Hertie School
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Policy Brief

The French EU Council Presidency
How to proceed on resettlement & humanitarian admission?

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#Resettlement

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Given the recent crises in Belarus and Afghanistan, President Macron has declared protecting the EU's external borders as a main priority of the upcoming French Council Presidency. Yet, in this policy brief, Lucas Rasche argues that the French Council Presidency should move beyond a restrictive approach to reform the EU's asylum and migration policy. A less politicised approach can thereby help focus on solving technical issues to make progress where it is severely needed. This is especially the case when it comes to enhancing the number of safe and legal pathways to protection in the EU.

Introduction[1]

After the European Commission had presented its Migration Pact on 23 September 2020, negotiations about its implementation commenced under Germany's EU Council Presidency. More than a year later, it will be up to the French Council Presidency to pick up the thread and take discussions forward. Achieving a compromise on the two most controversial issues – the solidarity mechanism to relocate asylum seekers and the responsibility for processing asylum claims – remains unlikely. Yet, the French Council Presidency should resist the temptation of entirely dropping the dossier. For one, because the crisis in Afghanistan, and more recently the bleak situation at the EU's external border with Belarus, have shown that the EU's approach to migration is unsustainable. Moreover, the stalemate in current reform negotiations should not become an excuse for in action. President Emmanuel Macron already announced that a revised and strengthened mechanism to manage the EU's external borders will be a priority during the next six months. Yet, progress is equally necessary when it comes to enhancing member states' efforts to establish safe and legal pathways to protection.

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1 This policy brief is an updated version of an earlier contribution to the report „MIGRATIONS, ASILE, MOBILITÉ ET INTÉGRATION EN EUROPE: INDISSOCIABLES VALEURS" from the Institut Jacques Delors."

At the High-Level Forum for providing protection to Afghans at risk on 7 October, Commissioner Johansson announced that EU member states had collectively evacuated 22.000 Afghans since mid-August.[2] Member states also committed to increase their resettlement pledges by providing admission spaces. Countries such as Canada or the United Kingdom respectively promised 40.000 and 20.000 resettlement places in response to the Afghanistan crisis. On 13 December, the Commission announced that 15 member states had pledged 40.000 resettlement places for Afghans in need of protection. The caution with which the EU announced its resettlement pledges two months after the High-Level Forum corresponds with member states' mixed messages in the immediate follow-up to the Afghanistan crisis. For example, French President Emmanuel Macron irritatingly called on the EU to "protect ourselves against irregular migratory flows", whilst also promising that France "will continue to do its duty to protect those who are most at risk" by participating in "an international effort, organised and just".[3]

With elections coming up in April 2022, the French government will be wary of making the impression that it has changed its mind towards a more liberal migration policy. This is especially the case given that the French population considers migration to be among the top three issues deciding the election outcome, with 40% of voters advocating against any immigration.[4] Hence, the French EU Council Presidency finds itself in a position where it must keep in mind public opinion at home whilst encouraging member states to present concrete numbers as to their intended resettlement pledges. In light of the Presidency's three pillars (recovery, power, belonging), one way to go about this would be to discuss the migration dossier not primarily as a security threat, i.e. under the power heading. Instead, a focus on resettlement and humanitarian admission provides for the possibility to associate migration with issues such as European norms and adherence to EU law. This would allow subordinating it to under the title of belonging.

The Migration Pact offers two frameworks for member states to scale up their humanitarian admission channels. First, it calls on member states to conclude negotiations with the European Parliament on the proposed regulation establishing a Union Resettlement Framework. Second, it encourages member states to build a distinct "European Model" for community sponsorship. In order to assess the benefits and pitfalls of both initiatives, this policy brief first traces the development of EU's global leadership on resettlement. It argues that the EU's growth in re-settlement activities has led to competing objectives: humanitarian concerns on the one hand and the interest to reduce irregular arrivals through third country partnerships on the other. The brief then outlines to which extend these objectives are mirrored in the Migration Pact before concluding with recommendations for the French EU Council Presidency.

1. The EU's evolution as a resettlement actor

According to estimates by the UNHCR, 1,47 million refugees are eligible for resettlement.[5] However, in part due to the corona virus pandemic, merely 26.000 refugees departed to a safe third country by the end of September this year.[6] While this is a slightly larger contingent compared to 2020 (22.800), it is merely about one fifth of the global resettlement places available in 2016 (126.000). Despite a reduction in the total number of resettlement places since 2016, the share of refugees resettled by EU countries has gradually increased (see Table 1). In 2020, resettlement to the EU made up 45% of global resettlement transfers, compared to merely 14% in 2016.

