



# **Emergency relocation and the future of solidarity in the European Union – a fresh approach?**

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## **ABSTRACT**

This paper discusses the emergency relocation schemes envisaged in the 2015 European Agenda on Migration focusing on their ability to serve as a mechanism of solidarity for all Member States as proclaimed by the European Commission in May 2015. Based on a program effect case study it aims to answer three essential questions. First, in how far the schemes are different to previous relocation measures which pursued the same objective. Second, if lessons were learned and UNHCR's suggestions included in the new schemes. Third, in how far they are indeed able to achieve success both in terms of actually meeting their relocation target in the short run and most importantly in terms of increasing solidarity among the Member States in the long run to pave the way for a future permanent solution. Finally, it offers tangible recommendations to strengthen solidarity among European Member States for a more effective common asylum policy and concludes that although progress has been made in many respects further steps have to be taken.

**Keywords:** European Agenda on Migration, Program effect case study, Refugee relocation, Solidarity, UNHCR, Common asylum policy

## Abbreviations

AMIF	Asylum, Migration and Integration Fund
CJEU	Court of Justice of the European Union
EAM	European Agenda on Migration
EASO	European Asylum Support Office
EC	European Commission
ECHR	European Convention of Human Rights
ECJ	European Court of Justice
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EPS	Early warning and Preparedness System
ERF	European Refugee Fund
ERN	European Resettlement Network
EU	European Union
EUREMA	EU Relocation Malta
GDP	Gross Domestic Product
IOM	International Organization for Migration
JHA	Justice and Home Affairs Council
LIBE	Committee on Civil Liberties, Justice and Home Affairs
OJ	Official Journal of the European Union
ODA	Official Development Assistance
p.	page
TCN	Third-country national
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TPD	Temporary Protection Directive
UK	United Kingdom
UNHCR	United Nations High Commissioner for Refugees

## 1. Introduction

Upon taking office in November 2014, European Commission President Juncker began to drive forward a new migration policy as part of the Commission's political program that defines migration as one of ten priority areas for policy action, making intra-EU solidarity a key element. Subsequently, the European Agenda on Migration including a first package of implementing measures was presented by the Commission in May 2015. The Agenda provides for a comprehensive approach that is intended to improve the management of migration on all levels, comprising relocation and resettlement measures as well as an Action Plan against the smuggling of migrants. In consideration of the particular pressure consistent high numbers of refugees pose to the asylum systems of the Frontline States, the relocation proposals of the Commission became a focal point of action. Taking account of this fact, this paper concentrates on the relocation schemes adopted by the Council of the European Union in September 2015, analyzing their potential to serve as a mechanism of intra-EU solidarity.<sup>1</sup> As the implementation process is to this date in its early stages and the specifics of the measures will most likely continue to be subject to change, this paper is confined to the agreements Member States have reached at the end of September this year, making no claim to be exhaustive. Also, although with regard to the future of solidarity among Member States, a comprehensive analysis should include all measures of the Agenda, this is outside the scope of this paper. It follows an inductive approach using qualitative data kindly provided by UNHCR Austria as well as quantitative data in the form of relevant Eurostat statistics and EU documents to conduct a program effect case study<sup>2</sup>. Based on this, it aims to answer three essential questions. First, in how far the schemes are different to previous relocation measures which pursued the same objective and therefore a "fresh approach". Second, if lessons were learned and UNHCR's suggestions included in the new schemes. Third, in how far they are indeed able to achieve success both in terms of actually meeting their relocation target in the short run and most importantly in terms of increasing solidarity among the Member States in the long run to pave the way for a future permanent solution. For this purpose, Chapter 2 gives a brief overview of the solidarity principle in European law and shortly introduces

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<sup>1</sup> 'Managing the refugee crisis: Immediate operational, budgetary and legal measures under the European Agenda on Migration' (European Commission - Press Release) <[http://europa.eu/rapid/press-release\\_IP-15-5700\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5700_en.htm)> accessed 24 November 2015.

<sup>2</sup> Edith B. Balbach, *Using Case Studies to do Program Evaluation* (California Department of Health Services, Sacramento 1999) 6.

the 2009-2013 Pilot Project EU Relocation Malta (EUREMA). Chapter 3 further analyzes the specifics of the relocation schemes in comparison with previous relocation measures and relevant legal instruments as well as proposals made by UNHCR to the Commission to enhance intra-EU solidarity. Thus, it captures the situation before and after the project intervention and presents the strengths and weaknesses of the program as well as expected impacts. Finally, this paper offers tangible recommendations with respect to an effective relocation mechanism in the years to come to strengthen solidarity among European Member States.

## **2. Solidarity ex ante**

### **2.1. Solidarity in European Treaties and Legislation**

As the European Union intends to “promote economic, social and territorial cohesion”<sup>3</sup> among its Member States, internal solidarity is per se a core principle and a legal objective. With regard to the asylum and migration policies of the European Union, the principle of internal solidarity is meant to function as a means to safeguard that Member States which, due to different factors, bear an exceedingly high burden of responsibility, receive the necessary support.<sup>4</sup> This is set in Articles 78(3) and 80 of the Treaty on the Functioning of the European Union (TFEU)<sup>5</sup>. While Article 78(3) enables the Commission to propose to the Council the adoption of provisional measures for the benefit of affected Member States in case of an emergency situation caused by a sudden mass influx of third-country nationals (TCNs), Article 80 states that the implementation of the Union’s policies on border checks, asylum and immigration shall be led by the “principle of solidarity and fair sharing of responsibility, including its financial implications”<sup>6</sup>. Together with Articles 77, 78(1)-(2) and 97, they establish a legal framework for the implementation of the solidarity principle in the field of a common European asylum policy.<sup>7</sup> However, prior to the making of the European Agenda on Migration, they have not been put to use accordingly to address emergency situations.<sup>8</sup> Another key part in intra-EU solidarity is the concept of sincere cooperation as laid down in

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<sup>3</sup> ‘Consolidated Version of the Treaty on European Union’ (OJ C 326/17) <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012M/TXT&from=HR>> accessed 9 July 2015.

<sup>4</sup> Roberta Metsola, Kashetu Kyenge, ‘Working Document on Article 80 TFEU’ (European Parliament website) <<http://www.europarl.europa.eu/committees/en/libe/working-documents.html>> accessed 4 December 2015.

<sup>5</sup> See Annex 1 Articles 77-80 TFEU.

<sup>6</sup> ‘Consolidated Version of the Treaty on the Functioning of the European Union’ (OJ C 326/78) <<http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:12012E/TXT>> accessed 9 July 2015.

<sup>7</sup> Roberta Metsola, Kashetu Kyenge, ‘Working Document on Article 80 TFEU’ (European Parliament website) <<http://www.europarl.europa.eu/committees/en/libe/working-documents.html>> accessed 4 December 2015.

<sup>8</sup> ‘Refugee Crisis – Q&A on Emergency Relocation’ (European Commission – Fact Sheet) <[http://europa.eu/rapid/press-release\\_MEMO-15-5698\\_de.htm](http://europa.eu/rapid/press-release_MEMO-15-5698_de.htm)> accessed 9 October 2015.

Article 4(3) of the Treaty on European Union (TEU). It requires the Union and its Member States to “assist each other in carrying out tasks which flow from the Treaties”<sup>9</sup> in mutual respect. Therefore, with regard to Article 80 TFEU, it has to be kept in mind that both the Union and the Member States are bound by the principle of cooperation and need to act in accordance to it. Further, the Temporary Protection Directive (TPD), adopted in 2001, also aims at promoting responsibility-sharing among the Member States and at setting minimum standards for temporary protection in case of a large number of TCNs arriving to the European Union.<sup>10</sup> If that number exceeds the absorption capacity of the national asylum systems, the European Commission can propose to the Council to activate the TPD to relocate TCNs to whom the 1951 Refugee Convention or other (inter)national legal instruments granting protection may apply to other Member States. The proposal must contain a description of the target groups for protection, approximate information on the scale of movements and an assessment of the feasibility of adequate protection measures. Temporary protection may be given for a period of maximum three years. Beneficiaries are allocated to Member States based on their respective capacity to receive in accordance with a distribution key based on criteria such as GDP, size of population, unemployment rate and both past numbers of asylum seekers and resettled refugees. Aside from the approval of the Member States, the consent of the beneficiaries is crucial. Also, the Member States are obliged to reunite spouses, partners and minors as well as other dependent close relatives. Approval may be denied by the Member States on grounds of national security. Host countries further have the obligation to ensure access to employment, education for minors and to suitable accommodation. Additionally, the TPD establishes a legal framework for resettlement measures in cooperation with UNHCR. For the TPD that provides for both practical and financial solidarity to be triggered, a Council Decision adopted by a qualified majority is essential.<sup>11</sup> So far, the TPD has never been used, although the Council considered triggering it on different occasions, due to the difficulty to secure a majority and the Member States’ concerns of it posing a ‘pull factor’ for migration.<sup>12</sup>

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<sup>9</sup> ‘Consolidated Version of the Treaty on European Union’ (OJ C 326/17) <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012M/TXT&from=HR>> accessed 9 July 2015.

<sup>10</sup> ‘Council Directive of 2001/55/EC of 20 July 2001’ (OJ L 212/14) <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF>> accessed 2 December 2015.

<sup>11</sup> Roberta Metsola, Kashetu Kyenge, ‘Working Document on Article 80 TFEU’ (European Parliament website) <<http://www.europarl.europa.eu/committees/en/libe/working-documents.html>> accessed 4 December 2015.

<sup>12</sup> Meltem Ineli-Ciger, ‘The Missing Piece in the European Agenda on Migration: the Temporary Protection Directive’ (EU Law Analysis blog) <<http://eulawanalysis.blogspot.co.at/2015/07/the-missing-piece-in-european-agenda-on.html>> accessed 2 July 2015.

