EUROPEAN CONFERENCE

FROM TAMPERE 20
TO TAMPERE 2.0

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Background Note: Responsibility-Allocation and Solidarity

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Pre-Conference Version

DISCLAIMER

The draft of this note has been prepared by Francesco Maiani, Associate Professor of European Law at the University of Lausanne. The present document is, however, the result of a process during which some changes have been made following a preparatory workshop and in liaison with the author. This means that the author might not agree with all of the suggestions proposed in this note. Final versions of all the background notes, which will take account of the input provided by the conference, will be published and widely disseminated. References to authors quoted have been reduced to a strict minimum contrary to academic rules due to a lack of space. More details will be provided in the published version of this note.

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Tampere Conclusions:

13. The European Council reaffirms the importance the Union and Member States attach to absolute respect of the right to seek asylum. It has agreed to work towards establishing a Common European Asylum System (…).
14. This System should include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application (…).
16. The European Council urges the Council to step up its efforts to reach agreement on the issue of temporary protection for displaced persons on the basis of solidarity between Member States (…).

I. ASSESSMENT OF THE CURRENT SITUATION:

The 1999 Tampere Conclusions called for a “clear and workable determination of the State responsible for the examination of an asylum application”, as well as for a system of “temporary protection for displaced persons on the basis of solidarity for the Member States”. The Lisbon Treaty has maintained and developed these elements. Article 78(2)(e) TFEU refers to the adoption of “criteria and mechanisms” for the determination of the Member State as necessary for the adoption of a Common European Asylum System (CEAS). Article 80 TFEU enshrines the “principle of solidarity and fair sharing of responsibility” as a governing principle of all EU migration policies. Furthermore, Article 78(3) TFEU authorizes the Council to adopt “provisional measures” for the benefit of States confronted by an “emergency situation”. However, twenty years after Tampere, and ten years since the Lisbon Treaty entered into force, the CEAS still lacks a clear and workable system of responsibility-allocation and solidarity and fair sharing remain to a large extent Zukunftsmusik.

A. Has the Dublin System Failed?

The shortcomings of the Dublin system, in force since the mid-1990s, are well documented. Over the past ten years, a mere 3% of all applications made in the EU+ States (EU+EFTA) have given rise to a Dublin transfer. Most (60-80% yearly) are ‘take backs’ of persons who have left the State responsible to seek asylum or simply stay elsewhere in the EU+. ‘Take charges’ (transfers made because the Dublin criteria indicated as responsible a State other than the State of application) were effected on average for less than 1% of all applications. Thus, while Dublin helps detecting multiple applications and preventing their examination, its effects in allocating responsibilities according to predetermined criteria are practically nil. Statistically, the State responsible is nearly always the one where the applicant lodges by chance, or by design his first application. This may or may not be regarded as a problem, but certainly it casts doubt on the usefulness of the responsibility criteria and of the thousands of yearly ‘take charge’ procedures meant to apply them. More generally, the system is notoriously inefficient: most of the Dublin procedures carried out yearly – both ‘take charge’ and ‘take back’ – achieve no tangible result even when a transfer decision is adopted, as somewhere between 66% and 75% of all transfers are not implemented.

This does not yet show that the Dublin system fails in achieving its objectives. To begin with, there may be different perspectives on what exactly the system is meant to achieve. For some Member States at least –

those who do not receive many asylum claims, nor many Dublin transfers – the system is satisfactory no matter how badly it works, as it leaves them basically out of asylum-related migration movements. While this view may be unacceptable to other Member States, and problematic in the perspective of a Common European Asylum System, it may explain why some Member States at least support the status quo. Whatever its faults, the system may act as a deterrent for persons potentially intending to travel to Europe to lodge a claim. This is debatable: 'deterrence' is no formal objective of the system and controversial in itself. Furthermore, there is no evidence suggesting that knowledge of the system deters would-be protection seekers from undertaking the journey to Europe (rather the opposite: see JRS 2013:28 ff indicating that most of the protection seekers already in Europe have no or limited knowledge of the system). Still, it cannot be ruled out that policy-makers support the system because of its supposed 'deterrence' effects, whatever its flaws.

