies at Chemnitz University of Technology (TU Chemnitz), funded by the European Union’s Horizon 2020 research and innovation program under grant agreement No 770037.) It brings together 14 partners from European countries aiming to carry out a comprehensive evaluation of the CEAS in terms of its framework and practice and to elaborate new policies by constructing different alternatives of implementing a common European asylum system. On this basis, CEASEVAL will determine which kind of harmonisation (legislative, implementation, etc.) and solidarity is possible and necessary.