

**GREENS/EFA PROPOSAL
FOR A FAIR
AND EFFICIENT
ASYLUM SYSTEM
IN EUROPE**

Adopted on 27 March 2020



THIS PAPER LAYS OUT THE GREENS/EFA VISION for the future of the common European asylum system. Its scope is limited to the most contested elements of the upcoming European Commission proposal on the new Pact on Migration and Asylum: the creation of an external border procedure and a revision of the Dublin Regulation. There are many other challenges in the EU asylum and migration policy that are not touched upon in this paper.

The paper focuses on : ensuring effective and efficient asylum procedures; protecting the right to seek asylum; departing from the principle of first entry to ensure fair responsibility sharing among Member States and prioritising incentives over coercive measures to prevent irregular movements of asylum seekers from one Member State to another.

An additional background information covering the failures of the Dublin system and of border procedures as envisaged by the European Commission accompanies this paper. This background document also gives deeper insight into our proposals for ensuring that all Member States comply with EU asylum law.

Our approach in a nutshell

For a well-functioning European asylum system, **fair, fast and orderly procedures at the borders** will be established.

- Asylum seekers arriving at the EU's borders will be **registered in common and open registration centres and undergo security checks**.
- Asylum files will be **registered and processed in a common database system** accessible to national asylum authorities and the European Union Agency for Asylum.
- Asylum seekers will be **interviewed shortly after their arrival** to identify specific needs and determine the Member State of allocation.
- The **European Union Agency for Asylum** will be responsible for a final decision on allocation and management of the allocation mechanism.
- Responsibility for asylum seekers will not be allocated to a Member State on the basis of the principle of first entry. Instead, all Member States will share responsibility.

To fairly allocate asylum seekers, **a two-stage system with positive incentives to enhance solidarity** will be implemented.

- **Voluntary solidarity**, drawing heavily from the willingness of regional and local communities to welcome asylum seekers. All real costs will be subsidised by the EU.
- **'Solidarity by all'**, if voluntary pledges do not suffice in capacity, Member States either create new allocation places or financially contribute to the overall expenses related to welcoming asylum seekers. If pledges fall short, the European Commission should trigger a warning system - the yellow card procedure - and take further measures in case Member States fail to respond.

To avoid that asylum seekers move irregularly from one Member State to another, the system will **focus on incentives to stay**, rather than on coercion.

- **Personal links and preferences of asylum seekers** are taken into account when determining a country for allocation *within* the available capacity.
- **A level playing field for asylum seekers will be created in all Member States by ensuring full compliance** with the Common European Asylum System through a transparent **monitoring mechanism**.

1.

Fair, humane and efficient procedures at the border

Any reform of the Common European Asylum System must avoid replicating the failures of the hotspot approach on the Greek islands. We must avoid that asylum seekers are trapped in overcrowded centres at the borders by burdensome and lengthy procedures such as admissibility checks and by an approach, that centres on mass detention and deterrence rather than the protection of asylum seekers.

Fair, fast and orderly procedures at the borders are key for establishing a well-functioning European asylum system. Procedures at the borders should serve to swiftly register asylum seekers, to eliminate security risks and to figure out which Member State of allocation is the most suitable for them. Asylum seekers should not have to face protracted by checks on the merits of their asylum claims already at the borders.

All asylum seekers should be allocated. Following the example of the Malta Declaration for persons rescued at sea, asylum seekers with a low chance of receiving protection should also be allocated. Establishing filters at the external borders for sorting out “bad” asylum seekers with a low recognition chance would leave Member States at the borders with the most difficult cases and undermines European solidarity. The EU must uphold the possibility for asylum seekers to seek asylum at the EU borders and to get access to European territory.