As for the stated objectives of the system, it has been explained above that one is clearly not achieved: allocating responsibilities according to predetermined criteria. However, the key functions of the system are to assign each application to the responsibility of a Member State, and to prevent the examination of multiple applications. Arguably, the Dublin system achieves both purposes: it does indicate a State responsible for every application – most often, by default, the State where the application is first lodged – and it makes it unavoidable for multiple applications to be detected via the EURODAC database. In fact, we can measure the contribution made by the Dublin system to the functioning of the CEAS by observing the effects of its 'disapplication' in the wake of the 2015 crisis: as Member States lost faith in Dublin, and turned to deterrence and push-back measures of dubious legality in order to curb secondary movements (ECRE 2018), we witnessed the reappearance of – precisely – 'orbit situations'. This is a reminder that if it is not to devolve into chaos, the CEAS needs a responsibility-allocation mechanism and that, for all its shortcomings, Dublin is better than no mechanism at all.

That said, what the figures above do indicate without doubt is that Dublin achieves its objective in an extremely inefficient and wasteful manner. Furthermore, it generates many 'extra costs': the direct financial and administrative cost of Dublin procedures; the significant delaying of asylum procedures proper; the hardship caused to applicants and their families; the loss of confidence and cooperation between applicants and asylum authorities; the loss of control on migration movements to and between the Member States, as applicants are incentivized to avoid identification in the first State they enter and to engage in irregular secondary movements. It is no small irony that a system born to "rationalise the treatment of asylum claims" (CJEU, C-411/10, para. 79) should hinder it to such an extent. Could an alternative system be devised that fulfils the key functions outlined above by minimizing the costs described? But before this, why does the Dublin system perform as it does?

B. Why Does the Dublin System Perform as it does?

Applicants' "abuses and asylum shopping" are often cited as the causes of the state of affairs described above (see e.g. European Commission 2016:3). Things, however, are more complex. True, there is widespread resistance and evasion by the applicants, and this strongly affects the functioning of Dublin. But calling this 'abuse' tout court is a gross simplification: the results produced by the system are widely and justifiably perceived as arbitrary by the applicants, especially in a context where adequate and convergent standards are not guaranteed in all the Member States to the point that one can speak about a 'protection lottery'. Moreover, Member State (in)action is as big a factor behind the (mal)functioning of Dublin. First, absent sufficient and reliable solidarity schemes at EU level, Member States tend to apply the system non-cooperatively – so as to maximize others' and minimize own responsibilities – with high

costs for a correct and efficient implementation. Second, delays, inefficiency and ineffectiveness are in many instances due to the inherent complexities of the administrative procedures, bureaucratic difficulties, or lack of resources (UNHCR 2017).

The debates surrounding Dublin and its reform are also linked to broader discussions on the lack of solidarity and fair sharing in the CEAS, which many regard as one of its key weaknesses. Dublin itself is indeed part of the problem. As its pivotal responsibility criterion is the irregular crossing of an external border, the system theoretically shifts the 'burden' of protection on the States located at the periphery of the Union. In practice, the distributive impact of the Dublin criteria is minimal and the system rather tends to put responsibility on the States where the first application is lodged, thus crystallizing the asymmetrical distribution of applications.