2 Johansson, Ylva (07.10.2021). Press Briefing. European Commission.
3 Leali, Giorgio (16.08.2021). Macron calls for European Plan to manage Afghan migration. Politico.
4 Vincendon, Salome (20.10.2021). Présidentielle: Le pouvoir d'achat principale préoccupation des français, loin devant l'immigration ou la sécurité.BFMTV; CNEWS (07.10.2021). 4 Français sur 10 favorables a une immigration zero. CNEWS.
5 UNHCR (23.06.2021). UN Refugee Agency releases 2022 resettlement needs. Press Release.
6 UNHCR. Resettlement Data.

France increased its annual resettlement pledges from 360 in 2010 to 5.600 in 2019 – spearheading the EU's resettlement effort ahead of Sweden (5.005) and Germany (4.890).[7]

Year	EU		Canada		United States	
	Total	Share	Total	Share	Total	Share
2016	17093	14%	21865	17%	78761	62%
2017	26397	41%	8912	14%	24559	38%
2018	26029	47%	7704	14%	17112	31%
2019	28992	45%	9031	14%	21159	33%
2020	10321	45%	3502	15%	6740	30%

Source: UNHCR

The gradual increase of resettlement to the EU prior to the coronavirus pandemic is largely a result of two developments. First, member states have resorted to resettlement as a response to mounting crises in the European neighbourhood. Second, they have done so as a result of the Commission's growing effort to expand financial incentives and facilitate coordination among member states' practices.[8]

Given that there is no legal obligation under international or European law, resettlement to the EU was historically driven by just a few member states, most notably by Sweden, Finland, Denmark and the Netherlands. The number of resettling EU countries increased when the Justice and Home Affairs Council called on member states to resettle 10.000 vulnerable refugees from Iraq in 2008. Eventually, twelve EU countries participated in the joint effort.[9] Common European resettlement priorities and increased financial incentives were further introduced through the Joint EU Resettlement Programme in 2012, which was adopted following political upheavals in North Africa and the Middle East throughout 2011.[10]

A substantial increase in national resettlement programmes and in the number of persons resettled to the EU followed upon the so-called "migration crisis" in 2015. In June 2015, the European Council concluded that all member states would contribute to "multilateral and national schemes in the resettling of 20.000 displaced persons in clear need of international protection".[11] This was followed by a Commission recommendation in 2017, which urged member states to provide another 50.000 resettlement places.[12] As a result, 20 European countries (including Norway and Switzerland) had set up national resettlement schemes by the end of 2019.[13] Both *ad hoc* programmes, in combination with the parallel downscaling of the United States' resettlement programme under the Trump administration, help explain the EU's growing relevance as a resettlement actor.

2. Resettlement after 2015: conflicting objectives

The growth of resettlement activities in the EU has been accompanied by a process of embedding resettlement into a wider set of policy objectives.[14] Traditionally, resettlement serves a twofold

7 Eurostat. Resettled persons – annual data. European Commission.

8 Perrin, Delphine & McNamara, Frank (2013). Refugee Resettlement in the EU: Between Shared Standards and Diversity in Legal and Policy Frames. KNOW RESET Research report. European University Institute.

9 European Resettlement Network. The Policy Framework.

10 European Commission (2009). Communication proposing a Joint EU Resettlement Programme. COM(2009) 447 final.

11 European Council (2015). Conclusions – 25 and 26 June 2015. CO EUR 8, CONCL 3.

12 European Commission (2017). Recommendation on enhancing legal pathways for persons in need of international protection. C(2017) 6504.

13 UNHCR (2019). Resettlement Overview Europe. January – December 2019.

14 Leboeuf, Luc (2020). Legal Pathways to Protection: Towards a Common and Comprehensive Approach? EU immigration and Asylum Law and Policy – Odysseus Network.

purpose. First, states can express solidarity and help in sharing the responsibility for refugees with countries of first asylum. Second, resettlement offers access to protection and a durable solution to the most vulnerable refugees.

However, the EU's approach to resettlement – as well as to other forms of humanitarian admission – is increasingly shaped by an objective that has been described as "contained mobility".[15] Rather than providing safe and legal pathways for purely for humanitarian purposes, this approach implies that selective refugee admission is offered to third countries as an incentive for cooperating with the EU in areas such as readmission or border management. The idea to contain asylum seekers in countries of origin or transit whilst offering limited, restrictive refugee admission was instrumental for the EU's response to 2015 and its partial externalisation of asylum responsibilities through third countries arrangements.