With respect to the commonly criticized Dublin Regulation of 2013, it should be noted that it also contains specific Clauses that enable the Member States to effectively share responsibility. The discretionary clauses under Article 17 provide the possibility for each Member State to take over responsibility and examine applications for international protection even if the application was initially lodged in another Member State. This may be done on humanitarian grounds, particularly on considerations concerning the family or culture of applicants and with regard to Article 3(2) if there are substantial grounds for assuming that the reception conditions or asylum procedure of the primarily designated Member State are deficient to an extent that it possibly results in a violation of Article 4 of the Charter of Fundamental Rights of the European Union on inhuman and degrading treatment.<sup>13</sup> Due to the ECtHR verdict in the case ‘M.S.S. v. Belgium and Greece’<sup>14</sup>, several States have so far decided on applying Article 3(2).<sup>15</sup>

## **2.2. EUREMA**

Between 2002 and 2009, 13,130 asylum seekers were arriving by sea to Malta, the smallest EU-Member State with a population of about 400,000 at the time.<sup>16</sup> As a result, the European Council called for the coordination of voluntary measures for intra-EU relocation of “highly vulnerable persons”<sup>17</sup> in June 2009, stressing the need for solidarity and responsibility-sharing among Member States. The Council also endorsed the European Commission’s proposal to start a pilot project for Malta that provides both funding as well as an organized framework for Member States for the arrangement and implementation of relocation measures from Malta. Subsequently, ten<sup>18</sup> out of then twenty-seven Member States agreed to participate in the pilot project “European Relocation Malta” (EUREMA), which was to be the first

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<sup>13</sup> ‘Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013’ (OJ L 180/41) <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=EN>> accessed 7 December 2015.

<sup>14</sup> ‘M.S.S. v. Belgium and Greece, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011’ <<http://www.refworld.org/docid/4d39bc7f2.html>> accessed 30 October 2015.

<sup>15</sup> ‘Updated UNHCR Information Note on National Practice in the Application of Article 3(2) of the Dublin II Regulation in particular in the context of intended transfers to Greece, 31 January 2011’ (UNHCR website), <<http://www.refworld.org/docid/4d7610d92.html>> accessed 30 October 2015.

<sup>16</sup> ‘World Refugee Day 2010’ (National Statistics Office Malta) <[http://nso.gov.mt/en/News\\_Releases/Archived\\_News\\_Releases/Documents/2010/News2010\\_113.pdf](http://nso.gov.mt/en/News_Releases/Archived_News_Releases/Documents/2010/News2010_113.pdf)> accessed 3 October 2015.

<sup>17</sup> ‘European Council Conclusions of 18-19 June 2009, 11225/2/09 CONCL 2’ (Council of the European Union) <[https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/108622.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/108622.pdf)> accessed 31 July 2015.

<sup>18</sup> France, Germany, Hungary, Luxembourg, Poland, Portugal, Romania, Slovakia, Slovenia and the United Kingdom.



multilateral project for intra-EU relocation.<sup>19</sup> It started in July 2009 and was co-financed under the ERF 2008-2013 Community Actions Scheme with a total budget of EUR 2.4 million.<sup>20</sup> <sup>21</sup> EUREMA was implemented under the coordination of the Maltese Ministry for Home and Parliamentary Affairs (MHPA) and in cooperation with UNHCR, IOM and other organizations.<sup>22</sup> The implementation process comprised different phases, of which UNHCR was responsible for pre-selection screening to identify candidates for relocation, counselling of potential candidates and referral to participating Member States.<sup>23</sup> The final screening and selection was done by the Member States. IOM was particularly in charge of pre-departure preparations including cultural orientation and publishing a handbook on lessons learned.<sup>24</sup> During the first phase of EUREMA that lasted until 2011, 255 relocation places were pledged, yet only 227 individuals were eventually relocated to only six out of ten<sup>25</sup> initially participating Member States. By contrast, Malta faced 2.065 new asylum applicants in the course of 2010 to 2011.<sup>26</sup> The project was eventually extended by the European Commission in April 2011 and during a second phase of the project in 2012 seven Member States<sup>27</sup> pledged 91 places, however only 16 are confirmed to have been filled by Poland, Lithuania and Portugal.<sup>28</sup> Pledges to relocate an additional amount of 265 persons were also made by Germany, Spain, the Netherlands, Denmark and Ireland as well as the three Associated Countries Norway, Liechtenstein and Switzerland, however the respective States preferred bilateral arrangements over participating in the EUREMA project, as they were considered both faster and more efficient means to demonstrate solidarity. Of these pledged places a total

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<sup>19</sup> 'Intra-EU Relocation' (European Resettlement Network website) <<http://www.resettlement.eu/page/intra-eu-relocation>> accessed 27 October 2015.

<sup>20</sup> 'European Refugee Fund' (UNHCR website) <<http://www.unhcr.org/pages/49c3646c305.html>> accessed 9 July 2015.

<sup>21</sup> 'EUREMA 2010-2011: A pilot project for intra-EU re-allocation of beneficiaries of protection from Malta' (UNHCR website) <<http://unhcr.org/4ef338859.pdf>> accessed 9 July 2015.

<sup>22</sup> 'EASO fact finding report on intra-EU relocation activities from Malta' (July 2012) <<http://www.refworld.org/docid/52aef8094.html>> accessed 9 July 2015.

<sup>23</sup> 'EUREMA I' (Government of Malta, Ministry of Home Affairs and National Security website) <<https://homeaffairs.gov.mt/en/MHAS-Information/EUREMA/Pages/EUREMA-I.aspx>> accessed 9 July 2015.

<sup>24</sup> 'EASO fact finding report on intra-EU relocation activities from Malta' (July 2012) <<http://www.refworld.org/docid/52aef8094.html>> accessed 9 July 2015.

<sup>25</sup> For further information and exact numbers see Annex 2 Tables 2 and 3 in this report.

<sup>26</sup> 'Asylum and first time asylum applicants, Monthly data' (Eurostat website) <<http://appsso.eurostat.ec.europa.eu/nui/show.do>> accessed 27 October 2015.

<sup>27</sup> Poland, Romania, Slovakia, Hungary, Lithuania, Portugal, Bulgaria.

<sup>28</sup> 'Annual Policy Report: Migration and Asylum in Lithuania 2012' (European Resettlement Network website) <<http://emn.lt/wp-content/uploads/2013/06/Annual-Policy-Report-2012-Full-reportEN.pdf>> accessed 9 July 2015.

of 252 has been filled.<sup>29</sup> Considering that Malta received 4.325 asylum applications in 2012, efforts made by the Member States produced very modest results.<sup>30</sup> Eventually, the second phase of EUREMA ended in December 2013.<sup>31</sup>

### **3. Solidarity 2015 – the Emergency Relocation Schemes**

In response to the ongoing emergency situation in Greece and Italy, with constantly growing numbers of people risking their lives to reach the shores of the European Union to apply for asylum, the European Commission under President Juncker announced its new migration policy, known as the European Agenda on Migration, on 13 May 2015.<sup>32</sup> This was followed by the submission of a first set of implementation measures on 27 May 2015, including a proposal for a Council Decision to initiate an emergency relocation of 40,000 asylum applicants in “clear need of international protection”<sup>33</sup> from the Frontline States Greece and Italy to the other EU Member States based on Article 78(3) of the TFEU. Considering the respective shares of the total amount of irregular border crossings of individuals in need of protection, the Commission proposed to have 16,000 applicants relocated from Greece and 24,000 from Italy. In close cooperation with EASO and other agencies, the local authorities are expected to identify applicants who, upon initial observation, seem to fulfill the requirement of being in clear need of international protection. According to the Commission this applies to applicants whose nationalities have an average recognition rate for international protection of at least 75% across EU Member States, which based on Eurostat data for 2014, holds true only for Eritreans and Syrians. The emergency relocation scheme is meant to be of a temporary nature, scheduled to be in place for approximately 24 months after adoption by the Council of the European Union. Member States are supposed to agree on the distribution of applicants by consensus meaning that participation is de facto voluntary. It generally concerns all Member States of the European Union, with the obvious exception of the two beneficiary States Greece and Italy. However, not all Member States are concerned equally.

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<sup>29</sup> Mark Camilleri, ‘EU Pilot Project on Intra-EU relocation from Malta EUREMA’ (French Interior Ministry) <[www.immigration.interieur.gouv.fr/content/download/36999/279729/file/Presentation\\_projet\\_EUREMA\\_Mark\\_Camilleri.pdf](http://www.immigration.interieur.gouv.fr/content/download/36999/279729/file/Presentation_projet_EUREMA_Mark_Camilleri.pdf)> accessed 27 October 2015.

<sup>30</sup> ‘Asylum and first time asylum applicants, Monthly data’ (Eurostat website) <<http://appsso.eurostat.ec.europa.eu/nui/show.do>> accessed 27 October 2015.

<sup>31</sup> ‘Country Factsheet: Malta 2013’ (European Migration Network) <[http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/country-factsheets/19.malta\\_emn\\_country\\_factsheet\\_2013.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/country-factsheets/19.malta_emn_country_factsheet_2013.pdf)> accessed 27 October 2015.

<sup>32</sup> ‘Communication on a European Agenda on Migration’ (European Commission) <[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf)> accessed 30 June 2015.

<sup>33</sup> ‘First measures under the European Agenda on Migration: Questions and Answers’ (European Commission – Fact Sheet) <[http://europa.eu/rapid/press-release\\_MEMO-15-5038\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-5038_en.htm)> accessed 8 August 2015.