The distribution of responsibilities in the CEAS is profoundly unbalanced and the current 'solidarity toolbox' falls well short of compensating for such imbalances (see e.g. Lilian Tsourdi 2017). While EU funding has grown considerably during the crisis, especially in favor of 'frontline' states such as Greece, it is still far from offering a comprehensive compensation of asylum-related costs incurred by the Member States. Operational support via agencies has also been strengthened but the question is still how to transform it into a more effective solidarity tool (see in this respect the Introductory paper on Agencies prepared by Lilian Tsourdi). As for the physical dispersal of protection seekers, the only significant experiences so far have been the relocation programs launched in September 2015 for the benefit of Greece and Italy under Article 78(3) TFEU. These have no doubt afforded some measure of relief to those two 'frontline states', allowed approximately 35,000 persons to access better protection, and constituted an important occasion for institutional learning. Still, numbers have been limited in relation to initial pledges and, most importantly, to the needs of the two beneficiary states. Indeed, the stark limits of 'European solidarity' have been evidenced by both the restricted scope of the schemes and the determined resistance by some Member States to their implementation. The current disembarkation crisis in the Mediterranean, where ad hoc solutions are found after protracted negotiations over extremely small numbers of persons, further highlights the lack of structured and reliable solidarity in the EU.

II. IDEAS AND SUGGESTIONS FOR THE FUTURE:

Any system of solidarity and responsibility-allocation, present or future, must take account of the following points:

- Respect for fundamental rights and a 'full and inclusive application' of the 1951 Convention must be guaranteed.
- No system of responsibility-allocation can function correctly if reception and protection practices diverge strongly or, worse, if there are 'protection black holes' in the EU+. Such divergences and gaps turn responsibility-allocation into an arbitrary 'protection lottery', undermine trust in the integrity of the CEAS, and fuel irregular onward movements. It is unacceptable that practices openly disregarding core EU and international standards are tolerated. The standards are in place and implementation gaps must be closed as a matter of priority.
- No system of responsibility allocation is sustainable unless Member States can rely at all times on a solidarity capable of offsetting distributive unbalances both structurally and in times of crisis. As experience shows, without this the incentives to defect – e.g., to stop taking fingerprints, to 'wave through', to engage in push-back practices, etc. – may simply be too strong for states that experience or anticipate increased pressure, or believe that they are on the losing side of the bargain.

Coming now to reform options for responsibility allocation and solidarity, there is hardly any other area of EU politics where perceptions, interests and ideas on how to go forward diverge as spectacularly. Discussions surrounding the reform of Dublin have intersected discussions on how to operationalize Article 80 TFEU, adding further complexity. In the last few years, at least three divergent approaches have emerged. The Commission approach, expressed in its 2016 Dublin IV Proposal, is to maintain the Dublin system, accentuate its coercive aspects in order to curb secondary movements, preface it with a 'pre-procedure' to filter out 'safe country' and 'security cases', and complement it with a 'corrective' allocation mechanism to be activated in case of need. The approach taken by the European Parliament differs substantially. It is based on incentivizing compliance by applicants and Member States i.a. through an in-depth revision of the criteria (whereby 'irregular entry' would no longer be relevant and only 'real links' would matter), and the establishment of a permanent quota-based allocation system. A third approach, advocated by sectors of academia and civil society, partially coincides with the EP approach (emphasis on 'real link' criteria) but is based on the idea that in order to ensure swift and economical responsibility-allocation, coercive elements must be abandoned to all possible extent.

Rather than discussing these three approaches as 'closed packages', I will attempt to unpack them and to identify the most salient issues to be addressed in the coming debates.

A. Carefully Choosing the Function(s) and Criteria of Responsibility-Allocation:

The three approaches described above all differ in the functions they assign to responsibility-allocation.

