ReSOMA

RESEARCH SOCIAL
PLATFORM ON MIGRATION
AND ASYLUM

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ASK THE EXPERT
POLICY BRIEF

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ASYLUM

Issue analysis & policy considerations

The **Ask the expert policy briefs** are **highly informative tools** proposed in the framework of the ReSOMA project that aim at **facilitating knowledge sharing** and **social capital development**. By reacting to current events and developments that shape the European migration and integration debate during the duration of the project, these policy briefs will provide timely, evidence-based input to public debates as they unfold and feed in the overall process of identifying the unmet needs and defining policy trends.

An overall of **6 policy briefs** (2 each for migration, asylum and integration) **per year** will be sourced and drafted by lead experts from project partners with additional assistance by leading European think-tanks. In addition, the project will access leading expertise for the topic at hand through collaboration with research networks and other EU-funded research projects.

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Setting the policy agenda

Proving impossibility & hardship on the family reunion of beneficiaries of international protection

The issue

The right to family life is key to the integration of foreigners in European society. In principle, the right to family life is solidly anchored in international and EU law. In practice, EU secondary law establishes specific rules to enforce such a right for third country nationals regularly residing in the EU. When it comes to beneficiaries of international protection, however, the Family Reunification Directive (2003/86/EC) introduces favourable rights for refugees whilst it does not apply to beneficiaries of subsidiary protection.

Despite efforts at EU level towards harmonising family rights for refugees and beneficiaries of subsidiary protection (notably through the Commission interpretative guideline on the Family Reunification Directive), there is still room for manoeuvre for MS to limit these rights. Germany is a case in point. With the Act on the Introduction of Accelerated Asylum Procedures, Germany has suspended the right to family reunion (until March 2018) for those under subsidiary protection from March 2016 onwards. Similarly, Sweden introduced a temporary act in 2016 suspending family reunification for beneficiaries of subsidiary protection until 2019. Other discrepancies concern alleviated conditions to allow family reunion (i.e. exemption from requirements to provide evidence of sufficient stable and regular resources, accommodation, sickness insur-

ance and compliance with integration requirements).

Studies report the challenges faced by refugees concerning family reunification. Beneficiaries of subsidiary protection are subject to even more significant obstacles (see ECRE 2017a). A range of legal and practical barriers often renders the right to family reunification ineffective in practice for beneficiaries of international protection. The lack of clear information on the possibility to enjoy the right to family life and the request to prove family ties are two examples.

Stakeholders (ECRE, Red Cross, UNHCR, etc.) highlight the difficulties in demonstrating the relationships because often the corresponding documentary evidence is missing or difficult to obtain. Documents certifying birth, marriage, etc. might be impossible to get because some countries of origin do not provide such documents or because there is the impossibility to contact the competent administration.

As far as unaccompanied minors are concerned, experts highlight that some Member States extend the right to family reunification of minor refugees to their parents only. This provision risks increasing the hardships faced by this vulnerable target group and keeping families apart (Groenendijk et al., 2017).

Perverse effects are produced by limiting the access to family reunification. It is possible here to recall both the risk to go against the efforts aimed to develop new strategies for discouraging people to undertake dangerous journeys and to discriminate people based on their statuses without taking into account their needs.

Indeed, the family reunification path is one of the current routes to enter safely the EU territories avoiding undertaking dangerous journeys. At the same time, blind national policies affect the possibility to develop active integration processes and put beneficiaries of international protection in unsustainable situations.

Policy considerations

Since family reunion is a fundamental right that considerably eases migrants' integration into receiving societies, it should not be used as a tool to stem migrations flows.

There would be great benefit in widening the ways to ascertain family ties so as to compensate the absence of documents proving legal bonds which are oftentimes hard to obtain.

Responding to the policy agenda

Responsibility-sharing for asylum decision-making

The issue

The very existence of a unified EU space without internal borders depends on member states' capacity to collaborate on migration-related issues. Accordingly, the Common European Asylum System (CEAS) was created to harmonise national legal frameworks on international protection and organise, to some extent, responsibility-sharing amongst MS. However, increasing influxes concentrated in some EU MS over the years have strained some Countries' reception systems and shed light on solidarity shortages across the EU.

A series of responsibility-sharing instruments were put in place over the years, although with limited effects. The European Refugee Fund (set up in 2000 with Council Decision 2000/596/EC), for a start, provided funding to face sudden increase in arrivals of asylum seekers. The Asylum Migration and Integration Fund (2014-2020), its successor, also aims at organising solidarity between MS. The amount available is however limited, and its functioning privileges programming over managing emergency.

In a different manner, the Hotspot approach was thought as a way to help MSs at the EU's external borders cope with increased arrivals. The approach, which foresees the collaboration between EU agencies (EASO, Frontex and Europol) and the responsible MS, is prone to differ-ent kinds of problems linked to facilities availability and establishment of standard procedures. In addition, even the afore-mentioned European agencies face several challenges due to the lack of partic-ipation from the other MS which, for example, do not (or not timely) make ex-perts available.