Protocols 21 and 22 of the TFEU provide the United Kingdom and Ireland with opt-in rights and Denmark with an opt-out right, meaning they only get to take part in the Council voting on the proposal if they decide to commit to the measures.<sup>34</sup> In addition to the EU-28, Associated States are encouraged to participate in the scheme. Receiving Member States have the obligation to examine the applications and grant protection. The distribution of applicants among the Member States is to take place on the basis of an objective distribution key that takes four verifiable and quantifiable criteria into account that provide information on the capacity of the respective countries to absorb and integrate relocated beneficiaries. The first criterion, making up for 40% of the key, is the size of the population. The total GDP equates to another 40%, since it indicates the absolute wealth of a Member State and therefore the resilience of its economy. Finally, the unemployment rate and the average number of past asylum applications (including the amount of resettled beneficiaries per 1 million inhabitants between the years 2010-2014) are considered as corrective factors to be applied inversely and both correspond to 10% each.<sup>35</sup>

On 20 July 2015, the Justice and Home Affairs Council (JHA) eventually decided to implement the proposed measures and to relocate 32,256 persons in clear need of protection from Greece and Italy in a first step. Subsequently, the proposal was adopted by the Council of the European Union on 14 September 2015.<sup>36</sup>

Meanwhile, taking the increasing number of arrivals along the Western Balkan route into account, the Commission had proposed a second relocation scheme on 9 September 2015, which was adopted by the Council soon after on 23 September 2015. According to this second Council decision, Member States commit to relocate an additional number of 120,000 applicants in clear need of international protection from Greece and Italy as well as other potential Member States that are equally effected by a sudden influx of third-country nationals. Initially, the Commission's proposal had envisaged the relocation of 50,400 applicants from Greece, another 15,600 from Italy and 54,000 from Hungary within two years. However, Hungary refused to be included as beneficiary State of the scheme. Therefore, the Council decided to only proceed with the relocation of the 66,000 applicants

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<sup>34</sup> Ibid, 'Council Decision (EU) 2015/1523 of 14 September 2015' (OJ L 239/147) <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1523&from=EN>> accessed 1 October 2015.

<sup>35</sup> 'Communication on a European Agenda on Migration' (European Commission) <[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf)> accessed 30 June 2015. For detailed information on the distribution key see Annex 2 Table 4 Emergency relocation scheme 1.

<sup>36</sup> 'Managing the refugee crisis: Immediate operational, budgetary and legal measures under the European Agenda on Migration' (European Commission - Press Release) <[http://europa.eu/rapid/press-release\\_IP-15-5700\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5700_en.htm)> accessed 24 November 2015.

from Italy and Greece within the first year. Afterwards, reconsidering the situation on the ground, the remaining number of 54,000 persons are to be relocated proportionally either from Greece and Italy or any other severely affected country. Should the latter be the case, the Commission will have to include the respective Member State(s) in an amendment proposal to the decision reached by the Council in September. With the adoption of the two relocation schemes, the Council agreed to relocate a total number of 160,000 applicants in clear need of protection. Unlike the first emergency relocation scheme, the second scheme is based on a mandatory distribution key, using the same quantifiable criteria.<sup>37</sup> Although mandatory, the respective opt-in and opt-out rights granted to the United Kingdom and Ireland as well as Denmark under the TFEU are being maintained. The recognition threshold applicants are required to meet is retained unchanged at 75%, which for the second quarter of 2015 qualifies Iraqis aside from Syrians and Eritreans as being in clear need of international protection. In order to do justice to the often rapidly changing realities on the ground, EUROSTAT figures on nationals passing the threshold will be consulted on a quarterly basis.<sup>38</sup>

Whereas European Commission President Juncker called the Council decision a “historic first and a genuine, laudable expression of European solidarity”<sup>39</sup> critics declare the entire Agenda on Migration a “new narrative to an old story, grounded around the notion of solidarity”<sup>40</sup>. Thus, the following subchapter will try to answer the questions whether or not the two Council decisions indeed constitute a fresh approach and in how far the schemes are different to previous relocation measures which pursued the same objective of increasing responsibility-sharing among the Member States.

### **3.1. Novelty of the New Approach?**

Inherently, the decision to initiate an emergency relocation mechanism based on Article 78(3) of the TFEU which specifically provides a legal basis to handle emergency situations at the borders of the European Union, constitutes a new approach. As mentioned in Chapter 2.1, the Article that is designed for exceptionally urgent and severe circumstances is being triggered for the first time. In the past, emergency assistance for Member States experiencing

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<sup>37</sup> For the relocation scheme breakdown per Member State see Annex 2 Table 5 Emergency relocation scheme 2.

<sup>38</sup> ‘Refugee Crisis – Q&A on Emergency Relocation’ (European Commission – Fact Sheet) <[http://europa.eu/rapid/press-release\\_MEMO-15-5698\\_de.htm](http://europa.eu/rapid/press-release_MEMO-15-5698_de.htm)> accessed 9 October 2015.

<sup>39</sup> ‘Managing the refugee crisis: Immediate operational, budgetary and legal measures under the European Agenda on Migration’ (European Commission - Press Release) <[http://europa.eu/rapid/press-release\\_IP-15-5700\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5700_en.htm)> accessed 24 November 2015.

<sup>40</sup> Angeliki Dimitriadi, ‘The European Agenda for Migration: A new narrative for an old tale?’ (2015) Vol. 35 ELIAMEP Briefing Notes 1.

considerable pressure comprised operational support by EASO and financial assistance either under the ERF (until 2014) or under the AMIF (2014-2020).<sup>41</sup> Both Greece and Italy still remain to be the main beneficiaries of the AMIF.<sup>42</sup> However, the recent consistent mass influx of third-country nationals has compelled the European Commission to trigger the Article to complement these measures, as the situation is seen to imperil the asylum system of one or more Member States and therefore fulfills the necessary criteria defined in the Treaty. Interestingly, previous emergency situations like the ones Malta had to cope with in the years 2009-2013 did not result in the activation of this mechanism, although the Commission states that they indeed would have qualified for it.<sup>43</sup> Therefore, it can be said that the decision is rather based on a change of course than on a change of challenges per se. With regard to other relevant legal instruments, it is also interesting to note that the European Parliament in its Resolution of 29 April 2015 initially called upon the Council to also take the activation of the TPD under consideration.<sup>44</sup> In fact, the European Parliament had already asked the Commission in late October 2014 to consider proposing the triggering of the TPD with regard to the war in Syria, however, the Commission was as of late January 2015 of the opinion that “[i]n view of the scale of the influx and the manner in which these persons’ asylum applications have been handled, [...] a proposal to trigger the EU-wide temporary protection regime provided by the TPD would not be justified in the present circumstances.”<sup>45</sup> While it is out of the scope of this analysis to answer the question as to why the Commission eventually preferred Article 78(3) over the TPD, there are essential differences between the instruments to be outlined. One being, that unlike the TPD, the Commission’s proposal makes no reference to regarding the consent of the beneficiaries to be relocated. Whereas the Parliament adopted an amendment to the proposal, according to which the preferences of the beneficiaries should be taken into account to the extent possible, the two Council Decisions on the contrary explicitly “entail[...] a derogation from the consent of the applicant”<sup>46</sup> and

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<sup>41</sup> ‘First measures under the European Agenda on Migration: Questions and Answers’ (European Commission – Fact Sheet) <[http://europa.eu/rapid/press-release\\_MEMO-15-5038\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-5038_en.htm)> accessed 8 August 2015.

<sup>42</sup> ‘Council Decision (EU) 2015/1523 of 14 September 2015’ (OJ L 239/147) <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1523&from=EN>> accessed 1 October 2015.

<sup>43</sup> ‘First measures under the European Agenda on Migration: Questions and Answers’ (European Commission – Fact Sheet) <[http://europa.eu/rapid/press-release\\_MEMO-15-5038\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-5038_en.htm)> accessed 8 August 2015.

<sup>44</sup> ‘Provisional measures for relocating asylum seekers arriving in Italy and Greece’ (European Parliament) <[http://www.europarl.europa.eu/RegData/etudes/ATAG/2015/565899/EPRS\\_ATA%282015%29565899\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2015/565899/EPRS_ATA%282015%29565899_EN.pdf)> accessed 5 December 2015.

<sup>45</sup> ‘Parliamentary Questions – 28 January 2015’ (E-008507/2014) <<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2014-008507&language=EN>> accessed 5 December 2015.

<sup>46</sup> ‘Council Decision (EU) 2015/1523 of 14 September 2015’ (OJ L 239/148) <[http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL\\_2015\\_239\\_R\\_0011](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2015_239_R_0011)> accessed 5 October 2015; ‘Council Decision (EU)

further include that the return of beneficiaries who left the Member State of relocation for another Member State, should be enforced.<sup>47</sup> Another difference is, that under the TPD, the Commission has to define a specific target group as beneficiaries, making the process of individual status determination obsolete. For the two emergency schemes, the Commission preferred to choose the 75% recognition rate, which implies, that the target group can depending on the EUROSTAT figures, be regularly subject to change and that the Member States have to examine each asylum application individually, considerably increasing administrative effort.<sup>48</sup> Therefore, although both the TPD and Article 78(3) TFEU are designed specifically to help the Union cope with emergency situations in the event of a mass influx of TCNs, they differ in their approach. Further, with respect to the legal implications and requirements of the two relocation schemes, it should be noted that while the first relocation scheme the Council agreed on, similarly to the EUREMA project, is designed to be voluntary and temporary, the adoption of the second mandatory scheme marks the opening of a new chapter. It not only means that for the first time, the Member States are legally bound by a mandatory distribution key to relocate people in clear need of international protection, it also comprises a (temporary) derogation from the provisions of the Dublin Regulation that define what Member State is responsible for examining an asylum application.<sup>49</sup> Moreover, as of December 2015, the European Parliament and the Council negotiate on the Commission's proposal for a permanent emergency relocation mechanism to be inserted in the Dublin Regulation.<sup>50</sup> Due to the mandatory distribution key, an unprecedented number of applicants can be expected to be relocated over the next years. Additionally, since the second Council decision did not repeal or amend the first one, Member States should also put their voluntary

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2015/1601 of 22 September 2015' (OJ L 248/83) <<http://data.consilium.europa.eu/doc/document/ST-12098-2015-INIT/en/pdf>> accessed 5 October 2015.

