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THE EU'S RELOCATION PUZZLE:
EXPLORING WAYS OUT OF THE SOLIDARITY IMPASSE

Executive Summary

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With the EU's current institutional cycle coming to an end, it is time to take stock of one of the Union's major priorities during the current legislative period: revising the Common European Asylum System (CEAS). Despite negotiations lasting since 2016, the envisioned reform is out of reach. In particular the objective to revise the Dublin Regulation is hamstrung by a 'relocation puzzle'. The repercussions of a persisting deadlock in the negotiations are exemplified by the perpetual wrangle among member states over the disembarkation and transfer of migrants rescued in the Mediterranean.

By analysing four major proposals to reform the Dublin regulation, this policy paper argues that **the impasse in Dublin negotiations results from two major points of contention on the relocation of asylum seekers.** While the four proposals are at odds as to establish a *permanent* or a *temporary* relocation mechanism, they equally disagree as to whether solidarity measures should be *mandatory* or *voluntary*. Given the rigorous opposition of Visegrad countries against a binding relocation scheme, the Dublin negotiations have reached a solidarity impasse. Under the current circumstances, a compromise along the lines of 'flexible solidarity' would constitute the lowest common denominator among the four proposals.

With no immediate compromise in sight and the prospect of a rather unambitious flexible solidarity looming, this policy paper argues that it is necessary to **complement the stalled negotiations for a longer-term reform of the Dublin rules with short-term measures** that respond to the urgent situation in the Mediterranean. To that end, this policy paper proposes a common Franco-German initiative that charts out a pragmatic way forward and addresses the humanitarian crisis in the Mediterranean. Elaborating on the frequently mentioned idea to establish a vanguard group of member states for the relocation of asylum seekers, this paper suggests combining such a 'coalition of the committed' with measures including all 28 EU member states. The proposed Franco-German initiative should thus be built on two aspects:

- Pushing for a search and rescue operation under the European Border and Coast Guard (EBCG) to save lives in the Mediterranean.

- Fostering a 'coalition of committed' member states that establish among themselves a set of binding rules for the relocation of rescued asylum seekers.
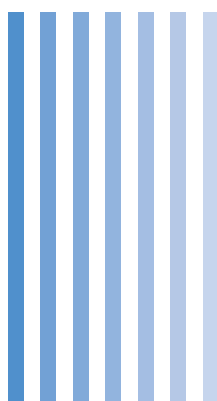
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1 . INTRODUCTION

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As the current European Commission is leaving office, its objective to establish a "fully efficient, fair and humane asylum policy" remains out of reach.[1] Similarly, the European Council's strategic objective to better manage "all aspects of migration" has hardly been achieved.[2] Instead, the past years have shown that few results emerged from this prioritisation. Since 2016, EU institutions are negotiating to revise the EU's Common European Asylum System (CEAS). Yet, the reform process has reached an impasse.

While the topic's salience has slightly declined, a recent Eurobarometer survey found that 69% of EU citizens continue to favour a common EU migration policy.[3] **The pressure for EU institutions to present common solutions thus remains in place for the upcoming legislative period.**

A crucial aspect in this regard will be to revise the existing Dublin regulation, which constitutes a major obstacle in the CEAS negotiations. Previous efforts to reform the Dublin rules have ended in a solidarity impasse, characterised by irreconcilable views on the potential relocation of asylum seekers. While there are other forms to express solidarity, **this 'relocation puzzle' threatens to erode the EU's political cohesion.**[4] It also has severe repercussions for the situation of migrants, as member states struggle to move past the current ship-by-ship approach for managing the disembarkation and subsequent transfer of asylum seekers rescued in the Mediterranean.

In light of the approaching institutional turnover, this policy paper analyses the four major proposals that were put forward by the Commission, the European Parliament, the Bulgarian and the Austrian Council Presidencies to revise the Dublin rules. It argues that the current reform deadlock results from two major points of contention on the relocation of asylum seekers. First, member states are at odds as to establish a *permanent* or a *temporary* relocation mechanism. Second, they disagree as to whether solidarity measures should be *mandatory* or indeed *voluntary*.

> PREVIOUS EFFORTS TO REFORM THE DUBLIN RULES HAVE ENDED IN A SOLIDARITY IMPASSE

With no immediate compromise in sight, there is a need to complement the stalled negotiations with meaningful short-term measures that tackle the unsustainable situation in the Mediterranean. This paper thus concludes by proposing a Franco-German initiative to chart a pragmatic way out of the solidarity impasse. The proposed initiative combines measures including all member states with a 'coalition of committed' EU countries. While every member state should contribute to establishing a search and rescue operation in the Mediterranean as part of the European Border and Coast Guard (EBCG), a vanguard group of EU countries should commit to binding rules for the relocation of rescued asylum seekers.