The coupling of refugee admission with border control measures is perhaps most evident in the EU-Turkey statement. The statement entered into force in March 2016 and has frequently been described as a blueprint for the EU's future cooperation with third countries. As part of the statement's so-called 1:1 mechanism, EU countries committed to resettle Syrian refugees from Turkey. This is a laudable effort as it helps alleviate pressure from Turkey and offers a durable solution to displaced Syrians. Yet, admission under the EU-Turkey statement is limited to refugees, who have not attempted to irregularly enter the EU before. At least in theory, admission is also conditional upon Turkey's promise to readmit asylum seekers who had irregularly entered Greece. This rests on the assumption that Turkey can be considered a safe third country, even though it has not signed the 1967 Protocol to the Geneva Refugee Convention. In practice, EU member states had resettled 28.000 refugees from Turkey by March 2021, while merely 2.140 were returned under the framework of the EU-Turkey statement.[16] The low number of returns can in part be explained by lengthy procedures in Greece. They are also a result of the fact that Turkey suspended its bilateral readmission agreement with Greece and stopped implementing a readmission agreement with the EU.[17]

The desire to use resettlement as a means for engaging third countries in migration management is also visible in the Commission's 2016 legislative proposal for a Union Resettlement Framework regulation. The proposal attempts to establish "a more structured, harmonised, and permanent framework for resettlement across the Union".[18] Although a partial provisional agreement between the European Parliament and the Council was attained in June 2018, member states remained wary of ceding control over the design and scope of their admission programmes.[19] Eventually, the Council did therefore not endorse the Commission proposal and handed the file back to negotiations at technical level during the Austrian Council Presidency in the second half of 2018.

Considering previous ad hoc approaches, the proposal offers a welcome opportunity to make resettlement to the EU more systematic and reliable. However, in doing so, the proposal has not struck an adequate balance between the competing objectives of border management on the one hand, and humanitarian concerns on the other. In the proposal's explanatory memorandum, the Commission lists helping "displaced persons in need of international protection" alongside using

15 Carrera, Sergio & Cortinovis, Roberto (2019). The EU's Role in Implementing the UN Global Compact. Contained Mobility vs. International Protection. CEPS.

16 Popp, Karoline (2021). "No more Morias"? Origins, challenges and prospects of the hotspots on the Greek islands. SVR Policy Brief 2021-1, Berlin; Terry, Kyilah (2021). The EU-Turkey Deal, Five Years On: A Frayed and Controversial but Enduring Blueprint. Migration Policy Institute (MPI).

17 Popp, Karoline (2021). "No more Morias"? Origins, challenges and prospects of the hotspots on the Greek islands. SVR Policy Brief 2021-1, Berlin.

18 European Commission (2016). Proposal for a regulation establishing a Union Resettlement Framework. 2016/0225 (COD).

19 European Parliament. EU Resettlement Framework. Legislative Train Schedule.

resettlement as a "tool of international solidarity and responsibility sharing".[20] Yet, the overall emphasis of the proposal is better described as "managing migration flows" with the objective to "help reduce the pressure of spontaneous arrivals". The proposal's focus on border management manifests itself primarily in the proposed (in)eligibility criteria for resettlement candidates, as well as in the prioritisation of third countries from which resettlement should occur.[21]

- First, the proposal excludes "persons who have irregularly entered, irregularly stayed in, or attempted to irregularly enter" the EU within the past five years.[22] It hence frames resettlement not only as an alternative to irregular arrivals but attempts to (partially) replace irregular arrivals though a "contained mobility" approach.

- Second, the proposal gives member states substantial leeway in selecting beneficiaries. It allows member states to give preference to candidates with a certain skillset or with characteristics perceived as facilitating integration. The proposal thereby provides for more flexibility in setting up admission schemes, which can be helpful when responding to immediate crises. However, the broad scope of eligibility criteria and the emphasis on integration outcomes risk undermining vulnerability as the prime parameter for selecting resettlement beneficiaries.

- Third, the proposal not only considers "the number of displaced people in need of protection" as a relevant factor when determining the countries from which resettlement should primarily take place. It also states that "any onward movement of those persons to the territory of the Member states" should determine priority regions.[23] The proposal further specifies that "a third country's effective cooperation" in reducing the number of irregular arrivals to the EU and in increasing the number of readmissions should be considered when deciding whether resettlement should take place from these countries.

