

Mandatory or Discretionary Admission? – The Relocation Agreements of The European Union

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Abstract

The irregular migration crisis that peaked in 2015 spurred the member states of the European Union to take joint action. Today, it can be stated that the cornerstones of collective action, in addition to the protection of external borders and cooperation with third countries, are the various relocation agreements. However, in contrast to the first two principles, the question of relocation has been the subject of intense political debates from the very outset. The purpose of this analysis is to present the relocation agreements adopted since 2015 and the problems that relate to them.

Keywords: European Union, quota, relocation, sovereignty, Greece

The quota system

The migration crisis, which gathered momentum as a result of political and economic crises in the Middle East, reached its peak in 2015. Even at the beginning of the crisis, there were significant differences between the migration policies applied and proposed by EU member states. However, the Dublin system – which imposes the tasks of conducting asylum procedures on the countries of entry – in addition to the exceptionally high number of arrivals, presented an insurmountable task for Mediterranean states such as Italy and Greece.¹ In the beginning, both reform of the Dublin system and relocation agreements based on independent commitments by member states were proposed as solutions, but these were not implemented due to the protests of the member states less affected by irregular migration.²

In response to this untenable situation, in September 2015 the Commission proposed the quota system, which was intended to manage the distribution of migrants reaching the territory of the European Union among member states. According to documents issued by the Commission, the numbers determined for

¹ VARA 2022.

² Ibid.

each member state would be “based on objective, identifiable and quantifiable data” and were intended to match the reception and integration capabilities of the given member state.³ The applied formula paid special attention to the population and economic capabilities of member states.⁴ Accordingly, at a meeting of the Justice and Home Affairs Council on September 12, 2015, it was decided that 120,000 irregular migrants would be relocated, with 15,600 going to Italy, 50,400 to Greece, and 54,000 to Hungary.⁵ During the meeting, the ratios for some parts of the above-mentioned formula were also spelled out. According to this, a country’s population and GDP were to account for 40% each, while the remaining 20% was made up of the average number of previously filed asylum applications (10%) and the number of unemployed people (10%).⁶

According to Griffin Shiel, a researcher at Queen Mary University of London, the issue of the quota system sheds light on two important issues.⁷ In the view of the majority of member states, continuous cooperation and agreement are necessary for the development of a functioning migration policy at the European level. This opinion was also shared by leading EU officials.⁸ However, as a counterpoint to this, most Central European countries strongly rejected the quota system, seeing it as a violation of their sovereignty.⁹ In the words of the Polish Minister of the Interior, Teresa Piotrowska: “We are ready to accept migrants, but we reject the quota system”.¹⁰

The European Commission’s 2017 report highlights the failure of the quota system. Instead of the previously planned 160,000 relocations, a total of just over 19,000 had been realized, while at the time another almost 6,000 procedures were in progress.¹¹ Seeing the failure of the system and the sharp political debates it provoked, the Commission finally abandoned the quota system and began to support the creation of voluntary relocation agreements.¹²

With regard to the quota system, it is worth mentioning the lawsuit initiated by Hungary and Slovakia, which in a victory for the European Union. According to the judgment of the Court of Justice of the European Union, the EU can oblige

³ MARTIN 2017.

⁴ Ibid.

⁵ EUROPEAN COMMISSION 2015.

⁶ Ibid.

⁷ SHIEL 2022.

⁸ PEUTTER 2016.

⁹ SHIEL 2022.

¹⁰ BRIGAZZI – DE LA BAUME 2015.

¹¹ EUROPEAN COMMISSION 2017.

¹² SHIEL 2022.

member states to accept a certain number of asylum seekers, as this helps ease the strain on frontline countries. The verdict stated that if the two countries still do not accept asylum seekers, they can expect a fine, but due to the abandonment of the quota system, this was ultimately not imposed.¹³ The ECRE's 2018 analysis of states that comply with the quota system brings to light some interesting data. According to the analysis, the host countries rejected 1,311 of the planned 24,911 Greek relocations. In numerical terms, France rejected the most applications (510), while Estonia rejected the highest percentage (53.2%).¹⁴ No statistics are available regarding planned relocations from Italy, but Slovenia, Croatia and Romania also refused to fulfill several requests.¹⁵ The analysis also highlights that the majority of receiving countries conducted security checks on asylum seekers during the procedure with the involvement of national authorities.¹⁶

The Malta Agreement

The next issue related to relocation processes was the issue of irregular migrants and asylum seekers rescued from the sea. The latter became the focus of the Mediterranean countries' interest after the Central Mediterranean route increased in popularity in 2016.¹⁷ According to Reuters data, 181,000 irregular migrants arrived in Italy and Malta via this route in 2016,¹⁸ while 4,500 people died during the crossing. Hoping to resolve this problem, the interior ministers of Italy, France, Germany, and Malta, which held the rotating presidency of the Council of the European Union, organized an informal meeting on September 23, 2019, in Valletta. The purpose of the meeting was to adopt a joint declaration, which the other member states could comment on at the October meeting of the Interior Council.

Before describing the document adopted at the Malta meeting, it is important to clarify its what kind of document it is. The adopted "joint statement of intent" is not binding at the level of either EU or international law, though the parties signing the declaration undertake to jointly comply with its provisions. The document itself envisages significant departures from the currently operational Dublin system. The memorandum of understanding enables the transport of

¹³ DEUTSCHE WELLE 2017.

¹⁴ ECRE 2018.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ KANTER 2017.