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1. European Commission (13 July 2016). Completing the reform of the Common European Asylum System: towards an efficient, fair and humane asylum policy. Press release.
2. European Council (2014). Setting the EU's political agenda.
3. Eurobarometer (November 2018). Standard Eurobarometer 90. European Commission.
4. Another point of contention concerns the period of time that needs to pass until the responsibility for processing an asylum application is passed from the member stare in which a person was first registered, to the country in which the given person is residing. While traditional member states of first arrival would not like to extend that period to more than two years, destination countries in Western and Northern Europe would like to introduce a ten year period.

2 . FOUR PROPOSALS TO SOLVE THE EU'S RELOCATION PUZZLE

The spike in arrival numbers between 2015 and 2017 revealed substantial shortcoming in the CEAS. Member states at the EU's external border, such as Greece and Italy, were overwhelmed by their responsibility to register incoming asylum seekers. However, the 2016 emergency relocation mechanism, which was put in place to allocate responsibilities more evenly, failed to provide relief.[5] By October 2018, only 34,705 out of 98,225 initially pledged relocations have taken place.[6]

To address these shortcomings, the European Commission put forward proposals to reform all seven legislative files of the CEAS in 2016. Reforming the Dublin Regulation has since proven to be particularly difficult. Diverging perceptions as to whether the revised regulation should include a solidarity mechanism for the relocation of asylum seekers manifest the major obstacle behind the EU's relocation puzzle.

The notion of solidarity is enshrined in the EU's primary and secondary law. Art. 80 TFEU states that a system based on solidarity should be implemented through the "fair sharing of responsibility" among EU member states. The Dublin III Regulation currently in force also refers to 'practical solidarity' as a form of cooperation in support of member states facing particular pressure on their asylum system.[7] Yet, the question of **how to implement this "practical solidarity" stands at the centre of the current Dublin deadlock.**

There are currently four major proposals that seek to clearly define solidarity within the framework of reforming the Dublin rules. The European Commission and Parliament each put forward their proposals in 2016 and 2017 respectively, but the member states have thus far failed to agree on a common position in the Council. To facilitate compromise, the Bulgarian (first half of 2018) and Austrian Council Presidencies (second half of 2018) floated their own approaches to reforming the Dublin regulation.

In the following, these four proposals are distinguished according to their differing understanding of solidarity and its adequate implementation. **Two parameters are used to disentangle the proposals:** Firstly, the preference for a *permanent* or for a *temporary* relocation mechanism. Secondly, the distinction between *mandatory* and *voluntary* participation in a potential relocation scheme. Figure 3 summarises the proposals' stance on the abovementioned criteria. In a second step, the chapter discusses which member states would benefit most from the different models, based on migration data from 2015–17.

5. European Commission (2016). European Solidarity: A Refugee Relocation System. Fact Sheet.
6. European Commission (30 October 2018). Member States' Support to Emergency Relocation Mechanism.
7. European Parliament & Council of the European Union (2013). Regulation (EU) No 604/2013 (recast). European Database of Asylum Law.

FIGURE 1 ■ Overview of proposals to reform the Dublin regulation
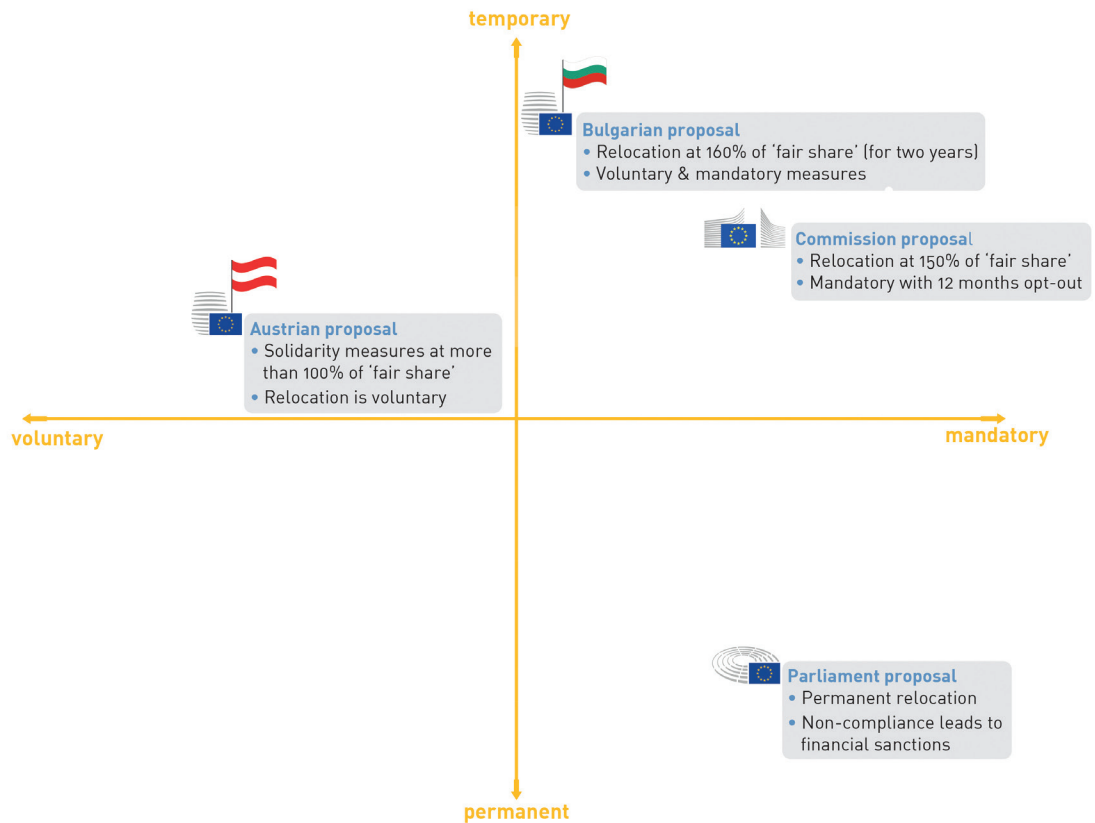
Source: *Author's elaboration of Dublin proposals*