3. Resettlement & humanitarian admission in the Migration Pact

Contrary to other files from the Juncker Commission's 2016 reform package, the Migration Pact neither amended nor replaced the Union Resettlement Framework proposal. Instead, the Migration Pact urges member states in the Council and the European Parliament to "conclude swiftly negotiations" on the Framework regulation.[24] It also invites member states to formalise their resettlement pledges from 2022 onward with the intention to "confirm the EU's global lead".[25]

Hence, rather than offering a "change in paradigm", as the Commission described it, the Migration Pact consolidates the "contained mobility" approach.[26] It does so by framing resettlement as integral to the EU's "comprehensive approach to migration". This is particularly the case when outlining the EU's cooperation with third countries on a variety of migration-related areas. As part of a comprehensive approach, creating legal pathways to protection is one out of many priorities in the toolbox for engaging with third countries outlined in the Migration Pact. Other priorities include readmission and addressing the root causes of displacement. It thereby further integrates resettlement into a wider set of policy objectives that "are not inherently opposed to one another but generate tensions upon their implementation".[27]

20 European Commission (2016). Proposal for a regulation establishing a Union Resettlement Framework. 2016/0225 (COD).
21 Bamberg, Katharina (2018). The EU Resettlement Framework: From a humanitarian pathways to a migration management tool. Discussion Paper. European Policy Centre (EPC).
22 European Commission (2016). Proposal for a regulation establishing a Union Resettlement Framework. 2016/0225 (COD).
23 European Commission (2016). Proposal for a regulation establishing a Union Resettlement Framework. 2016/0225 (COD).
24 European Commission (2020). Communication on a New Pact on Migration and Asylum. COM(2020) 609 final.
25 European Commission (2020). Communication on a New Pact on Migration and Asylum. COM(2020) 609 final.
26 Garcia Andrade, Paula (2020). EU cooperation on migration with partner countries within the New Pact: new instruments for a new paradigm? EU immigration and Asylum Law and Policy – Odysseus Network.
27 Leboeuf, Luc (2020). Legal Pathways to Protection: Towards a Common and Comprehensive Approach? EU immigration and Asylum Law and Policy – Odysseus Network.

In the absence of a legislative framework to steer harmonisation, the Migration Pact outlines three measures through which the Commission intends to coordinate member state practices. First, the Commission points to its financial instruments for supporting implementation of resettlement pledges. This includes a payment of 10.000 EUR per person resettled from priority countries and 6.000 EUR for other resettlements under the Asylum, Migration and Integration Fund (AMIF) (Recital 16). The Commission further points to the 2021-2027 Asylum and Migration Fund (AMF) as a resource for resuming resettlement efforts following the coronavirus pandemic (Recital 21). Second, the recommendation stresses the relevance of operation support offered by the European Asylum Support Office (EASO) in organising "remote interviewing or dossier resettlement" (Recital 19) and through the European Resettlement Support Facility in Turkey (Recital 22).[28] Third, the Commission encourages member states to use the Resettlement and Humanitarian Admissions Network for "information sharing and peer learning" (Recital 22).

In addition to traditional resettlement, the Migration Pact introduces the idea of a "European Model of community sponsorship" with the intention to increase the number of refugee admissions.[29] Although there is no settled definition of community sponsorship, it can be described as "a modality of welcoming asylum seekers based on the shared responsibility of private actors and public authorities".[30] Several EU member states have over recent years set up sponsorship schemes. These can either be linked to complementary pathways or be incorporated into existing resettlement programmes.[31] For example, France developed a so-called "humanitarian corridors" programme with an annual quota for 500 refugees.[32] The programme is run by faith-based organisation which identify beneficiaries and are subsequently responsible for organising travel, housing and integration support of beneficiaries.

The proliferation of pilot projects, as well as the attention given to sponsorship both in the Global Compact and in the Migration Pact have raised expectations that community sponsorship could offer "a potential solution to the dismal global refugee situation".[33] And while sponsorship schemes indeed bear much potential, both in scaling up refugee admission and in creating a positive narrative around refugee admission, there are also risks. Given that community sponsorship involves a (partial) transfer of responsibilities from the state to private actors, such risks revolve less around the strategic use of sponsorship for a "contained mobility" approach. Instead, they refer mostly to the inherent flexibility of sponsorship schemes that give states considerable leeway in the design of programmes. For example, the Migration Pact repeatedly stresses the added value of community sponsorship in strengthening the integration process of refugees. Similar to the proposed Resettlement Framework regulation, an overly due focus on integration outcomes may, however, risk prioritising candidates with certain skill sets over more vulnerable refugees. This is a particular concern when community sponsorship does not offer additional pathways to protection but is instead integrated into existing resettlement programmes where candidates would thus compete for the same admission places. The flexibility of community sponsorship schemes hence necessitates introducing certain safeguards as to the protection status of beneficiaries and non-discriminatory selection criteria.

