The “Dublin IV”-Proposal:  
Towards more solidarity and protection of individual rights?

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I. Background

On May 4, 2016, the European Commission has published three proposals to reform the Common European Asylum System.¹ They are the first series of two legislative packages the Commission has presented in 2016 to tackle the current “refugee crisis”.² One of the proposals (the “Dublin IV” proposal) intends to amend the Dublin system³, the controversial cornerstone of the Common European Asylum System.

¹ Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), COM(2016) 270 final; Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, COM(2016) 271 final; Proposal for a Regulation of the European Parliament and of the Council on the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes (recast), COM(2016) 272 final.


According to the European Commission, the proposal aims at “creating a fairer, more efficient and more sustainable system for allocating asylum applications among Member States”. Although the Dublin system was originally not intended as a burden sharing instrument, the obligation to create a system that is more solidary than the current one can be derived from Article 80 TFEU, inserted into the TFEU by the Lisbon Treaty. It is also evident that the protection of fundamental rights of concerned persons has to be guaranteed. Point 6.2 of the Stockholm Programme also called for a Common European Asylum System “based on high protection standards”. It also added that “effective solidarity with the Member States facing particular pressures should be promoted.”

In its communication of April 6, 2016, the European Commission had already called for reforms and confirmed the conclusion that the Dublin system is not functioning properly: “The overall objective is to move from a system which by design or poor implementation places a disproportionate responsibility on certain Member States and encourages uncontrolled and irregular migratory flows to a fairer system which provides orderly and safe pathways to the EU for third country nationals in need of protection or who can contribute to the EU’s economic development. The EU needs a robust and effective system for sustainable migration management for the future that is fair for host societies and EU citizens as well as for third country nationals and countries of origin and transit. For it to work, this system must be comprehensive, and grounded on the principles of responsibility and solidarity.”

But which changes will the Dublin IV proposal really entail? Will it really bring forward solidarity between the Member States? Will it lead to a better treatment of asylum seekers in Europe? These two questions will be examined in the present article.

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5 Cf. Madeline Garlick, Solidarity under strain, 2016, p. 162.
6 The main allegation that is being made is that the Dublin system imposes a more substantial burden on Member States at the external border of the EU. However, it is contested whether this is really the case, as other states (without external borders) have been the major recipients of asylum seekers in the last years. It is also difficult to evaluate how heavy the burden really is, as this does not depend on absolute numbers of asylum claims, but also on the relative capacity of a country to receive (and integrate) asylum seekers. Cf. Madeline Garlick, Solidarity under strain, 2016, p. 163.
7 Article 80 TFEU: “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 acts of the Union adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.”
8 Mainly Articles 4, 7, 18, 19, 24, 33, 35, 41 and 47 of the Charter on Fundamental Rights of the European Union.
10 Point 6.2.2. of the Stockholm Programme.
II. Content of the Dublin IV proposal

The main changes to the Dublin III Regulation that the Commission suggested in its Dublin IV proposal are the following:

- A corrective allocation mechanism (fairness mechanism) will be created, which will automatically be established when a country has to handle a disproportionate number of asylum applications – considering the country's size and wealth. If one country receives applications exceeding 150% of the reference number, all further new applicants (regardless of their nationality) will be relocated across the EU. This applies until the number of applications is back below that level. A Member State has the option of temporarily not taking part in the reallocation. In that case, it has to pay a “solidarity contribution” of € 250’000 to the Member State the person is reallocated instead;
- A special pre-procedure will be introduced (that actually petrifies the “Turkey deal”): It starts with an obligation to introduce a claim for international protection in the Member State of first irregular entry. The Member State then has the obligation (not: the possibility) to check whether the application is inadmissible, on the grounds that the applicant comes from a first country of asylum or a safe third country. If this is the case, the applicant will be returned to that country. If the person comes from a safe country of origin or presents a security risk, the application must be dealt with in an accelerated procedure;
- Legal obligations for applicants for international protection will be introduced, the above-mentioned obligation to deposit their asylum claim in the first country they enter will be fortified by a duty to remain in the Member State responsible for their claim, geographically limited reception benefits, and sanctions in case of non-compliance;
- Shorter, but not binding time limits for sending transfer requests, receiving replies and carrying out transfers of asylum seekers between Member States will be included in the Regulation;
- Shifts of responsibility will be removed (for example the expiry of deadlines for replying to take charge requests);
- Deadlines for the exercise of a person’s right to an effective remedy against a transfer decision will be shortened (7 days);
- The responsibility criteria will be streamlined (for example, the abolition of the cessation of responsibility after 12 months from irregular entry);
- A new responsibility criterion for unaccompanied minors will be introduced: In the absence of family members or relatives, the country where the first asylum application was lodged shall be responsible for the examination of an asylum application of an unaccompanied minor;
- The Dublin system will be applied to recognized beneficiaries of international protection.
III. Improvement or regress?