<sup>47</sup> 'Council Directive of 2001/55/EC of 20 July 2001' (OJ L 212/14) <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF>> accessed 2 December 2015; 'Provisional measures for relocating asylum seekers arriving in Italy and Greece' (European Parliament) <[http://www.europarl.europa.eu/RegData/etudes/ATAG/2015/565899/EPRS\\_ATA%282015%29565899\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2015/565899/EPRS_ATA%282015%29565899_EN.pdf)> accessed 5 December 2015.

<sup>48</sup> 'Council Directive of 2001/55/EC of 20 July 2001' (OJ L 212/14) <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF>> accessed 2 December 2015, 'Council Decision (EU) 2015/1601 of 22 September 2015' (OJ L 248/83) <<http://data.consilium.europa.eu/doc/document/ST-12098-2015-INIT/en/pdf>> accessed 5 October 2015, Kate Akkaya, 'Why is the Temporary Protection Directive Missing from the European Refugee Crisis Debate?' (ATHA blog) <<http://atha.se/blog/why-temporary-protection-directive-missing-european-refugee-crisis-debate>> accessed 9 October 2015.

<sup>49</sup> 'Managing the refugee crisis: Immediate operational, budgetary and legal measures under the European Agenda on Migration' (European Commission - Press Release) <[http://europa.eu/rapid/press-release\\_IP-15-5700\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5700_en.htm)> accessed 24 November 2015.

<sup>50</sup> 'Permanent relocation scheme and list of safe countries of origin: state of play' (European Parliament News) <<http://www.europarl.europa.eu/news/en/news-room/content/20151130IPR05304/html/Permanent-relocation-scheme-and-list-of-safe-countries-of-origin-state-of-play>> accessed 8 December 2015.

commitments into practice.<sup>51</sup> While in the case of EUREMA, Member States initially committed themselves during the first phase to relocate 255 beneficiaries within two years, the current target is 40,000 plus 120,000 respectively over the same time period.<sup>52</sup> With regard to the impact these numbers have, the Council stated in its first Decision that the relocation of 40,000 people corresponds to approximately 40% of the total number of TCNs in clear need of protection who have arrived in Greece or Italy irregularly in 2014.<sup>53</sup> The second decision reads that the additional 120,000 applicants to be relocated equate to 43% of potential beneficiaries who arrived in July and August 2015 alone.<sup>54</sup> In comparison, the number of people relocated as part of the EUREMA project, including the bilateral agreements it encouraged, corresponds to less than 8% of new applicants in Malta in the years 2010-2013.<sup>55</sup>

It is important to note that while the Council agreed unanimously on the first decision, the second Council decision was adopted by a qualified majority vote, with Finland abstaining and the Czech Republic, Hungary, Romania, and Slovakia voting against.<sup>56</sup> Hungary, Romania and Slovakia were - unlike the Czech Republic and Finland – initially participating in the EUREMA project, however they did not fill any of the pledged places.<sup>57</sup> Ireland, having been one out of three exemplary countries that relocated more applicants from Malta in 2012 than it had pledged, has made use of its opt-in right and has already made 20 places available.<sup>58</sup> Denmark, although not formally participating in the scheme, has pledged 1,000 places in the context of the Council decision to relocate 120,000 people.<sup>59</sup> As for the United Kingdom, having been a part of EUREMA phase 1, it has decided not to participate in the

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<sup>51</sup> Steve Peers, 'Relocation of Asylum-Seekers in the EU: Law and Policy' (EU Law Analysis blog) <<http://eulawanalysis.blogspot.co.at/2015/09/relocation-of-asylum-seekers-in-eu-law.html>> accessed 8 October 2015.

<sup>52</sup> 'EASO fact finding report on intra-EU relocation activities from Malta' (July 2012) <<http://www.refworld.org/docid/52aef8094.html>> accessed 9 July 2015, 'Refugee Crisis – Q&A on Emergency Relocation' (European Commission – Fact Sheet) <[http://europa.eu/rapid/press-release\\_MEMO-15-5698\\_de.htm](http://europa.eu/rapid/press-release_MEMO-15-5698_de.htm)> accessed 9 October 2015.

<sup>53</sup> 'Council Decision (EU) 2015/1523 of 14 September 2015' (OJ L 239/147) <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1523&from=EN>> accessed 1 October 2015.

<sup>54</sup> 'Council Decision (EU) 2015/1601 of 22 September 2015' (OJ L 248/83) <<http://data.consilium.europa.eu/doc/document/ST-12098-2015-INIT/en/pdf>> accessed 5 October 2015.

<sup>55</sup> See Annex 2 Table 1 and 2, 'Asylum and first time asylum applicants, Monthly data' (Eurostat website) <<http://appsso.eurostat.ec.europa.eu/nui/show.do>> accessed 27 October 2015.

<sup>56</sup> Steve Peers, 'Relocation of Asylum-Seekers in the EU: Law and Policy' (EU Law Analysis blog) <<http://eulawanalysis.blogspot.co.at/2015/09/relocation-of-asylum-seekers-in-eu-law.html>> accessed 8 October 2015.

<sup>57</sup> See Annex 2 Table 1 and 2.

<sup>58</sup> See Annex 2 Table 2 and 5, 'Refugee Crisis – Q&A on Emergency Relocation' (European Commission – Fact Sheet) <[http://europa.eu/rapid/press-release\\_MEMO-15-5698\\_de.htm](http://europa.eu/rapid/press-release_MEMO-15-5698_de.htm)> accessed 9 October 2015.

<sup>59</sup> Ibid.

current voluntary relocation scheme.<sup>60</sup> With regard to the second mandatory scheme, the outcome is still not certain. Should the Council agree to the Commission's proposal to amend the Dublin Regulation – which the UK is bound by – in order to introduce a permanent mandatory emergency mechanism, then a refusal to opt-in to the scheme means that the Dublin Regulation itself no longer applies to the UK, a scenario that is neither in the interest of the Union nor of the UK.<sup>61</sup> The second Council decision however includes a temporary safeguard clause according to which within three months of its entry into force, Member States may inform the Commission and the Council of their inability to relocate up to 30% of applicants allocated to them on the grounds of exceptional circumstances like a sudden mass influx of TCNs that extremely overburdens even well-functioning asylum systems. It is then up to the Commission to propose a temporary suspension of the relocation (of up to 30% of beneficiaries) that cannot be extended for more than 12 months beyond the duration of the scheme.<sup>62</sup> As for the Associated States, Norway, Switzerland, Liechtenstein (all three having contributed to EUREMA through bilateral agreements) and Iceland have declared their solidarity and will make places available for applicants, concrete numbers are however still to be announced.<sup>63</sup> So far, 16 Countries including Malta, have made 3,389 places available for relocation as compared to 18 countries having pledged 611 places during EUREMA phase 1 and 2. The majority of these countries has also been engaged in relocating applicants from Malta between 2010 and 2013. Until 3 December 2015, Finland, France, Germany, Spain and Sweden have already relocated 129 applicants (mostly Eritreans) from Italy, while Luxembourg has relocated 30 Syrians and Iraqis from Greece. These numbers equate to over 32% of relocated applicants over the course of three years under the EUREMA project.<sup>64</sup>

The implementation of the relocation schemes follows a new hotspots-approach for increased cooperation among the different stakeholders involved, in order to react more flexible to different and changing realities on the ground in both Greece and Italy, with the Malta-based

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<sup>60</sup> See Annex 2 Table 1, 'The United Kingdom opt-in to the proposed Council Decision on the relocation of migrants within the EU' (UK Parliament website)

<<http://www.publications.parliament.uk/pa/ld201516/ldselect/1deucom/22/22.pdf>> accessed 4 August 2015.

<sup>61</sup> Steve Peers, 'Can the UK opt-out of mandatory EU refugee quotas?' (EU Law Analysis blog)

<<http://eulawanalysis.blogspot.co.at/2015/05/can-uk-opt-out-of-mandatory-eu-refugee.html>> accessed 6 July 2015.

<sup>62</sup> 'Council Decision (EU) 2015/1601 of 22 September 2015' (OJ L 248/83)

<<http://data.consilium.europa.eu/doc/document/ST-12098-2015-INIT/en/pdf>> accessed 5 October 2015.

<sup>63</sup> See Annex 2 Tables 2 and 5, 'Refugee Crisis – Q&A on Emergency Relocation' (European Commission – Fact Sheet) <[http://europa.eu/rapid/press-release\\_MEMO-15-5698\\_de.htm](http://europa.eu/rapid/press-release_MEMO-15-5698_de.htm)> accessed 9 October 2015.

<sup>64</sup> See Annex 2 Tables 1, 2 and 5, 'Technical Press Briefing: In the margins of Valletta Summit on Migration – 10 November 2015' (EASO website) <<https://easo.europa.eu/latest-news/technical-press-briefing-in-the-margins-of-valletta-summit-on-migration-10-november-2015/>> accessed 9 December 2015.