The traditional Dublin approach, reinforced in the Dublin IV proposal, places responsibility-allocation at the service of migration control in the Schengen area. In this perspective, subject to exceptions, applicants should ask protection and have their application examined in the first Member State entered, while secondary movements should be discouraged or sanctioned. This concept is still strongly supported by some Member States, and is typically justified with the argument that since the EU is a single area of protection, 'true' refugees must ask protection as soon as they enter it. However, as intimated above, the EU is not a single area of protection in any sense: protection costs are borne to a large extent by national budgets, national implementation practices diverge, and beneficiaries of protection do not enjoy free movement rights. In such a context, there is no normative justification for (and there is increasing contestation against) the idea that a few States located at the Union's external borders should process the vast majority of the applications and bear the related costs. From the standpoint of Article 80 TFEU, such a system could only be accepted if costs were entirely offset via structural 'fair sharing' measures (see below, points D and E). Ersatz 'corrective mechanisms', such as the one proposed by the Commission, are unlikely to be workable (Constantin Hruschka 2016). In addition, experience shows that without a full level playing field, and without extensive consideration being given to the 'real links' and aspirations of the applicants, a system of this kind invites widespread resistance from the applicants, requires a considerable amount of coercion, and is inherently prone to giving raise to all the problems detailed above. This is especially true in an area without internal borders: constraining free movement coercively in an area of de facto free movement is per se an uphill struggle. There is therefore a very real trade-off between concentrating responsibilities at the Union's borders and pursuing efficiency in responsibility-allocation. Increased sanctions, while questionable from a human rights standpoint, are unlikely to constitute a way out of this dilemma (see below, B).

Different from the Dublin model, the EP model aims to enhance applicants' integration prospects ('real links' approach) but most of all it attempts to fully realize 'solidarity and fair sharing' via a permanent and

mandatory allocation to the least burdened state(s). There are many laudable elements in the model proposed, but one immediately apparent problem: ‘real links’ transfers would still likely be a minority, and nearly all the other cases would require a transfer to a destination not of the applicant’s choosing. In short: compared to the current system, the number of involuntary transfers would literally skyrocket. Systems whose functioning is premised on the execution of a large number of involuntary transfers are not workable. For all its theoretical appeal, therefore, such a model would risk raising the same difficulties that are observed now, multiplied tenfold: low compliance rates, large-scale use of coercion, equally large-scale evasion, etc. Not to mention the fact that sending applicants, against their will, to states to which they have no connection whatsoever would be problematic in light of UNHCR guidance related to the ‘safe third countries’, postulating the existence of just such a connection.

The last kind of model is focused on the idea that responsibility-allocation must, above all, place the applicant in status determination procedures as swiftly and economically as possible. As Elspeth Guild et al. aptly put it: “before identifying ways to share the burden, it is […] desirable to reduce it by avoiding unnecessary coercion and complexity” (European Parliament 2014:9). In order to do so, coercion should be drastically reduced and only voluntary transfers should be foreseen at ‘take charge’ stage, thereby eliminating human rights issues, litigation, absconding, etc. in this phase of the process. Two variants are imaginable.

The first is ‘free choice’. This model is usually dismissed as utopian without giving consideration to the substantial advantages it would entail in terms of incentives provided to applicants to play by the rules, and of integration prospects. Several objections are indeed raised. First, one questions whether applicants should have the right to choose their destination country. It is submitted that, since the Treaty is silent on the issue, the question needs to be reformulated as follows: should the legislator grant such a right, and if so to what extent or subject to what conditions? This is a policy question, not a legal question. Second, fears were expressed that a ‘free choice’ system would concentrate responsibilities only in some ‘desirable’ states, and likely trigger a race to the bottom among the latter in order not to become attractive destinations. There is merit to both observations. Still, as noted above, the current system also concentrates responsibilities in a few states only, while being much more inefficient and provoking a host of undesirable secondary effects. Furthermore, just like the current system, a ‘free choice’ system could be accompanied by robust solidarity and fair sharing mechanisms. As for the ‘race to the bottom’ argument, empirical observations appear to validate it. However, this then questions the ability of the Union to enforce the common standards that it has adopted in the field of asylum. As noted above as well, the (already existing) implementation gap must be closed as a matter of priority. This would also take care of any risks of a ‘race to the bottom’.