2.1 The Commission Proposal

The Commission proposed a crisis-driven model of solidarity, which applies *temporarily* at times of high migratory pressures.[8] Although the proposal makes it *mandatory* for all member states to participate in the relocation of asylum seekers, it offers a *provisional opt-out* in the form of a financial compensation.

To avoid large numbers of new arrivals leading to a disproportionate allocation of asylum applications, **the Commission Proposal designates a "fair share" of applicants to each member state.** This 'fair share' is based on a country's GDP (50%) and its population size (50%).

Once a member state exceeds 150% of the reference figure attributed to it, the proposed "corrective allocation mechanism" is automatically triggered. In this case, every new applicant arriving in the given member state would be relocated to another EU country. The corrective mechanism would end once actual asylum applications are back to below 150% of the member state's fair share. Member states would be granted the possibility of temporarily opting out of the relocation mechanism for a period of 12 months. After the end of the opt-out period, the member state would have to take part in the relocation mechanism, or make a "solidarity contribution" of EUR 250,000 per refused applicant. The financial compensation would be paid to the member state that instead took in the applicant.

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8. European Commission (2016). COM(2016) 270 final/2.

The Commission Proposal at a glance:

- Temporary relocation at 150% of a member states' 'fair share'
- Mandatory participation (with 12 months opt-out)
- Main beneficiaries (2015–2017): Austria, Bulgaria, Cyprus, Finland, Germany, Greece, Hungary, Italy, Malta, Sweden

2.2 The Parliament Proposal

In line with its role as a co-legislator, the European Parliament (EP) amended the Commission Proposal.[9] It proposed establishing a *permanent* relocation system, which would make it *mandatory* for all member states to participate and penalises non-compliance by limiting access to EU funds. How such funding would be limited as a result of non-compliance is not outlined further in the Parliament Proposal. However, with negotiations for the Multiannual Financial Framework (MFF) already underway, it would be hard to incorporate such demands.

The European Parliament further suggested that asylum seekers undergo an initial registration and screening in the member state in which they first enter the EU. While asylum seekers from countries with low asylum recognition rates would have their claim processed in the member state of first entry, all other asylum seekers would be relocated. **The Parliament's proposal thus largely replaces existing Dublin rules with a permanent relocation mechanism.**

The allocation of asylum seekers across EU member states would be subject to a distribution key similar to that of the Commission. Yet, the European Parliament proposed incorporating an additional criterion to the Commission's distribution key. A preference-matching procedure should take into consideration asylum seekers' country of choice and prevent secondary movements.

The Parliament Proposal at a glance:

- Permanent and preference-based relocation of asylum seekers
- Mandatory participation with financial sanctions via EU budget
- Main beneficiaries (2015–2017): member states of first arrival

2.3 The Bulgarian Proposal

In the first half of 2018, the Bulgarian EU presidency developed a three-phase model, to foster a common position of the member states in the Council.[10] The Bulgarian proposal elaborated the Commission's idea of a *temporary, crisis-driven* model by adding a *sequence of voluntary and mandatory measures,* depending on the level of migratory pressure that a member state is experiencing. The Bulgarian proposal entails three phases:

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9. European Parliament (2017). Draft European Parliament Legislative resolution. (COM(2016)0270 – C8-0173/2016 – 2016/0133(COD). Committee on Civil Liberties, Justice and Home Affairs.
10. Council of the European Union (2018). New Dublin: Reversing the Dynamics. Interinstitutional file.