EASO playing a central role.<sup>65</sup> Approximately six hotspots are planned to be set up in Italy and five in Greece. As of November 2015, two hotspots, one located in Lampedusa and one in Lesbos are already operational, with the EASO providing operational support to the two beneficiary States. For this purpose, EASO has called for 374 international experts to be appointed by the Member States. So far, 177 have been pledged and about 30 experts are already active in the hotspots. Operational support mainly comprises the registration of applicants, the initial processing of their applications as well as their matching with appropriate receiving States and transfer preparation. In close cooperation with UNHCR, applicants are further given information on national asylum procedures and the advantages of relocation.<sup>66</sup> All Member States except for Denmark and the UK have appointed national contact points to facilitate an exchange of information with EASO. Additionally, all participating States have to appoint liaison officers to Greece and Italy to match applicants' individual qualifications including language skills and cultural, social and family ties with the respective receiving countries. With the help of EASO, a tool kit indicating available types of applicants is to be prepared.<sup>67</sup> The selection of suitable candidates is made by Greece and Italy, giving priority to those particularly vulnerable as specified in the Reception Conditions Directive. Only those applicants who have arrived in Italy and Greece after 24 March 2015 and have been fingerprinted are eligible candidates. Although national contact points can indicate non-binding preferences for specific applicants, they can only refuse those nominated by Greece and Italy on the grounds of public or national security.<sup>68</sup> The AMIF supports receiving States with EUR 6,000 per relocated person and the beneficiary States with EUR 500.<sup>69</sup> So far, EUR 73 million of emergency funding for the most affected Member have been allocated. In addition, the Commission proposed for another EUR 100 million in funding for this purpose and for EUR 1.3 million in financial support for EASO, Frontex and Europol for the remainder of 2015. For the year 2016, the proposal further includes an increase of

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<sup>65</sup> Roberta Metsola, Kashetu Kyenge, 'Working Document on Article 80 TFEU' (European Parliament website) <<http://www.europarl.europa.eu/committees/en/libe/working-documents.html>> accessed 4 December 2015, 'Technical Press Briefing: In the margins of Valletta Summit on Migration – 10 November 2015' (EASO website) <<https://easo.europa.eu/latest-news/technical-press-briefing-in-the-margins-of-valletta-summit-on-migration-10-november-2015/>> accessed 9 December 2015.

<sup>66</sup> Ibid, 'Europe's Refugee Emergency Response - Update #12' (UNHCR website) <[http://data.unhcr.org/mediterranean/documents.php?page=1&view=grid&Org\[\]=8](http://data.unhcr.org/mediterranean/documents.php?page=1&view=grid&Org[]=8)> accessed 9 December 2015.

<sup>67</sup> 'Refugee Crisis – Q&A on Emergency Relocation' (European Commission – Fact Sheet) <[http://europa.eu/rapid/press-release\\_MEMO-15-5698\\_de.htm](http://europa.eu/rapid/press-release_MEMO-15-5698_de.htm)> accessed 9 October 2015.

<sup>68</sup> Steve Peers, 'Relocation of Asylum-Seekers in the EU: Law and Policy' (EU Law Analysis blog) <<http://eulawanalysis.blogspot.co.at/2015/09/relocation-of-asylum-seekers-in-eu-law.html>> accessed 8 October 2015, 'Council Decision (EU) 2015/1601 of 22 September 2015' (OJ L 248/83) <<http://data.consilium.europa.eu/doc/document/ST-12098-2015-INIT/en/pdf>> accessed 5 October 2015.

<sup>69</sup> Ibid.

emergency funding for the most affected States and the relevant EU agencies of EUR 600 million as well as EUR 300 million for humanitarian aid.<sup>70</sup> Moreover, as the Commission opts for a holistic approach, the relocation schemes are directly attached to a number of additional measures like the advancement of EASO's 'Early warning and Preparedness System' (EPS), the increase of resources to combat both smuggling and human trafficking as well as the increase of financial support to third countries hosting refugees.

### **3.2. Lessons Learned?**

According to a fact finding report on the EUREMA-project and associated bilateral agreements that was conducted by EASO and the European Commission in 2012, the main challenges were identified in connection with the process of selecting candidates for relocation. The pre-selection process was led by UNHCR on the basis of selection criteria set by the participating States and comprised the creation of a database on adequate candidates as well as their counselling and referral to the respective countries for consideration. Final selection was carried out by the participating States, including separate selection procedures in addition to surveying the cases presented to them by UNHCR. This made the process very time-consuming and also resulted in a discrepancy between the selection criteria and candidates' characteristics. Generally, States put emphasis on the integration potential of applicants focusing on education and language skills and preferred families over individuals having relatives in their countries of origin. Some countries further insisted that the candidates qualify as refugees under the Geneva Convention and refused beneficiaries of subsidiary protection, who constituted the majority of protected persons in Malta.<sup>71</sup> As for the current relocation schemes, the target group is clearly defined as nationals who have an EU-wide average recognition rate for international protection of at least 75%. The Council Decisions acknowledge the importance of integration-related characteristics, however reaffirming the States obligation to respect the principle of non-discrimination. Also, the selection process is designed differently as compared to EUREMA. As mentioned in Chapter 3.1., Beneficiary States are in charge of choosing suitable candidates, who can only be refused by Receiving States if there is legitimate reason to believe that they endanger public or national security.<sup>72</sup>

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<sup>70</sup> 'Managing the Refugee Crisis: Budgetary measures under the European Agenda on Migration' (European Commission - Press release) <[http://europa.eu/rapid/press-release\\_IP-15-5729\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5729_en.htm)> accessed 10 December 2015.

<sup>71</sup> 'EASO fact finding report on intra-EU relocation activities from Malta' (July 2012) <<http://www.refworld.org/docid/52aef8094.html>> accessed 9 July 2015.

<sup>72</sup> 'Council Decision (EU) 2015/1601 of 22 September 2015' (OJ L 248/83) <<http://data.consilium.europa.eu/doc/document/ST-12098-2015-INIT/en/pdf>> accessed 5 October 2015.

Another challenge the report identifies is the applicants' reluctance to being relocated to certain EU Member States out of a lack of trust in their national asylum systems or because the associated diaspora in the respective States is considered too small.<sup>73</sup> As previously discussed, the Council Decisions do not regard the consent of the applicants. In order to prevent irregular secondary movements of relocated persons to States of their preference, the Decisions stress the need for the harmonization of reception conditions among Member States and limit the entitlement to rights attached to international protection to the original State of relocation. If necessary, the return of relocated people should be enforced. The second Decision further proposes "preventive measures in the field of access to social benefits and legal remedies"<sup>74</sup>.

As was the case with EUREMA, the current relocation schemes hinge on the question regarding the willingness of the Member States to comply with the Council Decisions. So far, both Hungary and Slovakia have appealed against the mandatory allocation of applicants, with Slovakia mounting a legal challenge under Article 263 TEU at the European Court of Justice.<sup>75</sup> In addition, the respective countries could consider suspending commitments made under the first decision and provoke time-consuming infringement actions for their non-compliance. Of course, irrespective of the final rule of the court, the Member States have to follow the law in the meantime. However, the Member States' opposition to the measures makes project implementation more difficult and increases the pressure on the Commission that will find it harder to introduce a permanent mandatory mechanism.<sup>76</sup>

According to the EASO fact finding report on EUREMA, the involvement of UNHCR and other relevant agencies particularly encouraged Member States to participate in the project as they could draw on their expertise. Member States therefore recommended that they should also be project partners in future relocation schemes.<sup>77</sup> As for UNHCR, the agency proposed a temporary pilot program to the European Commission in March 2015 for the relocation of Syrian refugees and beneficiaries of subsidiary protection from Greece and Italy based on

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<sup>73</sup> 'EASO fact finding report on intra-EU relocation activities from Malta' (July 2012) <<http://www.refworld.org/docid/52aef8094.html>> accessed 9 July 2015.

<sup>74</sup> 'Council Decision (EU) 2015/1601 of 22 September 2015' (OJ L 248/83) <<http://data.consilium.europa.eu/doc/document/ST-12098-2015-INIT/en/pdf>> accessed 5 October 2015.

<sup>75</sup> 'Slovakia v Council, Case C-643/15' (InfoCuria) <<http://curia.europa.eu/juris/liste.jsf?td=ALL&language=en&jur=C,T,F&num=C-643/15>> accessed 14 December 2015, Paul Dallison, 'Hungary second to challenge EU's refugee scheme' (Politico) <<http://www.politico.eu/article/hungary-second-to-challenge-eus-refugee-scheme/>> accessed 14 December 2015.

<sup>76</sup> Steve Peers, 'Relocation of Asylum-Seekers in the EU: Law and Policy' (EU Law Analysis blog) <<http://eulawanalysis.blogspot.co.at/2015/09/relocation-of-asylum-seekers-in-eu-law.html>> accessed 8 October 2015.

<sup>77</sup> 'EASO fact finding report on intra-EU relocation activities from Malta' (July 2012) <<http://www.refworld.org/docid/52aef8094.html>> accessed 9 July 2015.

lessons learned from EUREMA. UNHCR suggested activating the TPD to promote solidarity, responsibility-sharing and increased cooperation among the Member States with EASO playing a key role in managing the relocation program. The High Commissioner further expressed regret over the reluctance of the Member States to make use of the dependency and discretionary clauses under the Dublin Regulation stating that the implementation of these clauses would result in applicants being more cooperative during identification procedures and also lead to a decrease in irregular secondary movements.<sup>78</sup> As discussed in chapter 3.2., UNHCR currently supports EASO at the hotspots providing information and counselling on access to asylum and the relocation procedure to first time applicants. UNHCR thus monitors procedures closely to safeguard that they are compliant with applicable protection standards and that vulnerable persons are identified and prioritized. While inadequate provision with basic supplies is of primary concern to the UNHCR regarding the situation on the ground in Greece, limitations to the efficient provision of information to new arrivals are identified as an issue in Italy.<sup>79</sup> Overall it can be said that the Council Decisions have put intra-EU solidarity and relocation measures on a whole new level and important lessons have been learned from EUREMA, however as chapter 3.3. will discuss in more detail, a number of challenges remain.

### **3.3. Program Effect**

With regard to the estimated effect of the relocation schemes, this paper identifies their legal basis as well as the distribution keys introduced by the European Commission as the main strengths. The Commission set clear targets for the Member States considering their capacity to absorb and integrate applicants on the basis of data the States themselves provide to Eurostat.<sup>80</sup> Moreover, the Commission was successful in making the question of intra-EU solidarity the central point of the political debate. Much is at stake, since the outcome of the schemes will essentially determine whether or not a permanent mechanism will be inserted in the Dublin Regulation. Considering this, the EASO budget for ‘relocation, resettlement and

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<sup>78</sup> ‘UNHCR proposals to address current and future arrivals of asylum-seekers, refugees and migrants by sea to Europe’ (March 2015) <<http://www.refworld.org/docid/55016ba14.html>> accessed 31 July 2015.