The second variant was advocated by UNHCR at the start of the 2000s and more recently in my own work under the moniker ‘Dublin minus’ (European Parliament 2016:48 ff). Under this less ambitious, more pragmatic model, the application is examined where it is lodged, unless a ‘real link’ criterion is applicable with the applicant’s consent. Such a system would be much lighter and cost-effective than Dublin for the reasons set out above: it would do away entirely with coercion at the ‘take charge’ stage and, to the extent that it would emphasize ‘real links’, it would likely elicit a greater degree of cooperation in both establishing responsibility and carrying out transfers. On the downside – like Dublin – it would leave in place incentives for irregular secondary movements, because (well-informed) applicants would still try to reach their preferred destination before lodging their claim. Furthermore, it would leave the unequal distribution of applications unaddressed. Therefore, it would need to be complemented by robust solidarity mechanisms, and it should incorporate elements inciting applicants to apply at the first opportunity and cooperate throughout the process (see below, points D and E).

These observations raise the following questions:

- What should be the function(s) of the instrument to be adopted under 78(2)(e) TFEU? Should it primarily aim at confining applicants in the first state of entry? Should it aim at realizing a 'fair distribution' of applicants across the Member States? Should the mechanism rather aim at placing applicants as quickly and economically as possible in the status determination procedure?
- Accordingly, what criteria should be chosen as the 'core' criteria?

Initial suggestions and ideas include:

1. Consider fully – on the basis of available evidence – the trade-offs implicit in the choice of responsibility-allocation model. In particular, be aware of the fact that loading responsibility-allocation with further functions (solidarity, externalization, migration management) comes at a high cost in terms of efficiency, swiftness, cost-effectiveness.

2. Consider responsibility-allocation as part and parcel of the CEAS rather than as a self-standing system, so that desirable results (e.g. fair sharing of responsibilities) may be pursued in responsibility-allocation itself as well as in complementary instruments.

3. Exit the pattern of path-dependency that has characterized the successive Dublin reforms so far, and discuss openly the virtues and potential shortcomings of all available models including those that have traditionally been regarded as taboo (e.g. 'free choice').

B. Taking Applicants' Agency and 'Real Links' Seriously:

While positions may vary widely on the issue of how we should allocate responsibility, two facts are beyond dispute. First, no system may work unless it elicits cooperation from applicants. Second, as things currently stand, and contrary to the mantra that 'applicants should not have a free choice' (European Commission 2018:16), the latter do exercise a high degree of agency in responsibility-determination – but this comes at a high cost to them personally, and also fuels avoidance of identification, irregular movements, destruction of evidence, etc.

Based on this premise, one of the key themes of any future reform debate must be: how do we incite applicants to enter and abide by the formal process, instead of evading identification, transfers, etc.? The language spoken by the Commission is that of sanctions. However, draconian sanctions have been applied by Member States for years without tangible results. The EP position relies more on positive incentives: 'real link' criteria and giving applicants a (very limited) choice in selecting among the least-burdened states. It is a start, but it is doubtful that it will help in the cases where 'real link' criteria are not applicable and the choices among less-burdened states all equally unattractive. More could and should be done.

A 'free choice' system would per se provide sufficient incentives for applicants to lodge their claim at the first opportunity and thus 'enter the game' as soon as possible. Under any other system, incentives could be provided by expanding 'real links' criteria to encompass, e.g., extended family ties. Furthermore, short of offering full free choice, the applicants could be presented with a 'reasonable range of options' (European Parliament 2015:56). For instance, absent a 'real link', they could be given a choice among all the Member States that are 'below quota'. This would be conducive to a fairer distribution and – because of the element of choice involved – might attract applicants into the system and prevent, at a later stage, secondary movements. Likewise, the credible promise of fully-fledged free movement rights post-recognition might convince applicants to accept a less-than-ideal allocation under the Dublin system or its successor. Of course, cooperation cannot be expected, and onward irregular movements are unavoidable, whenever responsibility-allocation risks condemning the applicant to sub-standard reception and

protection. To reiterate: tolerating 'black holes' in the CEAS comes at a high cost, including for the integrity and efficiency of responsibility-allocation.