'Normal circumstances'
Similar to the proposal of the European Commission, the Bulgarian Presidency attributed a hypothetical share of asylum seekers to each member state, based on member states' GDP (50%) and population size (50%). Under the 'normal circumstances' phase – which implies that de-facto asylum applicants remain below a member state's fair share – the current Dublin rules would continue to apply.

'Challenging circumstances'
The 'challenging circumstances' phase would apply when member states received unusually high numbers of asylum applications. The second phase is further divided into two sub-phases:

- The first sub-phase would be automatically triggered once asylum applications in a single member state exceeded its given share (> 100%). The main responsibility to coordinate solidarity measures, which mostly focus on financial and technical support, would lie with the Commission. Participation of other member states is voluntary at this stage.

- The second sub-phase would apply once the number of asylum applications in one member state exceeds 160% of its share. In that case, the main responsibility would shift from the Commission to the Council, which could issue a decision to upgrade already existing solidarity measures and trigger new ones. A possible relocation scheme would be implemented "primarily on a voluntary basis". To that end, a Council Implementing Decision could provide a "last resort" and an "effective guarantee for triggering [relocation]". However, such a decision would have to be adopted through a reinforced qualified majority in the Council, which requires that 72% of EU member states, representing at least 65% of the entire EU population, vote in favour of the decision.[11]

'Severe crisis'
Should de-facto asylum applications exceed 160% of a member state's share for more than two consecutive years, the third, so-called, 'severe crisis' phase would be triggered. Authority would lie with the European Council. Yet, the proposal is rather vague and only refers to "extraordinary measures" which could be taken "depending on the scope and specific characteristics of the crisis at hand". Participation of member states in a possible relocation mechanism would therefore be subject to "guidance from the European Council".

> "
> RELOCATION WOULD
> BE SUBJECT TO
> GUIDANCE FROM THE
> EUROPEAN COUNCIL

The Bulgarian Proposal at a glance:

- Temporary relocation at 160% of 'fair share'
- Sequence of voluntary and mandatory measures
- Beneficiaries (2015–2017): Austria, Belgium, Bulgaria, Cyprus, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Luxembourg, Malta, Sweden

2.4 The Austrian Proposal

The Austrian proposal goes back to a simple two-phase model of solidarity that would only apply *temporarily* and in times of high migratory pressure.[12] While all member states would have to contribute to responsibility sharing exercises in some way, participation in a possible relocation scheme would remain *voluntary*.

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11. See: European Council. Voting Calculator.
12. Nielsen, N. (9 October 2018). Austria EU Presidency seeks 'mandatory solidarity' on Dublin. EU Observer.

The Austrian Council Presidency suggested a mechanism that would minimise changing between different legal and practical phases. Similar to the abovementioned proposals, it is based on the idea that each member state would be attributed a hypothetical share of asylum applicants (50% GDP and 50% population size). However, the Austrian model is reduced to a situation of normal circumstances and a single "solidarity phase", which would be triggered when a member state exceeds 100% of its hypothetical share.

Once a member state is found to be in need of support, the Austrian proposal distinguishes between measures of "direct solidarity" and "indirect solidarity":

> RELOCATION WOULD REMAIN AN ENTIRELY VOLUNTARY OPTION

- Direct solidarity would imply that each member state should contribute to several solidarity measures, while not being obliged to contribute to every single measure. Options include technical, financial and operational assistance, providing return capacities, assistance in joint processing of asylum claims and relocation. Consequently, relocation would remain an entirely voluntary option for member states.

- Indirect solidarity would invite member states to contribute to border management, resettlement or combatting human trafficking. The introduction of such elements, which would lie in the external realm of EU migration policy, are part of the Austrian interest to externalise asylum processing to countries outside the EU and reduce access to asylum in the EU.[13]

The Austrian Proposal at a glance:

- Temporary direct and indirect solidarity measures at 100% of fair share
- Relocation remains strictly voluntary
- Main beneficiaries (2015–2017): Austria, Belgium, Bulgaria, Cyprus, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Luxembourg, Malta, Sweden

2.5. Beneficiaries and positions

Based on the number of asylum applications lodged between 2015 and 2017, **fourteen member states would have benefitted from solidarity measures** outlined in the four reform proposals.

A group of first arrival countries (Italy, Greece, Malta, Cyprus) would have been among the main beneficiaries of the relocation schemes proposed by the Commission, Parliament, the Austrian and Bulgarian Presidencies. Joined by Sweden and Germany, the group surpassed their hypothetical share of 150% and would have thus benefitted from relocation measures under the Commission proposal (see: table 3). Seven member states (Austria, Bulgaria, Cyprus, Germany, Greece, Hungary, Malta) would even have qualified for the parameters of the 'severe crisis' scenario, outlined in the Bulgarian proposal, as they exceeded 160% for a period of two years.