A last instrument worth mentioning is the temporary relocation mechanism put forth by the Commission, refused by four MS in its adoption phase, and further hampered in its application by a series of other MS. Scholars appreciate the reloca-tion schemes and the resettlement sys-tem, recognising the advantage for both the migrants and the Member States. In-deed, the relocation system can balance the dysfunctionalities of the Dublin sys-tem. Several experts reported the im-portance to take fully into account the asylum seekers' preferences in order to support the future integration paths and reduce secondary movements (Carrera et al., 2017; Geddes et al., 2017; Ripoll Servant, 2017; Kats, 2017).

Another issue highlighted by experts is the threshold limiting the relocation to indi-viduals holding nationalities for which the EU-wide recognition rate of asylum claims is at least 75% according to Eurostat sta-tistics. This policy reduces the range of potential candidates by excluding other people in desperate need of protection.

Failed attempts to enforce solidarity in the management of arrivals of asylum seeker are detrimental to migrants seeking effective protection, to civil society organisations working with them, to national governments struggling with influxes, to public opinion in those MS, and, consequently, to the unity of the Union as a whole. As things stand, the CEAS needs to be revised if MS are to commit to more solidarity in this respect. That being stated, the adoption of Dublin IV (providing for a permanent relocation mechanism), which was supposed to occur in June 2018, seems compromised, thus heralding further bumps on the road to more responsibility-sharing (Enderlein, 2016; Pascouau, 2018).

Policy considerations

Responsibility-sharing instruments have been put in place to face the increased arrival of asylum seekers. However, it is more than necessary to recognise that the concept of solidarity is an intrinsic part of the CEAS regardless of the number of asylum applications. In the short run, the criteria for selecting who can participate in the relocation system and the Country where she/he can be relocated to (specifically by taking into account the asylum seeker's preferences) should be revised by putting the asylum seekers' interest at the centre of the system.

Responding to the policy agenda
Safe Third Country

The issue

The global international protection system relies on protection from persecution and the principle of non-refoulement. EU law (Asylum Procedures Directive– 2005&2013) provides a general framework according to which a Country is safe when there is a democratic system, no persecution, no torture or inhuman or degrading treatment or punishment, no threat of violence and no armed conflict.

Under the safe third country concept, a receiving State is entitled to reject responsibility for the protection claim of asylum seekers who could have obtained protection in another country. Therefore, the safe third country concept is mostly applied for barring applicants from a full examination of the merits of their claim by declaring the application inadmissible (ECRE, 2017b).

Currently, the lists of Safe Third Countries are adopted at the national level, so that the State may be regarded as safe by one MS and unsafe by another. Other discrepancies stem from the way the Directive is transposed (e.g. a MS may emphasise more or less on gender or minorities) or from political motivations such as the will to curb inflows from specific Countries by declaring these countries safe (e.g. the assessment made by Germany on Afghanistan).

The EC proposal for an Asylum Procedure Regulation (COM(2016)467 final) required a mandatory application of the safe Third Country (and first country of asylum)

concept. Experts highlighted that the approach is highly questionable since the concept has no clear legal basis in international refugee and human rights law. Another aspect feeds the debate: the Commission references to a threshold of "sufficient" protection ensured by Third Countries. In this regards, the current discourse sheds light on the need to state the notion of safety by foreseeing "effective" protection instead of "sufficient" protection (articles 44 and 45) (UNHCR, 2016, ECRE, 2017b, et al.). As a matter of fact, the protection gaps in Turkey and the conditions of people detained in Libya confirm the point (on the Greece-Turkey agreement, see Ulusoy and Battjes, 2017; Strik, 2017)

Another element of concern regards the reasons why Third Countries accept to be part of the EU's asylum governance. In this regard, experts focus on the mutual interest coming from the agreements between MS and Third Countries. Indeed, some Third Countries are facing the challenge of receiving asylum seekers and are further impacted by the agreements with the EU or MS (Ceccorulli, 2017; Carrera and Guild, 2017).

To sum up, experts and stakeholder highlight the risk of shifting the responsibility to countries with lower protection standards than the European Union (Gogou, 2017; Pascouau, 2018).

Another issue regards the capacity to guarantee the human rights obligations

when there are Third Countries involved. Indeed, the European Court of Human Rights concluded that when violations of human rights occur, the jurisdiction and responsibility go beyond the borders of the European Union (Carrera and Guild, 2017).

Policy considerations

Given that the concept of Safe Third Country should remain on an optional basis, an effective protection (instead of sufficient) should be foreseen as a legal basis.

The assessment whether a third country is a first country of asylum has to be based on a careful and individualised case-by-case examination. In this regards, the meaningful connection between the asylum seekers and the territory need to be fully taken into account.

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ReSOMA

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ReSOMA - Research Social Platform on Migration and Asylum is a project funded under the Horizon 2020 Programme that aims at creating a platform for regular collaboration and exchange between Europe's well-developed networks of migration researchers, stakeholders and practitioners to foster evidence-based policymaking. Being a Coordination and Support Action (CSA), ReSOMA is meant to communicate directly with policy makers by providing ready-to-use evidence on policy, policy perceptions and policy options on migration, asylum and integration gathered among researchers, stakeholders and practitioners.

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