

POLICY
POSITION

A JRS vision for a humane, fair and efficient system of sharing responsibility for welcoming asylum seekers in Europe



CONTENTS

Why a JRS vision on sharing responsibility for welcoming asylum seekers in Europe?	2
Do we need a balanced numerical distribution of asylum seekers among EU member states?	3
From a refugee perspective	3
From a member state's perspective	3
In the context of CEAS	3
Conclusion: balanced redistribution = not necessary, maybe desirable	4
Guiding principles for a responsibility-sharing system entailing redistribution of asylum seekers	5
Effective protection above balanced redistribution	5
Asylum seekers' participation	5
Respect for human dignity	6
Solidarity with refugees and among member states	6
Respect for general principles of international (human rights) law	7
Free movement within the EU for beneficiaries of international protection	7

Why a JRS vision on sharing responsibility for welcoming asylum seekers in Europe?

The discussion on how to share responsibility for the reception and protection of asylum seekers and refugees in Europe has been going on for many years. Civil society actors, including JRS Europe and the JRS national offices, have always advocated to put refugees and their interests at the centre of this discussion. Despite these efforts, both the debate and the measures that have so far emerged from it have always been strongly driven by the States' perspective, which is in turn mainly driven by a preoccupation with limiting the amount of asylum seekers falling under each State's responsibility.

Responsibility-sharing can take many forms. It can be financial, sharing the costs of maintaining a common system. It can also entail sharing of resources and expertise or sharing of human resources. In recent years, due to the sharp increase in arrivals of asylum seekers to Europe and the consequent pressure put on a few EU Member States, the discussion on responsibility-sharing has focused on systems intended to achieve a balanced numerical distribution of asylum seekers throughout the territory of EU Member States.

JRS Europe, together with JRS national offices in Europe, like all civil society organisations working for and with refugees, has traditionally opposed systems that entail the transfer of asylum seekers against their will. Such is the case for the so-called Dublin system, the EU set of rules for the determination of the EU state responsible for the application of an asylum claim. One of the main reasons for our opposition to the Dublin system is that not all EU Member States offer the same level of reception and protection to asylum seekers. There is therefore a real risk that asylum seekers will end up in countries that do not respect their rights. Secondly, the current system gives no room to asylum seekers to express a preference on their country of destination. In JRS's experience this is detrimental both to the scope of refugee integration in host societies and to the functioning of the system as such, because asylum seekers often keep trying to reach the country they wish to settle in, regardless of whether that country was the one determined as responsible for them.

When confronted in recent years with the emergency of the inhumane conditions faced by asylum seekers in Italian hotspots, along the Balkan route, and on Greek islands, JRS Europe joined other civil society actors in calling for a system that would allow asylum seekers to legally travel across the EU to get to a Member State that would guarantee dignified reception and asylum procedures. We therefore welcomed the announcement of the temporary relocation scheme between September 2015 and September 2017.

However, this system came to an end without providing a structural solution to the challenge of creating a Common European Asylum System that puts refugee protection at its core, while ensuring the sharing of responsibility among Member States. The discussion on responsibility-sharing and a system to balance the distribution of asylum seekers among Member States remains unresolved.

In this paper JRS outlines its long-term vision on this matter and defines the principles that we believe should guide the current and future debates on these issues, both at the European and at the national level. This document represents the views of JRS Europe and the different JRS country offices in Europe.

Do we need a balanced numerical distribution of asylum seekers among EU member states?

From a refugee perspective

The issue of a balanced distribution of asylum seekers in the EU is not relevant to refugees who are determining their flight route. The primary concern of a refugee is to reach a place in which to seek and get protection. Protection does not only mean the recognition of a status, but also entails the true possibility of re-establishing the normal and dignified life that was made impossible in the home country. Refugees will try to reach the country where they believe this will be possible, regardless of the fact that this country, for example Germany, is already hosting many more refugees than another EU country, for example, Romania.

From a member state's perspective

The history of the development of the Common European Asylum System shows that Member States have always been concerned with the question of how asylum seekers are redistributed throughout the EU. Even Member States that are ready to welcome and protect refugees and already do so, feel that if there is such a thing as a common European system, other Member States should also make an effort and at least take their fair share. Member States' concerns about a balanced distribution of asylum seekers increase when the economic situation is challenging and if numbers of arrivals of asylum seekers to Europe rise. The sharp increase in arrivals between 2014 and 2015, combined with the lack of balanced redistribution, led to a crisis in solidarity among Member States, resulting in a blame game about which Member States were not doing their job, combined with a race to the bottom in restrictive asylum and reception policies intended to make each state a 'less attractive' destination.

In the context of CEAS

Sharing of responsibility for welcoming asylum seekers in the context of the CEAS can happen in different ways. It can happen financially, by sharing the costs of the system, and by sharing human, intellectual or logistical resources. Existing examples of responsibility-sharing are EU financial support for Member States through European funds such as AMIF, and the activities carried out by EASO in different areas. Such EASO activities include the deployment of officials from one EU country to another to support asylum procedures, deployment of interpreters, joint processing, or joint research efforts to produce country of origin information.