Together with countries such as Belgium, France or Luxembourg – which exceeded at least 100% of their 'fair share' – these member states can be considered to generally support the *temporary* and *mandatory* relocation schemes proposed by the Commission and the Bulgarian Presidency. While countries of first arrival would have also benefitted from the relocation

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[13]. Austrian Federal Ministry of the Interior & Danish Ministry of Immigration and Integration (2018). Vision for a Better Protection System in a Globalised World. Position Paper.

mechanism suggested by the European Parliament, 'mainland' member states tend to remain rather skeptical towards the *permanent* nature of the Parliament's relocation scheme.

Although Austria and Hungary would have benefitted from relocation measures under the Commission and the Bulgarian proposal, both countries continue to reject establishing a mandatory relocation scheme (see: table 3). Instead, Hungary and the other Visegrad countries support the Austrian proposal to make relocation an entirely voluntary aspect among a set of measures that focus on reducing arrival numbers and on externalising asylum processing.

TABLE 1 ▪ **Fulfilment of member states' 'fair share' between 2015 and 2017**

	2015	2016	2017
Austria	333%	164%	171%
Belgium	135%	57%	103%
Bulgaria	179%	179%	60%
Croatia	3%	31%	24%
Cyprus	120%	163%	443%
Czech Republic	7%	7%	12%
Denmark	106%	163%	443%
Estonia	9%	7%	13%
Finland	188%	35%	56%
France	41%	47%	101%
Germany	197%	318%	169%
Greece	60%	246%	509%
Hungary	996%	174%	35%
Ireland	19%	13%	29%
Italy	55%	84%	322%
Latvia	9%	10%	18%
Lithuania	8%	8%	19%
Luxembourg	81%	72%	147%
Malta	189%	202%	322%
Netherlands	86%	41%	64%
Poland	8%	19%	14%
Portugal	4%	7%	15%
Romania	4%	6%	27%
Slovakia	3%	1%	3%
Slovenia	6%	31%	61%
Spain	14%	15%	62%
Sweden	496%	91%	149%
United Kingdom	20%	21%	35%

<100%	
100%–160%	
>160%	

Source: Eurostat
Note: Calculations are made based on the Commission's proposed 'fair share' taking into account member states' population size (50%) and GDP (50%).

Considering the balance of power in the Council, a proposal based on a *temporary,* crisis-driven and *mandatory* relocation scheme would likely pass by qualified majority (QMV). However, experiences from the 2015 emergency relocation mechanism render the use of QMV an unpopular tool. Slovakia and Hungary, which like the Czech Republic and Romania voted against establishing the emergency mechanism in the Council, later tried to annul the decision by turning to the European Court of Justice. Although their claim was eventually dismissed, the countries undermined the mechanism's effectiveness by not, or barely, contributing to its implementation.[14] As argued above, only 35.3% of initially pledged relocations eventually took place under the emergency scheme.

EU institutions hence lack the means to enforce implementing the relocation of asylum seekers against the will of the member states. In light of the problematic implementation of the emergency relocation mechanism, **a renewed use of QMV to push through a decision in the Council is unlikely.** Moreover, an expert survey from the European Council on Foreign Relations (ECFR) found that 48% of EU countries favour a reform that includes all member states.[15] Only 20% of EU countries favour a 'coalition of member states' and a mere 13% advocate moving forward among a 'legally bound core of member states'.

The Dublin negotiations thus remain stuck in a deadlock. As figure 3 shows, the majority of reform proposals stipulate a temporary, crisis-driven relocation mechanism. While moving towards a system of *flexible solidarity* appears as a likely compromise, such a system merely represents the lowest common denominator among the four proposals discussed above. Member states' preferences remain particularly contradictory, which raises the question whether new formats of cooperation are needed to move out of the current solidarity impasse.

> " THE MAJORITY OF REFORM PROPOSALS STIPULATE A TEMPORARY, CRISIS-DRIVEN RELOCATION MECHANISM

3 . A PRAGMATIC WAY OUT OF THE SOLIDARITY IMPASSE

Ahead of the recent European Parliament elections on 23–26 May 2019, none of the four proposals was able to deliver a breakthrough in the negotiations to reform the Dublin Regulation. **Solving the EU's relocation puzzle thus remains on the political agenda of EU institutions in the next legislative cycle.**

An ideal reform of the Dublin rules would include all member states, since every EU country is a signatory of the Geneva Refugee Convention and subscribes to the common values of the EU. Given the current impasse in negotiations, it is unclear how long it will take to forge such a compromise in the Council.