These observations raise the following questions:

- Short of 'full free choice', evoked above, how could applicants be incentivized to enter the formal reception and allocation system, cooperate with it, and stay into it until the end of the asylum process?
- Would it be acceptable to the legislators to expand 'real link' criteria (e.g. based on extended family ties) so as to incentivize compliance and improve integration prospects?
- Would it be acceptable to the legislators to grant a 'reasonable range of options' to the same effect?

<u>Initial suggestions and ideas include:</u>

4. Select responsibility criteria that correspond to the real links and legitimate aspirations of applicants, while avoiding any responsibility criteria that may incite applicants to circumvent identification or controls (e.g. 'irregular entry').

5. Explore to what extent an element of 'choice' might be embedded into responsibility-allocation, or at later stages (e.g. a credible promise of free movement once recognized as beneficiaries of protection).

6. As a matter of priority, identify and eradicate 'implementation gaps' that, purposely or not, make certain Member States unattractive to applicants.

C. Extricating Responsibility-Determination from State-to-State Request-and-Reply Procedures:

As noted in the first part of this paper, national administrations also contribute through action and omissions to the inefficiency of the system. On the one hand, recent reports highlight how far bureaucratic difficulties and lack of resources impact the latter's operation (see e.g. UNHCR 2017, e.g. at p. 35 ff, 98 ff and 155 ff). On the other hand, the very fact that Dublin procedures require agreement between 'Dublin units' representing (conflicting) national interests has the effect of hindering and distorting the process.

New avenues should be explored. The simplification inherent in the mechanism proposed by the Wikström Report for the residual cases where the 'real link' criteria do not apply: automatic 'allocation', to be implemented by EASO or the future EU Agency for Asylum. There is the possibility that responsibility-allocation be entrusted squarely to an EU Agency. Both avenues are interesting but raise a number of questions. First, it is doubtful that fully 'automatic' allocation would be permissible in light of human rights standards that require an individualized assessment of personal circumstances (e.g. family circumstances). Second, any arrangement involving EU agencies would entail the need to endow such agencies with new resources and legal powers (e.g. the power to order the detention of recalcitrant transferees). Third, and in relation, full appeal rights against the actions and omissions of EASO/EUAA should be granted. As these are EU bodies, the competence to decide on those appeals would in principle need to be entrusted to an EU Court. However, it is unlikely that the judicial system of the EU as it currently stands could cope with the foreseeable amount of litigation. Thus, reforms would probably be required, such as setting up a specialised court(s). Let it be noted that the choice-based systems outlined above in sections A and B – 'full free choice' or 'limited range of options' – would also constitute an alternative to the current system based on state-to-state requests and replies, while at the same time obviating the need for novel appeal mechanisms.

These observations raise the following questions:

- In order to improve the efficiency of responsibility-allocation, should alternatives to the current 'state-to-state' procedures be considered?
- If so, should a greater role be reserved for EU agencies? How would legal protection be organised, and what additional material and legal resources would need to be entrusted?
- Could other options be considered, such as 'automated' decision-making, or choice-based systems?

<u>Initial suggestions and ideas include</u>:

7. Extracting responsibility-determination from state-to-state request-and-reply procedures has the potential to significantly improve its efficiency.

8. Full respect for fundamental rights must be ensured. This might rule out certain solutions, e.g. 'automatic' allocation that does not take personal circumstances and risks into account.

9. EU agencies could have a significant role to play. However, entrusting them with full decision-making power and with the task of carrying out the transfers would require potentially far-reaching reforms of their functioning and of the EU judiciary.

10. Choice-based processes could constitute a (technically) simpler alternative.

D. A New Debate on the 'How Much' and 'How' of Solidarity in the CEAS:

In order to ensure that EU standards are respected permanently and suppress Member States' incentives to defect, the CEAS needs more robust solidarity mechanisms. As the Treaty indicates, this is not only about 'emergency' measures but also about structural 'fair sharing', i.e. correcting the asymmetrical distribution of costs among the Member States.