In the following, the suggested modifications will have to be checked for their real value in the light of the claim for more solidarity, while at the same time safeguarding individual rights of asylum seekers.

Will the suggested changes enhance solidarity between the EU Member States?

As highlighted above, one of the major shortcomings of the Dublin system is the lack of sharing of responsibility between the Member States. However, the proposal still places the main burden on the Member States with external borders (Italy, Greece). The objective of ensuring an equitable distribution of applicants for international protection among and thus a certain degree of solidarity between the Member States will not be reached.

The new “fairness mechanism” will most likely never be applied, as the reference numbers will never be exceeded: With most of the applicants coming from a “safe” third country (Turkey...), a very high number of them will have to be sent back there after the pre-procedure.

The obligation to introduce a claim for international protection in the Member State of first irregular entry will further contribute to the burden of the Member States at the external borders of the EU. The same is valid for the abolished possibility of cessation of responsibility in case of irregular crossing of an external border: The Member States at the borders will remain responsible forever.

As to the idea of paying a solidarity contribution of € 250’000 to another Member State who is willing to take over the asylum seeker is simply absurd – not only because the amount is totally arbitrary, but also because it is actually not a sign of solidarity, but the exact opposite. Moreover, it will be impossible to execute this provision in practice, as Member States would have to transfer money back and forth all year long.

Therefore, the proposal clearly falls short of enhancing more solidarity between the Member States.

Will the Dublin IV proposal improve the situation of Asylum seekers in the EU?

Actually, due to the new pre-procedure, it will be more and more difficult to have ones asylum claim assessed in the EU. The pre-procedure might also bear the risk of a violation of the principle of family unity, as persons will be sent back notwithstanding the presence of family members in the EU. In fact, the Dublin IV proposal cements the EU-Turkey deal. If Turkey is considered a safe third country (meaning that it is safe for third county nationals; not necessarily for Turks, which is contested), the majority of asylum seekers that enter the EU will be sent back to Turkey, not because of the deal (whose qualification as a legally binding agreement is uncertain12), but because of the explicit provisions of the new Dublin regulation.

The new legal obligations for applicants for international protection to deposit their claims and to remain in the first country of irregular entry (along with the sanctions in case of non-compliance) also

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bear the risk of human rights violations. Namely families might remain separated for an excessively long period.

Moreover, shorter time limits throughout the whole procedure will not only cause infringements of individual rights, but also might increase the already high pressure on Member States authorities (even if they are not binding), almost certainly leading to more cursory assessments of the individual cases.

All in all, the protection of fundamental rights of asylum seekers is clearly weakened by the proposal. 

*Will there be any other improvement?*

It is difficult to identify at least some positive points of the proposal: Only the harmonization of the notion of family members and the introduction of a maximum period for detention (6 weeks) can be judged as some kind of material progress. What regards all the rest, the proposal will rather lead to a worsening of the situation of applicants for international protection in the EU, than to a better functioning of the system.

**IV. Conclusion**

Considering the history of the Common European Asylum System and landmark cases of the European Court of Justice in the area of asylum, the proposal seems premature and incoherent. Some of the suggested modifications undeniably increase the risk of human rights violations of applicants for international protection. The proposal therefore appears to be just another hasty reaction to the so-called “refugee crisis”, allowing the EU to prove critical Member States that efforts are being made. The proposal also reflects the prevailing tendencies in the EU regarding the regulation of migration: Regaining control of the situation, ending large-scale “irregular movements” and “protecting” the EU’s external borders are the primary goals. That’s why some legal scholars also denounced an “orbanisation”\(^\text{13}\) of EU Asylum Law.

As a conclusion, one can say that, compared to the currently applicable system, there is no real added value of the Dublin IV proposal. On the contrary: It would even add to the existing problems, as it will not be able to encourage Member States to commit to more solidary among each other and to a better treatment of asylum seekers. It is hard to imagine that such an instrument will find consensus in the Council and the Parliament. But: Some elements of the proposal might survive the ongoing negotiations. And these could still cause enough harm to the already weak position of migrants in Europe.

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