Procedures at the borders should encompass the following elements:

1.1. A COMMON REGISTRATION SYSTEM AND SECURITY CHECKS

Every asylum seeker should immediately be registered upon arrival, undergo a health check, and pass mandatory security controls with thorough checks against relevant national and European databases. Child- and gender-sensitive procedures for registration should be established. We also support the call of the UNHCR for a common database for asylum seekers. The database should serve as a common European system for the registration and processing of asylum files, accessible by national asylum authorities and the European Asylum Agency. The common registration system would give Member States full control over the arrival of asylum seekers in Europe and their status.

1.2. OPEN REGISTRATION CENTRES

In contrast to the current hotspots on the Greek islands, registration centres should be designed for a short period of stay until asylum seekers are allocated to their final destination. The centres must be open and ensure that the specific needs of children and persons in a vulnerable situation are duly addressed. Mass detention of asylum seekers, even for a short period, is inhumane and legally flawed. Furthermore, detention creates specific threats to vulnerable groups such, as women and, unaccompanied minors, including young girls, unaccompanied minors and traumatized people. Detention is never in a child's best interest and detention of children should always be prohibited.

1.3. SWIFT AND FAIR PROCEDURES

An interview should be conducted with each asylum applicant shortly after her or his arrival. The interview should be conducted in a child- and gender-sensitive manner. The interview serves two purposes:

1. identify specific needs of asylum seekers such as vulnerable people, persons with disabilities, gender-related claims, unaccompanied minors and traumatized refugees;
2. determine the Member State of allocation by identifying if the asylum seekers has family, linguistic or cultural links to a certain Member State.

1.4. FREE AND INDEPENDENT LEGAL AID

It is essential that independent and free legal aid is provided and available for asylum seekers at all stages, with interpretation if needed, as well as legal remedies.

1.5. FINAL SAY OF THE EU AGENCY FOR ASYLUM

The EU Agency for Asylum must play a key role in the allocation procedure, both when it comes to the final decision on allocation and the management of the allocation procedure. The EU Agency for Asylum should also conduct the initial interviews and inform asylum seekers, in cooperation with NGOs, of their potential Member State of allocation and possible alternatives. In this way, the EU rather than the Member State of arrival takes responsibility for the allocation mechanism. (1)

1.6. ALLOCATION OF ALL ASYLUM SEEKERS

All asylum seekers should be transferred to their final Member State as swiftly as possible. Member States at the external borders should not be left alone with the complicated or unsuccessful asylum cases, which often require considerably more time, effort and resources. It is therefore imperative for European solidarity that asylum seekers with a high chance of receiving protection as well as those with a low chance are allocated.

(1) As in the case of Frontex, the EU Agency for Asylum and the Member State where it operates will be jointly and severally liable for decisions on allocation.

2.

A two-step approach for fair allocation

We propose a two-step approach for allocation that relies on exploiting the full potential of solidarity in Europe. Hundreds of municipalities in Europe have declared their willingness to welcome asylum seekers. We take this as a starting point for an **approach that is based on positive incentives to enhance solidarity** rather than on forcing asylum seekers upon Member States. If pledges for voluntary allocation are insufficient, all Member States are, in a second step, required to deliver on solidarity either by taking refugees or by making meaningful financial contributions. If pledges fall short, a yellow card will be triggered and the EU has to take further measures.

2.1. FIRST STEP: VOLUNTARY SOLIDARITY

Many municipalities and regions in Europe are prepared to welcome asylum seekers. We take this as the basis for an allocation system that is based on positive incentives to enhance solidarity. **The EU should provide financial incentives to municipalities and regions receiving asylum seekers.** They should receive funding from the Asylum, Migration and Integration Fund (AMIF) in proportion to the number of asylum seekers they receive and covering the real costs of asylum seekers for local communities.

Under the current reform of the AMIF fund, the European Parliament has already taken the position that municipalities and regions which are willing to relocate asylum seekers should receive direct EU funding by the European Commission, instead of going through a central management by the national authorities. We strongly defend this position.

Further incentives for municipalities and regions can be provided through the European Social Fund (ESF) and the European Regional Development Fund (ERDF). This would benefit asylum seekers as well as the local population, as both funds can be used to improve local infrastructures such as schools and transport.