The political debate surrounding the relocation mechanism and the reform of the Dublin system has generated more heat than light. The false dichotomy of 'solidarity' and 'responsibility' has also been detrimental: fear of moral hazard has de facto stifled decisive steps forward in risk- and burden-sharing. While 'millions' have been disbursed in solidarity efforts and 'thousands' have been relocated (see e.g. European Commission 2019:1), these figures are never presented in relation to the needs they supposedly address. The praxis of solidarity of the EU is still limited and, most importantly, it lacks a theory to support it. This foundational debate must still take place.

As to the level of solidarity, the phrase 'full support' is gaining currency (e.g. European Council 2018, para. 6), but for the time being it seems no more than a catchphrase. Literally speaking, 'full support' would mean that all the costs associated to asylum are shared among all the Member States or compensated by the EU – via the EU budget, via service provisions, or by sharing out asylum applicants proportionally. Under the principle of fiscal equivalence, this would seem fully justified if not required: whenever a Member State receives an applicant, examines her claim, and provides protection or ensures return, it is providing a service to all the other Member States – at least to those belonging to the same travel area. Anything less would result in under-provision of the service, externalities and free-riding. So: does the EU need to tool up in order to provide 'full support' in asylum matter? And can this be done?

As to the 'how' of solidarity, experience should have made it abundantly clear that 'sharing persons' via coercive allocation systems is the most inefficient, polarizing and wasteful method imaginable. Relocation schemes based on the consent of the applicant, such as those evoked above in section B, might hold more promise. Most of all, there appears to be much untapped potential both in operational

support/centralizing services and in decisive increases to EU funding, changing its function from project co-financing to 'full financing'. In all likelihood, a mix of measures is what is called for. 'Sharing money' may still be the preferred form of solidarity for many actors, but it is also perceived as insufficient per se.

These observations raise the following questions:

- What kind and what level of solidarity is needed for the CEAS of the future? What would the underlying principle be? Project-financing, 'full support', or some middle way?
- To the extent that the physical redistribution of applicants is concerned, could consensual schemes be boosted in such a way as to contribute more significantly to fair sharing?

Initial suggestions and ideas include:

11. Information should be gathered and published not only on the absolute numbers of EU solidarity measures (e.g. millions disbursed to Member State* X *in year* Y*) but also on their importance relative to the needs addressed (e.g. total costs incurred by Member State* X *in year* Y *in the field of asylum).

12. There has to be a principled discussion on how much solidarity is needed for the good functioning of the CEAS and, more broadly, migration policies: what costs should be entirely mutualized, what costs should instead be left to individual Member States.

13. Physical dispersal measures should be consensual on the part of protection applicants, while decisive advances in operational support/centralization of services and in the increase of EU funds should be considered.

E. Going forward without reforming the Dublin III Regulation?

What if decisive progress could be achieved without reforming the Dublin III Regulation? This may seem like a provocative proposition, but a reflection on this point seems necessary for at least two reasons. First, at the moment, a good reform of the Dublin system might simply be out of reach for the foreseeable future, and 'no reform' would still be better than a bad reform. Second, many of the woes of the Dublin system derive from elements that are extraneous to it. These included, and to reiterate, the absence of a 'level playing field of protection', the absence of adequate solidarity and fair sharing, and the absence of free movement rules post-recognition. A resolute effort to address these historical weaknesses of the CEAS, as well as the sometimes blatantly inadequate implementation of the Dublin III Regulation would certainly yield better results on the ground than a legislative patch-up.

These observations raise the following question:

- What strategies would be available to improve the situation if a good reform of the Dublin system be beyond reach?

Initial suggestions and ideas include:

14. Whatever the progress (or lack thereof) in reforming Dublin, resolute action should be taken to ensure a better implementation of the existing CEAS legislation (including the Dublin III Regulation itself).

15. Even without a reform of the Dublin system, a reinforcement of solidarity (see above point D) and the long-overdue introduction of a 'status valid throughout the Union' should be firmly on the agenda, and could contribute decisively to resolving some of the problems and rigidities observed in the operation of Dublin.

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