Striving to achieve a numerical balance of asylum seekers in each Member State is another form of responsibility-sharing. However, existing analysis of the application of the Dublin Regulation and the temporary relocation programme shows that sharing funding and sharing resources is not only practically easier but is also much more cost-efficient than trying to 'share people'¹. In addition to

¹ For analysis on the performance of the Dublin and relocation systems see for example: Francesco Maiani, "The reform of the Dublin system and the dystopia of 'sharing people'", *Maastricht Journal of European and Comparative Law*, 2017, Vol. 24(5) 642-645; European Parliament Policy Department for Internal Policies, "The Reform of the Dublin III regulation", 2016, [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571360/IPOL_STU\(2016\)571360_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571360/IPOL_STU(2016)571360_EN.pdf) (last accessed on 25/09/2018); European Commission DG Migration and Home Affairs, "Evaluation of the Dublin III Regulation", 2015, <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we->

incurring heavy human costs, (such as prolonged journeys, uncertainty, and the potential separation of family members) the transfer of asylum seekers between Member States also requires a considerable effort in terms of organisation (staff, materials, procedures) and logistics (flights and reception facilities).

Taking these findings into account, in a system that wants to combine a refugee perspective and an efficiency approach, one option would be to allow asylum seekers to reach the country in which they want to apply for asylum. Then the system could provide financial and logistical support to those countries chosen by most asylum seekers, rather than investing in moving people around Europe against their will, with possible secondary movements as a consequence. This option would require acceptance on the part of EU Member States that a balanced numerical redistribution will not be achieved, nor is a goal as such. Some countries will receive more asylum seekers, but the total costs (including human resource costs) will be shared among the different states according to their capacity.

However, an unbalanced distribution of asylum seekers throughout Europe will probably always be in conflict with the vision of fairness among Member States. The idea, whether justified or not, that some Member States are making more of an effort than others to welcome refugees is harmful for the reciprocal trust among them. Financial support will not always be enough to counter these sentiments.

Such a situation, as current reality demonstrates, is detrimental to the goal of a larger protection space in the EU. Member States of goodwill have no incentives to set up systems to welcome more refugees, for example through safe and legal channels such as resettlement, because they consider that they are already doing more than enough. Even worse, they might start lowering their protection standards in order to deter asylum seekers from coming to them. On the other hand, Member States who do not believe in enlarging Europe's protection space will have no incentive to improve their systems, as they do not want to attract more refugees to their territories.

Conclusion: balanced redistribution = not necessary, maybe desirable

Based on the considerations so far, we can conclude that **JRS does not consider balanced redistribution of asylum seekers among European countries as strictly necessary to put in place a functioning CEAS that is fair both to asylum seekers and to Member States.**

The EU could keep the principle that only one Member State is responsible for an asylum application but could opt for a system in which it is the asylum seekers who determine which Member State that will be. In return, the EU will compensate (financially and with shared resources) those countries that ultimately receive more people.

However, we acknowledge that at least a certain degree of redistribution of asylum seekers among EU Member States might be desirable and could be politically helpful to achieve the goal of the enlargement of the protection space in the whole of the EU. This would benefit larger groups of refugees.

For this reason, we have formulated a set of principles to guide future political discussion, as well as JRS's positioning on any future concrete proposal on the matter.

[do/policies/asylum/examination-of-applicants/docs/evaluation_of_the_dublin_iii_regulation_en.pdf](https://www.jrs-europe.org/policies/asylum/examination-of-applicants/docs/evaluation_of_the_dublin_iii_regulation_en.pdf) (last accessed on 25/09/2018).

Guiding principles for a responsibility-sharing system entailing redistribution of asylum seekers

For JRS Europe, any system of responsibility-sharing in the context of the Common European Asylum System that entails mechanisms for the redistribution of asylum seekers throughout the EU is only acceptable if it is based on the following principles:

Effective protection above balanced redistribution

The first goal of a Common European Asylum System worth its name is that of providing effective protection to all those who need it.

This implies granting to protection seekers safe and legal access to the EU territory, access to a fair and high-quality asylum procedure, access to dignified reception conditions, and access to psycho-social and legal assistance and realistic integration opportunities in the new home-society, including access to adequate housing and to the labour market.

Pursuing the goal of a balanced numerical redistribution of asylum seekers among EU Member States cannot be prioritised against granting effective protection everywhere throughout the EU.

Asylum seekers' participation

JRS believes in the need for asylum seekers and forced migrants to participate in shaping legislation and taking decisions that will have an impact on the course of their lives. Being able to decide about one's life is also an important expression of one's own dignity. The country in which one applies for asylum can have a far-reaching impact on the future life of refugees.

A system of responsibility-sharing entailing the redistribution of asylum seekers among Member States can only be considered truly fair if it takes into consideration the preferences of asylum seekers to determine their country of destination.