<sup>79</sup> ‘Europe’s Refugee Emergency Response - Update #12’ (UNHCR website) <[http://data.unhcr.org/mediterranean/documents.php?page=1&view=grid&Org\[\]=8](http://data.unhcr.org/mediterranean/documents.php?page=1&view=grid&Org[]=8)> accessed 9 December 2015.

<sup>80</sup> ‘First measures under the European Agenda on Migration: Questions and Answers’ (European Commission – Fact Sheet) <[http://europa.eu/rapid/press-release\\_MEMO-15-5038\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-5038_en.htm)> accessed 8 August 2015.

external dimension'<sup>81</sup> for 2015 of only EUR 30,000 proves to be a grave weakness. Although the Commission has already proposed for a budget increase as mentioned in chapter 3.1., the crucial early stages of implementation are characterized both by a lack of financial support and staff members. The same applies to the emergency funding for the most effected Member States, since the sum available for 2015 has already been exhausted.<sup>82</sup> Another point of concern is the envisaged number of individuals to be relocated. As discussed in chapter 3.1., the schemes are designed to relieve Italy and Greece of 40% of the total number of TCNs in clear need of protection who have arrived irregularly in 2014 and of 43% of those who arrived in July and August 2015. As ambitious as these numbers appear at first glance, it is important to note that they include the 54,000 applicants who eventually might not be relocated from Greece or Italy but from (an)other Member State(s) instead. Also, regarding the second scheme, the number of people to be relocated over two years arrived within two months only.<sup>83</sup> The greatest weakness in this respect is however that the numbers currently only apply to Syrians, Eritreans and Iraqis who as for the second and third quarter of 2015, have preferred to apply for asylum in other Member States and therefore only make up for a relatively small number of applicants in Greece and Italy.<sup>84</sup> As the majority of asylum applicants in Italy and Greece are not subject to the Council Decisions, the schemes are likely to prove inefficient. Furthermore, it is questionable whether the Member States will indeed be able to prevent secondary movements of applicants especially considering the varying standards of national asylum systems and the chaotic developments in summer and fall 2015 that led to the construction of fences within the Schengen zone.<sup>85</sup> Also, although the intended swiftness of relocation is to be welcomed and the approach to project implementation is different as compared to EUREMA, it is hard to imagine that the Member States will manage to relocate 160,000 applicants from two countries within approximately two years, when it

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<sup>81</sup> 'EASO work programme 2015' (September 2014)

<[http://www.europarl.europa.eu/meetdocs/2014\\_2019/documents/libe/dv/16\\_easo\\_wp2015\\_/16\\_easo\\_wp2015\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2014_2019/documents/libe/dv/16_easo_wp2015_/16_easo_wp2015_en.pdf)> accessed 4 December 2015.

<sup>82</sup> 'Managing the refugee crisis: Immediate operational, budgetary and legal measures under the European Agenda on Migration' (European Commission - Press Release) <[http://europa.eu/rapid/press-release\\_IP-15-5700\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5700_en.htm)> accessed 24 November 2015.

<sup>83</sup> Steve Peers, 'Relocation of Asylum-Seekers in the EU: Law and Policy' (EU Law Analysis blog) <<http://eulawanalysis.blogspot.co.at/2015/09/relocation-of-asylum-seekers-in-eu-law.html>> accessed 8 October 2015.

<sup>84</sup> See Annex 2 Table 6 and 7, 'Five main citizenships of first time applicants, 3rd quarter 2015' (Eurostat) <[http://ec.europa.eu/eurostat/statistics-explained/images/d/de/Five\\_main\\_citizenships\\_of\\_first\\_time\\_asylum\\_applicants%2C\\_3rd\\_quarter\\_2015.png](http://ec.europa.eu/eurostat/statistics-explained/images/d/de/Five_main_citizenships_of_first_time_asylum_applicants%2C_3rd_quarter_2015.png)> accessed 14 December 2015.

<sup>85</sup> Steve Peers, 'Relocation of Asylum-Seekers in the EU: Law and Policy' (EU Law Analysis blog) <<http://eulawanalysis.blogspot.co.at/2015/09/relocation-of-asylum-seekers-in-eu-law.html>> accessed 8 October 2015.

proved difficult to relocate 611 from the smallest Member State within four years. It has to be taken into account that conditions on the ground are not the same in Italy as they are in Greece, thus the different stages of implementation comprise considerable administrative and bureaucratic efforts that are all time-consuming. It is not without reason that respondents to the EASO evaluation questionnaire requested more time for the implementation of future projects.<sup>86</sup> Much will of course also depend on the effective implementation of additional measures as pronounced in the Agenda on Migration and the Commission will be well-advised to further develop capacity and institution-building in countries of transit and first asylum.<sup>87</sup> Member States particularly emphasize the need for effective border control and especially those opposed to the mandatory scheme expressed their concern over the fact that the Commission introduced quotas for relocation before evaluating the Dublin system and that the relocation schemes could constitute a pull-factor, attracting even higher numbers of asylum applicants in the future.<sup>88</sup> The program effect depends entirely on the disposition of all the Member States and the degree of commitment, which is at this point not predictable. The same applies to the effect the program will have on voluntary relocation efforts with regard to the first relocation scheme as well as regarding the use of the solidarity clauses under the Dublin Regulation. Last but not least, the judgement of the ECJ in the case ‘Slovakia v European Council’ will have a substantial influence on the future of intra-EU solidarity. Should the Court rule in favor of the Council Decisions as is generally expected, it could pave the way for a future permanent solution, however, should it rule against them, questions concerning the further responsibility of the Member States both for already relocated applicants as well as for those who have eventually not been relocated, are likely to arise.<sup>89</sup>

#### **4. Recommendations**

This research paper has identified a number of issues that require further discussion. While the Council Decisions are considered a move in the right direction, they essentially merely

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<sup>86</sup> ‘EASO fact finding report on intra-EU relocation activities from Malta’ (July 2012) <<http://www.refworld.org/docid/52aef8094.html>> accessed 9 July 2015.

<sup>87</sup> ‘Central Mediterranean Sea Initiative (CMSI): Action Plan’ (UNHCR website) <<http://www.unhcr.org/531990199.pdf>> accessed June 2015.

<sup>88</sup> ‘Intervention by Cecilia Malmström during the Relocation Forum’ (European Commission – Press Release) <[http://europa.eu/rapid/press-release\\_SPEECH-13-754\\_en.htm?locale=en](http://europa.eu/rapid/press-release_SPEECH-13-754_en.htm?locale=en)> accessed 9 October 2015.

<sup>89</sup> ‘Slovakia v Council, Case C-643/15’ (InfoCuria) <<http://curia.europa.eu/juris/liste.jsf?td=ALL&language=en&jur=C,T,F&num=C-643/15>> accessed 14 December 2015, Andrew Rettman, ‘Slovakia filing case against EU migrant relocation’ (EU Observer) <<https://euobserver.com/justice/130499>> accessed 14 December 2015.

constitute emergency measures designed to deal with a specific emergency situation, thus limiting the principle of internal solidarity to a state of exception.

### **I. Establishing a firm legal basis for a permanent scheme**

Therefore, the relocation schemes are understood as a first step rather than an actual solution to the challenges the Union is and will be confronted with. In order to further promote solidarity among the Member States, the Commission should come forward with a long-term strategy and ensure an unambiguous legal situation.<sup>90</sup> It is recommended, that the Commission reviews the Dublin Regulation without delay and submits a proposal for an amendment to insert a future binding permanent mechanism based on the principle of solidarity and fair responsibility-sharing. As discussed in chapter 3.1., this would also clarify the responsibility of Member States like the United Kingdom.<sup>91</sup> Following the request of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE), Articles 78(2) and 80 TFEU should serve as a firm legal basis for such a mechanism, as the use of Article 78(3) alone is insufficient for this purpose.<sup>92</sup> While Article 78(2) legitimates the adoption of measures by the European Parliament and Council through ordinary legislative procedure in order to establish a common European asylum system, Article 80 identifies the need for solidarity measures to be an integral part of the Union's policies.<sup>93</sup>

### **II. Extending the scope of the scheme(s)**

Since the scope of the current relocation schemes is clearly insufficient considering the significant numbers of asylum applicants who are excluded from the Council Decisions, this paper proposes the adoption of supplementary decisions to expand it.<sup>94</sup> A future permanent relocation system should further ensure that Member States generally share responsibility for all applicants irrespective of their prospects to qualify for asylum. Simply put, the current schemes result in the transfer of "easy asylum cases", whereas Frontline States are not relieved of their responsibility to decide on asylum claims of applicants whose 'well-founded

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<sup>90</sup> Roberta Metsola, Kashetu Kyenge, 'Working Document on Article 80 TFEU' (European Parliament website) <<http://www.europarl.europa.eu/committees/en/libe/working-documents.html>> accessed 4 December 2015.

<sup>91</sup> Steve Peers, 'Can the UK opt-out of mandatory EU refugee quotas?' (EU Law Analysis blog) <<http://eulawanalysis.blogspot.co.at/2015/05/can-uk-opt-out-of-mandatory-eu-refugee.html>> accessed 6 July 2015.

<sup>92</sup> 'Provisional measures for relocating asylum seekers arriving in Italy and Greece' (European Parliament) <[http://www.europarl.europa.eu/RegData/etudes/ATAG/2015/565899/EPRS\\_ATA%282015%29565899\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2015/565899/EPRS_ATA%282015%29565899_EN.pdf)> accessed 5 December 2015.

<sup>93</sup> See Annex 1.