The fallout of an EU asylum system that lacks an effective solidarity measures can be seen in the case of Italy, where the country's Interior Minister, Matteo Salvini, frequently uses the absence of a relocation mechanism to enter into a standoff with other EU countries over the disembarkation of rescued asylum seekers. The resulting ship-by-ship approach, with which

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14. Kroet, C. (6 September 2017). ECJ rejects Slovakia, Hungary refugee challenge. Politico.
15. Knaus, G. (2017). In Search of a Credible Asylum Policy. European Council on Foreign Relations (ECFR).

rescued migrants are relocated to other EU countries, has led to a humanitarian crisis in the Mediterranean and jeopardises the political cohesion among member states.

With no immediate compromise in sight and the prospect of a rather unambitious flexible solidarity looming, it is necessary to complement the stalled negotiations for a longer-term reform of the Dublin rules with short-term measures that respond to the urgent situation in the Mediterranean. Such a measure could lie in the pragmatic combination of an obligatory yet less ambitious commitment, including all EU member states, with a more ambitious and binding initiative driven by only a group of member states.

An idea in that regard, which has been floated by analysts and policy makers, is to establish a vanguard group of member states for the relocation of asylum seekers.[16] Among others, German Chancellor Angela Merkel called for a "coalition of the willing" ahead of the European Council in June 2018 in case no solution among the 28 member states was found.[17] Despite being mentioned frequently, there is a need to discuss how this coalition could look like in more detail and who the drivers behind such an initiative could be.

> IT IS NECESSARY TO COMPLEMENT THE STALLED NEGOTIATIONS WITH SHORT-TERM MEASURES

3.1 Wanted: Franco-German leadership

In April 2019, Germany's Interior Minister, Horst Seehofer, announced **a common Franco-German initiative to be released after the European Parliament elections** in order to further harmonise EU asylum policies and better protect the Union's external borders.[18] This initiative should serve as a starting point to provide the necessary impetus to the current solidarity impasse.

France and Germany have both, the political weight and increasingly similar positions, to implement the rigorous but humane migration policy outlined by French President Emmanuel Macron.[19] In fact, the Seehofer initiative has been the last in a series of complementary statements from the two countries. In June 2018, Macron echoed Merkel's demand for a European solution "whether that is cooperation among 28 or among several countries that decide to move forward together".[20] At a Council meeting in December 2018, the two countries signalled their readiness to consent to "alternative measures of solidarity" as part of the revised Dublin rules, such as making financial contributions instead of relocating asylum seekers.[21] The position paper was a sign that both countries are willing to mediate between the opposing blocs. Both leaders have further called for a "genuine European border police" and a common EU migration policy that "protects both its values and its borders", as Macron summarised it in his recent letter to the European public.[22]

These statements describe the parameters of a proposed Franco-German initiative, which should strike a necessary balance between focussing on borders and values. The Franco-Ger-

16. See for example: Besch, S., Mortera-Martinez, C. & Scazzieri, L. (2018). Merkel's Migration Deal: Less than the Sum of its Parts. Centre for European Reform (CER); or Kreilinger, V. (2015). Proposal to use Enhanced Cooperation in the Refugee Crisis. Jacques Delors Institut – Berlin.
17. Escritt, T. (28 June 2018). Migration challenge is make-or-break for EU, says passionate Merkel. Reuters.
18. Wiegel, M. (5 April 2019). Seehofer plant Initiative mit Frankreich. Frankfurter Allgemeine Zeitung (FAZ).
19. Macron, E. (26 September 2017). Initiative for Europe. Speech at the Sorbonne.
20. The Straits Times (25 June 2018). France, Germany push for deal to end migration row. AFP.
21. Euractiv (7 December 2018). Host migrants or pay, France and Germany propose. Euractiv.com.
22. Koenig, N., Guttenberg, L. & Rasche, L. (2018). Merkel on EU reform: a decryption. Jacques Delors Institute; Macron, E. (4 March 2019). For a European renewal. Élysée.

man initiative, announced by Seehofer, should include **two measures that can complement the stalled Dublin negotiations** and provide the necessary response to the unfolding crisis in the Mediterranean:

i. Deploy the European Border and Coast Guard (EBCG) with a robust mandate to conduct search and rescue operations in the Mediterranean

ii. Establish legally binding rules for the relocation of rescued asylum seekers among a 'coalition of the committed' member states

3.2 Deploy the EBCG with a search and rescue operation

As a first measure under the common initiative, France and Germany should propose deploying the European Border and Coast Guard (EBCG) with a mandate to conduct search and rescue (SAR) activities in the central Mediterranean. Article 4 of the 2016 regulation establishing the EBCG has already made SAR a key component of the European integrated border management (IBM) strategy that guides EBCG operations.[23] EU member states should now strive to implement a comprehensive IBM strategy fully. This should include **a permanent and robust mandate for search and rescue operations in the central Mediterranean,** to be incorporated into the EBCG operational plan.