2.2. SECOND STEP: SOLIDARITY BY ALL

If more places for asylum seekers are needed than offered voluntarily, 'solidarity by all' should kick in as a second step. 'Solidarity by all' means that all Member States are obliged to deliver on solidarity, yet without avoids forcing them to welcome asylum

seekers into their country. Member States fundamentally opposed to receiving asylum seekers could instead contribute financially by covering the costs of the Member States taking asylum seekers.

The financial contribution of a Member State should amount to the real costs of welcoming the asylum seekers they should have taken under a fair distribution key. In this way, even wealthy Member States cannot easily buy themselves out nor can they resort to sending fingerprint readers or border guards as alternatives for receiving asylum seekers, as currently envisaged by the European Commission.

Member States receiving asylum seekers should directly benefit from those contributions. The contributions should cover the real cost of every asylum seeker they take in addition to their quota under the fair distribution key (see section 3.3). **In this way, incentives for allocation would be co-financed by those who oppose refugee protection in Europe for principled reasons.**

Allocation based on incentives to enhance solidarity can only function if all Member States effectively take their responsibility. If pledges offered fall short, the rights and needs of asylum seekers would be affected, and the Member State of first entry would be faced with a disproportionate task. In order to avoid this, the allocation has to be monitored by the EU Agency for Asylum in a transparent way. If a shortage is predicted, the European Commission should trigger a warning system: the yellow card procedure. In case the Member States fail to respond to this “yellow card”, the European Commission has to take measures of last resort to ensure that all Member States take their equal share and that sufficient places are available. A system of mandatory allocation can be part of these measures.

3.

A fair and humane allocation mechanism which takes asylum seekers' links into account

Asylum seekers are human beings, not numbers.

Transferring them between Member States like goods is neither appropriate nor effective. **While asylum seekers have no right to choose their country of asylum, their preferences and links to a particular Member State must be taken into account to the greatest extent possible.** By doing so, the system will enhance their prospects of integration and reduce irregular movements of asylum seekers from one Member State to another in a non-coercive way. The distribution key should depart from the principle of first entry under the Dublin Regulation and instead allow for a fair share of responsibility between all Member States.

3.1. AN ALLOCATION SYSTEM WHICH TAKES ASYLUM SEEKERS' LINKS AND PREFERENCES INTO ACCOUNT

Ensuring asylum seekers' agency by taking their preferences and links to a certain Member State into account, to the greatest extent possible, is key for a humane and efficient asylum system. **The prospects of integration are enhanced and the incentives to move irregularly to another Member State are reduced if the links that asylum seekers have are taken into account. Examples of such links include family relations, community links and language knowledge.** In this way, *incentives* to stay are created and irregular onward movement to another Member State is effectively prevented in a non-coercive manner. **We, therefore, strongly reject the idea of introducing some kind of "randomizer" to determine the Member State responsible for an asylum seeker.**

Asylum seekers should express their **five preferred choices** regarding Member States of allocation based on criteria such as, family and community ties, knowledge of languages, qualifications and/or previous stay or working relations with the Member State(s). If the asylum seekers' preferences cannot be accommodated because their preferred Member States have no more places available, they should be offered a choice among Member States which still have places available. Asylum seekers who have justified reasons for preferring a particular Member State must be given priority to be allocated to this Member State. The right to family reunification must always be respected.

No asylum seeker should be allocated against their will. Therefore, the consent of an asylum seeker to move to a Member State (which was not the preferred choice) is crucial for respecting human dignity and preventing irregular movements of asylum seekers to another Member State. If an asylum seeker refuses to give her/his consent and if no other option is possible under a fair distribution key, she/he will ultimately have to stay in the Member State of first arrival.

If an asylum seeker moves on to another Member State despite having consented to stay in the Member State of allocation, she/he has to go back to the allocated Member State, otherwise the whole system will be put at risk.