<sup>94</sup> Steve Peers, 'Relocation of Asylum-Seekers in the EU: Law and Policy' (EU Law Analysis blog) <<http://eulawanalysis.blogspot.co.at/2015/09/relocation-of-asylum-seekers-in-eu-law.html>> accessed 8 October 2015.

fear of being persecuted<sup>95</sup> is less obvious, which, as indicated in chapter 3.3., constitute the majority of claims in the respective countries. Taking into account that the implementation of EU legal standards on asylum is highly deficient in Member States like Greece, this proves to be particularly problematic.<sup>96</sup>

### **III. Improving protection standards for beneficiaries**

Additionally, this paper suggests formalizing a (temporary) protection status as provided by the TPD to replace the national protection statuses granted by the Member States, which considerably differ in terms of protection standards and tend to fall short of the standards set in the TPD.<sup>97</sup>

### **IV. Expanding criteria for a fair distribution of applicants**

Concerning the distribution key for relocation, it is recommendable to include further criteria like the respective population density and the size of the territory of the Member States.<sup>98</sup>

### **V. Reducing the incentives for irregular migration**

With regard to the prevention of secondary movements, it seems advisable to allow for non-binding and well-reasoned preferences for specific Member States to be made by applicants, based on criteria like language skills and family ties. These preferences should be considered as much as possible, taking the best interest of the Member States as well as of the applicants into account, without however letting Member States use it as a means to refuse candidates. As a result, the probability that applicants stay and eventually integrate into the respective relocating countries can be expected to increase.<sup>99</sup> This measure has to go hand in hand with comprehensive counselling of potential beneficiaries, as of course not all preferences can be respected in practice and applicants need to be informed about the conditions in the Member States they can actually be relocated to. Experience from EUREMA further shows that cultural orientation sessions are crucial to prepare beneficiaries for their future stay in the relocating country and can actually help to convince them to accept a destination country

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<sup>95</sup> 'Convention and Protocol relating to the Status of Refugees' (UNHCR website) <<http://www.unhcr.org/3b66c2aa10.html>> accessed 14 December 2015.

<sup>96</sup> 'Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report – Universal Periodic Review: Greece' (November 2010) <<http://www.refworld.org/pdfid/4cd8f2ec2.pdf>> accessed 14 December 2015.

<sup>97</sup> Meltem Ineli-Ciger, 'The Missing Piece in the European Agenda on Migration: the Temporary Protection Directive' (2015) <<http://eulawanalysis.blogspot.co.at/2015/07/the-missing-piece-in-european-agenda-on.html>> accessed 6 November 2015.

<sup>98</sup> Roberta Metsola, Kashetu Kyenge, 'Working Document on Article 80 TFEU' (European Parliament website) <<http://www.europarl.europa.eu/committees/en/libe/working-documents.html>> accessed 4 December 2015.

<sup>99</sup> Ibid, Steve Peers, 'Relocation of Asylum-Seekers in the EU: Law and Policy' (EU Law Analysis blog) <<http://eulawanalysis.blogspot.co.at/2015/09/relocation-of-asylum-seekers-in-eu-law.html>> accessed 8 October 2015.



other than of their initial choice.<sup>100</sup> In line with UNHCR, this paper also recommends a ‘people-to-people’ approach to put applicants in touch with persons from their country of origin who have already settled in the respective Relocation State, as this can also serve as an incentive for applicants to agree to relocation to less-favored Member States and facilitate integration. Skype or similar technology could enable the necessary contact prior to relocation.<sup>101</sup>

## **VI. Resettlement as a means to reduce smuggling and trafficking**

If a future permanent relocation scheme proves to lead to a decrease in pledged places for the resettlement of people in need of protection to EU Member States from third countries in spite of increased financial support, the Commission should come forward with a proposal for a binding and mandatory resettlement program as announced in the European Agenda on Migration.<sup>102</sup> Along with the measures envisaged in the Action Plan on Migrant Smuggling, this is seen as a substantial contribution to the reduction of the smuggling and trafficking of TCNs.<sup>103</sup>

## **VII. Additional measures**

In addition, this paper considers it important with respect to a holistic migration policy that the Member States fulfill their pledges to increase Official Development Assistance (ODA) to 0.7% of Gross National Income (GNI). In 2005 the Member States agreed to meet this target by 2015, but fell short of this pledge.<sup>104</sup> However, it is additional measures like these that the success of the Agenda on Migration and the future of intra-EU solidarity eventually also depends on.

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<sup>100</sup> ‘EASO fact finding report on intra-EU relocation activities from Malta’ (July 2012) <<http://www.refworld.org/docid/52aef8094.html>> accessed 9 July 2015.

<sup>101</sup> Information provided by UNHCR Austria, 4 December 2015.

<sup>102</sup> ‘Intra-EU Relocation’ (European Resettlement Network website) <<http://www.resettlement.eu/page/intra-eu-relocation>> accessed 27 October 2015, Roberta Metsola, Kashetu Kyenge, ‘Working Document on Article 80 TFEU’ (European Parliament website) <<http://www.europarl.europa.eu/committees/en/libe/working-documents.html>> accessed 4 December 2015, ‘Communication on a European Agenda on Migration’ (European Commission) <[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf)> accessed 30 June 2015.

<sup>103</sup> ‘First measures under the European Agenda on Migration: Questions and Answers’ (European Commission – Fact Sheet) <[http://europa.eu/rapid/press-release\\_MEMO-15-5038\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-5038_en.htm)> accessed 8 August 2015.

<sup>104</sup> ‘European Commission calls for renewed commitments to reach targets on official development assistance’ (European Commission – Press Release) <[http://europa.eu/rapid/press-release\\_IP-15-4747\\_en.htm](http://europa.eu/rapid/press-release_IP-15-4747_en.htm)> accessed 14 December 2015.

## **5. Conclusion**

The aim of this paper was to analyze the potential of the relocation schemes prescribed in the Council Decisions of September 2015 to serve as a mechanism of intra-EU solidarity. The research findings indicate that the Commission's proposals have overall increased the pressure on the Member States to act in solidarity and achieve considerable progress with regard to relocation within a concrete timeframe, paving the way for a future permanent solution. Although it is not certain if the relocation target will be met until 2017, the Decisions have turned lip service into tangible actions and raised awareness of the importance of internal solidarity for the future of the European Union. With the support of UNHCR, key lessons to be learned from the Pilot Project EU Relocation Malta were identified and valuable suggestions included in the new schemes. However, the schemes in their current forms do not go beyond an emergency response, limiting the principle of solidarity to emergency situations. Therefore, further action needs to be taken especially with regard to the legal basis of the envisaged permanent relocation system.

Finally, the intention of this research project was to create added value by particularly focusing on the nexus between relocation and solidarity in EU law, offering a comprehensive analysis on past and present European relocation policy while linking it to its ability to strengthen solidarity among the Member States of the European Union.

## **ANNEXES**

### **Annex 1: Articles 77-80 TFEU**

#### **Chapter 2 - policies on border checks, asylum and immigration<sup>105</sup>**

##### **Article 77** (ex Article 62 TEC)

1. The Union shall develop a policy with a view to:

- (a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders;
- (b) carrying out checks on persons and efficient monitoring of the crossing of external borders;
- (c) the gradual introduction of an integrated management system for external borders.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning:

- (a) the common policy on visas and other short-stay residence permits;
- (b) the checks to which persons crossing external borders are subject;
- (c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period;
- (d) any measure necessary for the gradual establishment of an integrated management system for external borders;
- (e) the absence of any controls on persons, whatever their nationality, when crossing internal borders.

3. If action by the Union should prove necessary to facilitate the exercise of the right referred to in Article 20(2)(a), and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt provisions concerning passports, identity cards, residence permits or any other such document. The Council shall act unanimously after consulting the European Parliament.

4. This Article shall not affect the competence of the Member States concerning the geographical demarcation of their borders, in accordance with international law.

##### **Article 78** (ex Articles 63, points 1 and 2, and 64(2) TEC)

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<sup>105</sup> 'Consolidated Version of the Treaty on the Functioning of the European Union' (OJ C 326/78) <<http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:12012E/TXT>> accessed 9 July 2015.

1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:

(a) a uniform status of asylum for nationals of third countries, valid throughout the Union;

(b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;

(c) a common system of temporary protection for displaced persons in the event of a massive inflow;

(d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;

(e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;

(f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;

(g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.

3. In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.

### **Article 79**

(ex Article 63, points 3 and 4, TEC)

1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:

(a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;

(b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;

(c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;

(d) combating trafficking in persons, in particular women and children.

3. The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.

4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.

5. This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.

**Article 80**

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.

**Annex 2: Tables**

**Table 1: EUREMA – phase 1 (2010-2011)<sup>106</sup>**

<b>Member State</b>	<b>Places Pledged</b>	<b>Number relocated</b>
<b>France</b>	90	95
<b>Germany</b>	100	102
<b>Hungary</b>	8-10	0
<b>Luxembourg</b>	6	6
<b>Poland</b>	6	0
<b>Portugal</b>	6	6
<b>Romania</b>	7	0
<b>Slovakia</b>	10	0
<b>Slovenia</b>	10	8

<sup>106</sup> ‘EASO fact finding report on intra-EU relocation activities from Malta’ (July 2012) <<http://www.refworld.org/docid/52aef8094.html>> accessed 9 July 2015.