Although arrival numbers have fallen drastically, the central Mediterranean route remains deadly. Following the de facto suspension of the EU's naval operation Sophia in March 2019 and the clamp down on humanitarian NGOs, there is an eminent need for a European presence in the Mediterranean.[24] Strengthening search and rescue activities in the Mediterranean should thereby not be limited to the territorial waters of the EU, as is currently the case under Operation Themis, but must include patrolling international waters closer to the Libyan coast.[25]

Thus far, politicians have justified the limitation of search and rescue activities by arguing that the presence of such operations would constitute a so-called 'pull factor', encouraging ever more migrants to cross the Mediterranean.

> EMPIRICAL EVIDENCE SHOWS THAT THE 'PULL FACTOR THEORY' IS FLAWED

However, empirical evidence shows that the 'pull factor theory' is flawed. Research from the University of Oxford compared periods with low SAR activities to those with relatively high SAR activities between 2013 and 2016 and found that "arrivals were highest in the low-SAR period".[26] A report by *Médécins Sans Frontières* (MSF) further noted that maritime safety improved by 59% at the time when search and rescue operations were in place.[27] Moreover, the University of London's 'forensic architecture' programme showed that the relative increase of Mediterranean sea crossings throughout 2014 and 2016 was no result of either state-led or humanitarian search and rescue missions operating closer to the Libyan coast.[28] Instead the department's research highlighted the impact of worsening economic and political crises

23. European Parliament & Council of the European Union (2016). REGULATION (EU) 2016/1624. Official Journal of the European Union.

24. Euractiv (27 March 2019). EU to end ship patrols in scaled down Operation Sophia. Euractiv.com.

25. European Council. Saving lives at sea and targeting criminal networks. Last retrieved on: 24 May 2019.

26. Steinhilper, E. & Gruijters R. (2017). Border Deaths in the Mediterranean: What we can learn from the latest data. University of Oxford. Border Criminologies.

27. Arsenijevic, . et al. (2018). Defending Humanity at Sea. Médécins Sans Frontières (MSF).

28. Heller, C. & Pezzani, L. et al. (2016). Death by rescue: the lethal effects of non-assistance at sea. Goldmith's University of London. Forensic Oceanography; Heller, C. & Pezzani, L. et al. (2018). Blaming the rescuers. Goldmith's University of London. Forensic Oceanography.

in Sub-Saharan Africa as well as the deterioration of the Syrian civil war on the number of attempted sea crossings.

Establishing a search and rescue operation under the EBCG could thus set an example for fact-based policymaking. Organizing search and rescue through the community method would further build on the member states' common interest of seeking to strengthen European border management and cater to their wish of finding a solution that incorporates all member states. It would thus guarantee that saving lives at sea is handled as a common European responsibility and ensure that this is done subject to the rule of law and in full respect of human rights.

3.3 Establish a 'coalition of the committed' to relocate rescued asylum seekers

Strengthening search and rescue capacities in the Mediterranean only makes sense if there are reliable rules for the disembarkation and relocation of rescued asylum seekers. As a second measure, France and Germany should therefore **forge an alliance of particularly committed member states** that establish among themselves a binding mechanism for the relocation of rescued asylum seekers.

Such a 'coalition of the committed' already exists in practice. A group of member states, among them France, Germany, the Netherlands, Portugal, Sweden, Luxembourg and others, have shown their willingness to relocate asylum seekers under the previous emergency mechanism and through recent ad hoc transfers of rescued asylum seekers. The objective of the proposed 'coalition of the committed' would be to transform the existing *de facto* alliance of member states into a *de jure* coalition.

> CONCLUDE A LEGALLY BINDING AGREEMENT TO RELOCATE ASYLUM SEEKERS RESCUED IN THE MEDITERRANEAN

To do so, the group of member states should conclude a legally binding agreement expressing their intent to relocate asylum seekers rescued in the Mediterranean. The agreement should comprise three elements: clear and accountable disembarkation rules (i), a binding relocation mechanism (ii), and broadening the coalition to include municipalities across the EU (iii). Earlier propositions of such elements, among others from the European Council for Refugees and Exiles (ECRE), are reflected and incorporated into the following proposal.[29]

> *i. Clear and accountable disembarkation rules*

The agreement should complement existing EU asylum legislation to guarantee that the reception and relocation of rescued asylum seekers is in line with the legal safeguards enshrined in the CEAS.

In practice, that implies rescued migrants being fingerprinted, identified and informed about the possibility of claiming international protection immediately after disembarkation. National authorities should be assisted, upon request, by staff from the European Asylum Support Office (EASO). Each person who applies for asylum has his or her Dublin interview held in the member state of disembarkation. That way it is ensured that vulnerability and best interest assessment, as well as potential claims for family unity and special considerations for unaccompanied minors, are taken into account.