28 European Commission (2020). Recommendation on legal pathways to protection in the EU. C/2020/6467.
29 European Commission (2020). Communication on a New Pact on Migration and Asylum. COM(2020) 609 final.
30 Duken, Carlotta & Rasche, Lucas (2021). Towards a European Model for Community Sponsorship. Policy Brief. Jacques Delors Centre.
31 Duken, Carlotta & Rasche, Lucas (2021). Towards a European Model for Community Sponsorship. Policy Brief. Jacques Delors Centre.
32 European Resettlement Network (2018). Towards a Private Sponsorship Model in France. Feasibility Study.
33 Feith Tan, Nikolas (2020). Community Sponsorship, the Pact and the Compact: Towards Protection Principles. ASILE Forums.

4. A twofold approach for the French EU Council Presidency

Setting up a resettlement scheme for refugees displaced by the Afghanistan crisis requires immediate action. It would therefore be sensible to implement the resettlement efforts announced on 13 December in another ad hoc manner, rather than waiting for negotiations on the Union Resettlement Framework to be concluded. Whereas it remains unlikely for resettlement to become a political flagship of the Presidency, this is not necessarily a disadvantage. Instead, a less politicised approach can focus on solving technical issues to make progress on enhancing member states' efforts to substantiate their resettlement pledges. With that in mind, the French EU Council Presidency should pursue a twofold approach when it comes to enhancing member states' efforts to establish safe and legal pathways to protection.

First, the French government should encourage other member states in the Council to make their pledges additional to previously existing resettlement schemes. For example, as part of the Commission's announcement on 13 December, Germany's commitment merely re-confirmed previous resettlement pledges. A resettlement scheme for displaced Afghans based on additional pledges would help underline the EU's ambition to claim a leadership role on resettlement. To support member states in scaling up existing resettlement programmes or setting up new schemes, the French EU Council Presidency can make use of the instruments laid out in the Migration Pact. For example, it could persuade member states to make use of the EU's existing resettlement infrastructure, such as EASO's Resettlement and Humanitarian Admission Network, which can serve as a platform for horizontal dialogue between traditional resettlement countries and newcomers in order to share best practices. The recent crisis in Afghanistan has further worsened a situation of protracted displacement for many Afghan refugees in the region. An ad hoc scheme should therefore pave the way for the EU's longer-term commitment to resettle from the region. This also requires ensuring sufficient financial support to the UNHCR in order to establish and maintain the necessary resettlement infrastructure in countries like Pakistan or Iran.

Second, the French EU Council Presidency should invest its political weight to move negotiations on the Union Resettlement Framework forward. In the past, external crises have often driven the EU to corroborate its resettlement efforts. This could be similar with regard to the Afghanistan crisis. The main objective for establishing a common resettlement framework should be to counterweigh an otherwise restrictive EU migration policy that is mostly directed at the "non-admission" of refugees and asylum seekers.[34] For that to happen, member states need to increase their annual resettlement pledges. Further, the European Parliament and Council should agree on a better balance between humanitarian and migration management priorities in the proposed regulation establishing a Union Resettlement Framework.

Over the next six months, the French government should therefore invite member states to revisit the proposal's emphasis on third country arrangements. This does not necessarily imply that member states should entirely abandon cooperation with third countries. Instead, they should reconsider under which circumstances cooperation is beneficial for all three parties involved: migrants, the EU, and third countries. In particular, this concerns the plan to prioritise resettlement from third countries that cooperate with the EU on migration management. Not only does such a prioritisation distort the principle that resettlement should benefit the most vulnerable refugees. The coupling of selective refugee admission with outsourcing border management has in the past manoeuvred the EU into a vulnerable position in which third countries have repetitively used migrants as a means to assert pressure on the EU.

Lastly, the French Council Presidency should ensure that the inclusion of humanitarian pathways into the proposed Resettlement Framework helps widening the range of admission channels. To that end, humanitarian admission programmes should primarily be set up in a complementary

34 Carrera, Sergio & Cortinovis, Roberto (2019). The EU's Role in Implementing the UN Global Compact. Contained Mobility vs. International Protection. CEPS.

manner to traditional resettlement. This also concerns setting up a European model for community sponsorship. Rather than competing for limited resettlement spaces with the most vulnerable refugees, community sponsorship can be of added value when its flexible selection criteria are used to increase the portfolio of refugees who are being offered a safe pathway to protection in the EU.