3.2. AN ALLOCATION SYSTEM BASED ON COMPREHENSIVE AND RELIABLE INFORMATION

Asylum seekers often base their decision to travel to a certain Member State on distorted and incomplete information. They often rely on smugglers who advertise distorted versions of reception conditions in certain Member States. Providing asylum seekers with as much reliable and objective information as possible is therefore crucial for matching their preferences with a fair allocation. In particular, in case their first or second preference cannot be taken into account, asylum seekers must be informed in a comprehensive way about possible alternatives.

3.3. A FAIR DISTRIBUTION KEY

The distribution key comes into play once voluntary relocation is exhausted and solidarity by all kicks in. The key determines the share of asylum seekers a Member State has to take and is the basis for the financial contributions which must be made in case the Member State is fundamentally opposed to taking asylum seekers. **The distribution key must be based on objective criteria reflecting the ability of Member States to take in and integrate asylum seekers.** The European Parliament suggested in its position on the reform of the Dublin Regulation the following criteria, which we support:

- a) population size
- b) total GDP

In order to take into account the voluntary efforts of Member States to take asylum seekers and refugees, we suggest adding:

- c) average number of asylum seekers taken voluntarily per million inhabitants
- d) average number of resettled refugees per million inhabitants

Taking into account the number of asylum seekers that a Member State previously had agreed to take voluntarily creates further incentives for allocation. Those Member States will have to create fewer additional places for asylum seekers once solidarity by all kicks in.

Including of the number of resettled refugees in the distribution key indicators can be a useful incentive to take a humanitarian approach to asylum. Resettled refugees defined as particularly vulnerable, such as unaccompanied minors or people with special medical needs, are transferred by Member States directly from countries that currently host the largest numbers of refugees and that are more in proximity to conflict regions such as Lebanon, Jordan or Turkey. Including resettlement in the distribution key thus encourages Member States to provide safe and legal access for refugees with special protection needs to the EU.

3.4. INTEGRATION AND MOBILITY

Beneficiaries of international protection are currently "trapped" in the Member State where they were granted asylum. The Long Term Residence Directive grants third-country nationals free movement in the EU only after five years. As asylum seekers might end up in a Member State that is not their preferred choice, the five-year-rule is a threat to allocation. This five-year rule makes it more difficult for asylum seekers to accept allocation, does nothing to assist successful integration and ignores the challenge of irregular movements of asylum seekers from one Member State to another.

To avoid such failures, beneficiaries of international protection should be able to benefit from free movement in the EU one year after the granting of protection. This would make it easier for them to accept being allocated to a Member State for which they have no preference, while giving them some time to integrate in the allocated Member State.

Finally, prospects for integration are key for both refugees and Member States. Refugees need support in rebuilding their lives in their new home country. Therefore, the right of asylum seekers to access housing, health care and other social security systems, language courses, education and training, the labour market and support schemes such as mentoring programmes must be significantly strengthened under the new integrated EU asylum system.

3.5. COMPLIANCE WITH EU ASYLUM RULES: CREATING A LEVEL-PLAYING FIELD FOR ASYLUM SEEKERS

Asylum seekers have little reason to stay in a Member State in which their chances of getting protection are lower than elsewhere and where reception conditions are extremely poor, regardless of whether their preferences are taken into account. The creation of an asylum system with common standards applied in all Member States is therefore essential.

Today, we face many compliance gaps, leading to appalling reception conditions, unjustified denials of access to an asylum procedure or to the right to appeal, and sometimes even to blatant pushbacks and violence. These violations need to be addressed immediately and effectively.

The European Union Agency for Asylum, which already has a mandate to advise and support authorities with implementing EU asylum law, should be tasked with the **establishment of a transparent system for monitoring the compliance of Member States** with the EU asylum rules. Based on this information, but also on information by independent monitoring bodies, the European Commission should publish guidelines for better implementation and enforce compliance by the Member States. The European Commission should not shy away from infringement procedures and sanctions towards Member States that do not respect EU values and obligations.