The first criteria to determine the Member State responsible for an asylum application should be the asylum seeker's choice of Member State. This implies that if the asylum seeker, when applying for asylum, already finds him/herself in the Member State where he/she wants his/her claim to be examined, then that Member State will be responsible, and the asylum seeker will not be transferred to another Member State against his/her will.

If the asylum seeker wishes his/her application to be examined by a Member State other than the one where he/she is currently staying, such relocation should, as a rule, be granted.

If, in exceptional cases, the preference of the asylum seeker is not respected, this should happen according to clear and transparent criteria. Such a decision is only acceptable if this divergence from the asylum seeker's preference is necessary and proportionate to the goal of guaranteeing effective protection to all asylum seekers throughout the EU.

JRS's experience shows that asylum seekers' first choice of destination country is not always based on objective elements. Myths and hearsay about specific countries, obtained from unreliable sources, can have an important influence on asylum seekers' behaviour, as can the lack of information about the rights and duties and the consequences of their decisions.

Clear and objective information about their rights and duties, the situation in different EU countries and the consequences of their choices must be provided to asylum seekers before they name their preferred Member State(s) of destination, to ensure they express an informed preference.

Respect for human dignity

The recognition of the inherent dignity of all human beings and the need to respect it and protect it is a fundamental Christian value that inspires and guides the work of JRS. Moreover, it lies at the basis of international human rights law and is enshrined in the European Charter of Fundamental Rights and in the European Convention on Human Rights.

This value must therefore also guide any measure and policy concerning asylum seekers and refugees. This might sound self-evident, knowing that all the different pieces of EU legislation that form the current Common European Asylum System already refer to the need to respect human dignity. However, asylum seekers in Europe nowadays are too often forced to survive in undignified, inhumane and degrading conditions. JRS's experience shows that the application of the current Dublin regulation often results in asylum seekers ending up in Member States where their human rights and human dignity are violated.

Therefore, we believe that:

- **any responsibility-sharing system entailing the redistribution of asylum seekers among different EU Member States must always respect the inherent human dignity of the asylum seekers;**
- **the transfer of asylum seekers to Member States that cannot guarantee the respect of their dignity is not acceptable.**

In JRS's view, deprivation of liberty in the context of an asylum procedure always amounts to a violation of the asylum seeker's human dignity. For this reason, **the use of detention within any mechanism for the redistribution of asylum seekers in the EU should be banned.**

Solidarity with refugees and among member states

The value of solidarity is a fundamental Christian value that inspires and guides the work of JRS. Solidarity is also one of the fundamental values upon which the European Union is built, and as such it is enshrined as a legal obligation under Article 80 of the Treaty on the Functioning of the EU.

We understand a society based on solidarity as a society in which its members help one another. In the context of a Common European Asylum System, this means that we strive to build a Europe that shows solidarity with refugees by welcoming and protecting them, and we count on Member States to help each other to achieve this goal.

If the situation in a given Member State is such that it violates the rights and dignity of asylum seekers and refugees, other Member States should act in solidarity with asylum seekers and refugees and offer them protection by relocating them to their territories.

Member States that, for any reason, are welcoming a high amount of asylum seekers into their territory, either in absolute numbers or in proportion to their local population, should receive help from the EU and other Member States in the form of financial means and technical or logistical resources.

If a situation arises in which a Member State is (temporarily) not capable to guarantee dignified reception and high-quality asylum procedures to asylum seekers, the EU and other Member States should provide support in order to (re)establish a situation with effective protection standards, including by putting into place (temporary) relocation measures.

When such situations are the result of deliberate actions or lack of action by the Member State concerned, the EU should take appropriate action against this Member State, for example by starting an infringement procedure.

Respect for general principles of international (human rights) law

It is a fact that any responsibility-sharing system entailing the redistribution of asylum seekers throughout the EU must be enacted in accordance with the general principles of international (human rights) law.

Still, given their importance specifically in the context of redistribution, we do want to remind that any such system must:

- **Respect family unity**, whereby the concept of family is broadly defined and goes beyond the nuclear family, by encompassing at the very least (adult) siblings, adult children and parents of adults. **The application of any redistribution system may never result in the separation of families travelling together.**
- Always be applied taking into consideration **the best interest of the child.**

Free movement within the EU for beneficiaries of international protection

The likelihood that asylum seekers will remain in the country that is identified as responsible for them is much higher in a system that uses the preferences of asylum seekers as the first criterion for the determination of that country.

However, we acknowledge that it might not always be possible to reconcile individual asylum seekers' preferences with the goal of effective protection for all asylum seekers and with the pursuit of a more balanced distribution of applicants across the Member States.

For this reason, conditions should be elaborated to allow free movement within the EU for people once they have obtained a protection status in a Member State.

Jesuit Refugee Service (JRS) is an international Catholic organisation with a mission to accompany, serve and advocate for the rights of refugees and others who are forcibly displaced.