¹⁸ MACDONALD – BACZYNSKA 2017.

irregular migrants and asylum seekers rescued on the Central Mediterranean route to alternative countries.¹⁹ This would be a significant difference compared to the above-mentioned principle of the Dublin system, according to which migration procedures are the responsibility of the first European Union member state an applicant reaches. According to the statement, this option would come into effect if Italy or Malta faced a capacity shortage due to the large number of arrivals.²⁰ The document makes few specific statements on issues of relocation, and essentially leaves this to the discretion of the participating countries, primarily Germany and France. However, it is important to highlight that the document stipulates a maximum duration of the relocation procedure of one month.²¹ The most controversial aspect of the document is the role of the Libyan Coast Guard in search and rescue operations. The letter of intent envisages additional financial and capacity-building support for the Libyan authorities, and also encourages the UN High Commissioner for Refugees and the International Organization for Migration to provide support.²²

The assessment of the meeting also varies between member states of the European Union. The convention's disproportionate focus on the Central Mediterranean route received the most criticism. In a joint resolution, the Greek, Cypriot, and Bulgarian governments requested the extension of the convention.²³ In the end, the draft did not gather the necessary support at the meeting of the Interior Council in Luxembourg. According to German Interior Minister Horst Seehofer, 12 member states supported the convention, but based on Jean Asselborn's statement, only three other member states indicated their intention to join.²⁴

The 2020 action plan

The next relocation problem centered on Greece. The Greek government requested help from the European Union to cope with overwhelming migration pressure. The Commission convened an extraordinary meeting of the Council of the Interior, and Ursula von der Leyen, accompanied by several leading politicians, inspected the Greek-Turkish and Turkish-Bulgarian border sections.

¹⁹ CARRERA – CORTINOVIS 2019.

²⁰ Ibid.

²¹ Ibid.

²² SANSONE 2017.

²³ CARRERA – CORTINOVIS 2019.

²⁴ NIELSEN 2019.

Margaritis Schinas, vice-president of the European Commission, while emphasizing protection of the external borders, called on member states to support Greece.²⁵ The aim of the action plan drawn up by the European Commission was to ease the migration pressure on Greece. As part of the action plan, in addition to expert and financial support, a relocation mechanism was introduced, which enabled the relocation from Greece of unaccompanied minors, persons granted international protection, and irregular migrants classified in other vulnerable categories. In the end, 16 countries, including 13 EU member states, joined the mechanism.²⁶ As part of the 35-million-euro support mechanism, 5,000 people were ultimately resettled from Greece.²⁷

The voluntary solidarity mechanism

The French presidency, seeking innovative solutions, formulated several proposals regarding the EU's migration and asylum policy. In matters of migration, the French strategy prioritized gradualism. According to this view, instead of a full-scale renegotiation of the Pact on Migration and Asylum, it was preferable to focus on smaller goals that would be achievable in the shorter term. It was along these lines that the Declaration of Solidarity was adopted, which set the goal of relocating 10,000 asylum seekers in one year.²⁸ However, it should be emphasized that the matter of this declaration was the subject of a lively political debate. In the end, 21 states (18 member states and three Schengen area members) supported it, but nine member states did not sign it. Six member states from the latter group – Austria, Hungary, Poland, Slovakia, Lithuania, and Denmark – rejected the idea entirely.²⁹

The Declaration of Solidarity, like the aforementioned Maltese Declaration, is a non-legally binding document that merely enumerates the stated intentions of the signatories. It designates as the subjects of relocation persons entitled to international protection, with particular regard to those who can be classified as belonging to vulnerable groups.³⁰ In addition, however, it provides for the possibility of financial or operational support for member states in lieu of relocation.³¹ In clarifying what it means by “operational support”, the document lists border

²⁵ EUROPEAN COMMISSION 2020.

²⁶ Plus Iceland, Norway, and Switzerland.

²⁷ EUROPEAN COMMISSION 2022.

²⁸ CARRERA – CORTINOVIS 2022.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

protection, capacity-building, and support programs for voluntary return.³² The document also contains provisions for financial support to third countries should problems regarding migration arise.³³ The participating countries agreed to a one-year test period, after which the Commission would examine and summarize the results and experiences. According to the available data, during the test period, France and Germany made the largest commitments, accepting 3,000 and 3,500 people respectively.³⁴

However, the Russian-Ukrainian war radically altered the situation. According to the data, a total of 435 asylum seekers were successfully relocated due to the large number of war refugees and the economic problems resulting from the conflict.³⁵ In addition, Ireland came under the spotlight after the Commission ordered it to pay €1.5 million in compensation for failing to provide adequate accommodation for 350 asylum seekers.³⁶

Summary

In summary, it can be stated that the European Union's relocation agreements applied to date have not brought the hoped-for success. Both the quota system and solutions based on voluntary solidarity have proved insufficient, unable to ensure the permanent relocation of a large and persistently elevated number of asylum seekers. The politicization of the issue of migration and asylum, as well as differing levels of exposure among member states, greatly influenced the possibilities and successes of the conventions. Nevertheless, it is important to highlight that both the migration crisis of 2015 and the ongoing Ukrainian refugee crisis necessitate the development of a functional, common European migration policy, though it is doubtful whether the new Migration and Asylum regulations represent a real, substantial solution, and to what extent they will remedy the problems found in previous drafts. One of the questionable elements of the previous proposals, support for third countries, also reappears among the new regulations. In order to reduce irregular migration, it is essential that the European Union engages with neighboring states, especially those to its south and southeast.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ EURONEWS 2023.

³⁶ ANADOLU AGENCY 2023.

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