<b>United Kingdom</b>	10	10
<b>Total</b>	253-5	227

**Table 2: EUREMA – phase 2 and bilateral relocation (2012-2013)**

<b>Member State</b>	<b>Places pledged</b>	<b>Places filled</b>	<b>Bilateral/ Co-funded project</b>
<b>Germany</b>	150	153	Bilateral
<b>Poland</b>	50	Selection mission for 6 persons ongoing	EUREMA 2
<b>Spain</b>	25	Process rescinded	Bilateral
<b>The Netherlands</b>	20	20	Bilateral
<b>Denmark</b>	10	8 (process ongoing)	Bilateral
<b>Romania</b>	10	2 individuals referred but became ineligible as RO informed that only Geneva Convention refugees are eligible	EUREMA 2
<b>Slovakia</b>	10	No cases referred	EUREMA 2
<b>Hungary</b>	5	No cases referred	EUREMA 2
<b>Ireland</b>	10	20	Bilateral
<b>Lithuania</b>	6	Selection mission conducted, 7 persons interviewed	EUREMA 2
<b>Portugal</b>	6	6 persons selected, currently awaiting departure	EUREMA 2
<b>Bulgaria</b>	4	No cases referred	EUREMA 2
<b>Norway</b>	30	31	Bilateral
<b>Switzerland</b>	19	19	Bilateral
<b>Liechtenstein</b>	1	1	Bilateral
<b>Total</b>	365	252	

**Table 3: Emergency relocation scheme 1**

<b>Member States<sup>107</sup></b>	<b>Key</b>
<b>Austria</b>	2,62%
<b>Belgium</b>	2,91%
<b>Bulgaria</b>	1,25%
<b>Croatia</b>	1,73%
<b>Cyprus</b>	0,39%
<b>Czech Republic</b>	2,98%
<b>Estonia</b>	1,76%
<b>Finland</b>	1,72%
<b>France</b>	14,17%
<b>Germany</b>	18,42%
<b>Greece</b>	1,90%
<b>Hungary</b>	1,79%
<b>Italy</b>	11,84%
<b>Latvia</b>	1,21%
<b>Lithuania</b>	1,16%
<b>Luxembourg</b>	0,85%
<b>Malta</b>	0,69%
<b>Netherlands</b>	4,35%
<b>Poland</b>	5,64%
<b>Portugal</b>	3,89%
<b>Romania</b>	3,75%
<b>Slovakia</b>	1,78%
<b>Slovenia</b>	1,15%
<b>Spain</b>	9,10%
<b>Sweden</b>	2,92%

Distribution key as of 13 May 2015. Calculations are based on statistical information provided by Eurostat (consulted on 8 April 2015)<sup>108</sup>

<sup>107</sup> The percentages set out in the distribution key are subject to modification, depending on the voluntary participation of the United Kingdom, Ireland, Denmark and the Associated States.

<sup>108</sup> 'Communication on a European Agenda on Migration' (European Commission)

<[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf)> accessed 30 June 2015.

**Table 4: Emergency relocation scheme 2**

	<b>Italy</b>	<b>Greece</b>	<b>TOTAL</b>
<b>Austria</b>	462	1491	1953
<b>Belgium</b>	579	1869	2448
<b>Bulgaria</b>	201	651	852
<b>Croatia</b>	134	434	568
<b>Cyprus</b>	35	112	147
<b>Czech Republic</b>	376	1215	1591
<b>Estonia</b>	47	152	199
<b>Finland</b>	304	982	1286
<b>France</b>	3064	9898	12962
<b>Germany</b>	4027	13009	17036
<b>Hungary</b>	306	988	1294
<b>Latvia</b>	66	215	281
<b>Lithuania</b>	98	318	416
<b>Luxembourg</b>	56	181	237
<b>Malta</b>	17	54	71
<b>Netherlands</b>	922	2978	3900
<b>Poland</b>	1201	3881	5082
<b>Portugal</b>	388	1254	1642
<b>Romania</b>	585	1890	2475
<b>Slovakia</b>	190	612	802
<b>Slovenia</b>	80	257	337
<b>Spain</b>	1896	6127	8113
<b>Sweden</b>	567	1830	2397
<b>TOTAL</b>	15600	50400	66000

The numbers will be amended to take into account the participation of Norway and Switzerland.<sup>109</sup>

<sup>109</sup> 'Refugee Crisis – Q&A on Emergency Relocation' (European Commission – Fact Sheet) <[http://europa.eu/rapid/press-release\\_MEMO-15-5698\\_de.htm](http://europa.eu/rapid/press-release_MEMO-15-5698_de.htm)> accessed 9 October 2015.



**Table 5: Member States' Support to Emergency Relocation Mechanism**

(Communicated as of 03 December 2015)<sup>110</sup>

Member States	National Contact Points Appointed	Liaison Officers Appointed		Reply to EASO call - Experts	Reply to Frontex call – Border guards	Relocation			
		Italy	Greece			Places Made Available	Relocated from Italy	Relocated from Greece	Remaining Places from the 160,000
Austria	✓	✓	✗	45	26	✗	✗	✗	1953
Belgium	✓	✓	✓	15	4	30	✗	✗	3812
Bulgaria	✓	✓	✓	1	✗	1302	✗	✗	1302
Croatia	✓	✗	✗	2	11	✗	✗	✗	968
Cyprus	✓			✗	✗				
Czech Republic	✓	✗	✗	10	8	✗	✗	✗	2691
Denmark	N/A	N/A	N/A	5	50	✗	✗	✗	N/A
Estonia	✓			1	1	✗	✗	✗	329
Finland	✓	✓	✓	1	2	150	48	✗	2030
France	✓	✓	✓	6	59	900	19	✗	19694
Germany	✓	✓	✗	13	50	30	11	✗	27525
Greece	✓	N/A	N/A	1	✗	✗	✗	✗	N/A
Hungary	✓	✗	✗	1	4	✗	✗	✗	1294
Ireland	✓	✓	✓	2	✗	20	✗	✗	600
Italy	✓	N/A	N/A	✗	4	✗	✗	✗	N/A
Latvia	✓	✗	✗	✗	✗	✗	✗	✗	481
Lithuania	✓	✓	✓	1	14	40	✗	✗	671
Luxembourg	✓	✓	✓	6	✗	90	✗	30	527
Malta	✓	✓	✗	2	✗	131	✗	✗	131
Netherlands	✓	✓	✓	6	23	100	✗	✗	5947
Poland	✓	✓	✓	✗	18	✗	✗	✗	6182
Portugal	✓	✓	✓	✗	12	100	✗	✗	2951
Romania	✓	✓	✓	11	23	300	✗	✗	4180
Slovakia	✓	✓	✓	2	20	✗	✗	✗	902
Slovenia	✓	✓	✓	1	✗	✗	✗	✗	567
Spain	✓	✓	✓	30	41	50	12	✗	9311
Sweden	✓	✓	✗	2	6	300	39	✗	3727
UK	N/A	N/A	N/A	10	29	N/A	✗	✗	N/A
Norway	✗	✗	✗	2	3	✗	✗	✗	tbc
Switzerland	✗	✗	✗	✗	2	✗	✗	✗	tbc
Liechtenstein	✗	✗	✗	✗	✗	43	✗	✗	tbc
Iceland	✗	✗	✗	✗	✗	✗	✗	✗	tbc
<b>TOTAL</b>	<b>All concerned EU Member States have now notified</b>	<b>17</b>	<b>12</b>	<b>176 experts (of 374 requested)</b>	<b>447 border guards (of 775 requested)</b>	<b>14 Member States 3346 places (of 160,000)</b>	<b>129 (out of 39,600)</b>	<b>30 (out of 66,400)</b>	<b>98097 (of initial 98,256)<sup>111</sup></b>

<sup>110</sup> 'Member States' Support to Emergency Relocation Mechanism' (EU Commission – Press Release) <[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/pressmaterial/docs/state\\_of\\_play\\_-\\_relocation\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/pressmaterial/docs/state_of_play_-_relocation_en.pdf)> accessed 6 December 2015.

<sup>111</sup> 7,744 from the 40,000 decision still to be allocated and 54,000 from the 120,000 decision still to be allocated.

**Table 6: Five main citizenships of first time applicants, 2<sup>nd</sup> quarter 2015<sup>112</sup>**

Greece			Italy		
Citizenship	#	(%)	Citizenship	#	(%)
Syria	965	34	Nigeria	2,920	20
Afghanistan	440	15	Gambia	1,640	11
Pakistan	345	12	Pakistan	1,395	9
Bangladesh	140	5	Senegal	1,375	9
Albania	125	4	Ukraine	1,250	8
Other	850	30	Other	6,315	42

**Table 7: First time applicants from Eritrea, Iraq and Syria by destination country, 2<sup>nd</sup> quarter 2015<sup>113</sup>**

Eritrea		
Destination country	#	(%)
Netherlands	2,680	29
Sweden	2,405	26
Germany	2,035	22
United Kingdom	765	8
Denmark	515	6
Other	785	9
Iraq		
Destination country	#	(%)
Germany	4,640	33
Austria	2,795	20
Hungary	2,425	17
Bulgaria	1,085	8
Belgium	645	5
Other	2,335	17
Syria		
Destination country	#	(%)
Germany	16,335	37
Hungary	8,440	19
Austria	5,290	12
Sweden	3,860	9
Bulgaria	1,930	4
Other	8,145	19

<sup>112</sup> 'Five main citizenships of first time asylum applicants, 2<sup>nd</sup> quarter 2015' (Eurostat)

<[http://ec.europa.eu/eurostat/statistics-explained/images/9/91/Five\\_main\\_citizenships\\_of\\_first\\_time\\_asylum\\_applicants%2C\\_2nd\\_quarter\\_2015.png](http://ec.europa.eu/eurostat/statistics-explained/images/9/91/Five_main_citizenships_of_first_time_asylum_applicants%2C_2nd_quarter_2015.png)> accessed 9 December 2015.

<sup>113</sup> 'Thirty main citizenships of first time asylum applicants by destination country in the EU-28, 2<sup>nd</sup> quarter 2015' (Eurostat) <[http://ec.europa.eu/eurostat/statistics-explained/images/c/c4/Thirty\\_main\\_citizenships\\_of\\_first\\_time\\_asylum\\_applicants\\_by\\_destination\\_country\\_in\\_the\\_EU\\_28%2C\\_2nd\\_quarter\\_2015.png](http://ec.europa.eu/eurostat/statistics-explained/images/c/c4/Thirty_main_citizenships_of_first_time_asylum_applicants_by_destination_country_in_the_EU_28%2C_2nd_quarter_2015.png)> accessed 9 December 2015.

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