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29. European Council for Refugees and Exiles (ECRE) (2019). Relying on Relocation. Policy Paper 6.

ii. A binding relocation mechanism

The centrepiece of the envisioned agreement would be a binding relocation mechanism, which applies to all asylum seekers arriving in the EU as a result of search and rescue activities or through other sea arrivals. The mechanism should be based on a **mandatory relocation quota,** which assigns a certain number of asylum seekers to each signatory of the agreement. A reference key, based on member states' GDP (40%), population size (40%), unemployment rate (10%) and the share of previously registered asylum applications (10%) is applied to every group of new arrivals. Calculating the share that each member state has to relocate is to be done with assistance from EASO.

As suggested by the ECRE, member states should make the 'humanitarian clause' under Article 17(2) Dublin III their standard procedure for organising the relocation process. In line with the legislative provisions of Article 17(2), the member state of disembarkation issues a 'take charge' request for each asylum seeker to be relocated, which the other participating member states accept until their calculated share is reached.

iii. Broadening the coalition

For the proposed relocation mechanism to work, it will be necessary to sufficiently incentives participation in the Franco-German initiative. One option to do so would be a **broadening of the coalition to include particularly committed municipalities.** Forging a multi-level coalition would account for the fact that municipalities across the EU, among others in Naples, Livorno and Palermo, have already offered to host rescued asylum seekers and demanded a more active role in EU migration policies.[30]

As outlined in a recent study from the Heinrich Boell Stiftung, EU funding for municipalities offering to integrate relocated asylum seekers should be enhanced.[31] The relevance of municipalities in the process of integrating asylum seekers is already accounted for in the Commission's proposal for the forthcoming Multiannual Financial Framework (MFF), which plans to make funding for integration purposes available to municipalities via the Asylum and Migration Fund (AMF), as well as through the EU's social and regional development funds (ESF+ and ERDF).

In order to generate additional financial resources to incentivise the participation of municipalities in the envisioned coalition, the Commission should balance its proposed allocation of funds under the migration heading in the next MFF more evenly.[32] Out of the EUR 34.9 billion planned for the migration heading, EUR 21.3 billion are currently to be dedicated to border management priorities, while asylum and integration receive a 'mere' EUR 10.4 billion. Creating sufficient financial incentives to participate in the 'coalition of committed' would hence require adjusting the Commission Proposal to include a 50/50 allocation of funds for border management and asylum priorities.

30. Schwiertz, H. (3 April 2019). Safe harbours: the cities defying the EU to welcome migrants. Open Democracy; Balmer, C. (3 January 2019). Naples mayor offers to welcome in stranded NGO migrant boat. Reuters; Seebrücke (2019). Offener Brief an die Bundeskanzlerin – drei Forderungen aus der Zivilgesellschaft. Seebrücke.

31. Bendel, P. et al. (2019). Der Weg über die Kommunen. Policy Paper. Heinrich Boell Stiftung.

32. Rasche, L. (2018). More Money, Fewer Problems? Policy Paper. Jacques Delors Institute.

4 . CONCLUSION

Following the European Parliament elections, the EU institution's incoming staff faces a tableau of key challenges. Delivering on the Commission's promise of a "fully efficient, fair and humane" asylum policy will remain one of them.

Two major points of contention on the *permanent* or *temporary* and *mandatory* or *voluntary* nature of a proposed relocation system have thus far prevented reforming the Dublin regulation. In order to move out of the current impasse, it will thus be crucial to solve the EU's relocation puzzle. Not only does the struggle to agree on adequate solidarity measures hamper a 'fully efficient' asylum policy. Its repercussions – expressed in the lack of substantial search and rescue activities and the perpetual wrangle over transferring rescued asylum seekers – also undermine the 'humane' character of a common European migration policy.

As the current trajectory of the Dublin negotiations points towards a voluntary, flexible solidarity, there is a need to complement the stalled negotiations with short-term measures. The new legislative cycle should therefore start with **a common Franco-German initiative that proposes a pragmatic approach to solve the EU's relocation puzzle.** As a test case for their common leadership and for their ability to shape a sensitive policy field, France and Germany should propose a mix of binding EU28 measures, complemented by a 'coalition of committed' member states.

Such an initiative could build on France and Germany's explicit demand for the EBCG to be bolstered. It would further **address the humanitarian imperative of saving lives at sea.** With a deteriorating situation in Libya and the quasi suspension of Operation Sophia, the need for a European search and rescue operation in the Mediterranean has become ever more evident. The above-mentioned proposal allows turning the *de facto* alliance of member states that have participated in the recent ad hoc transfers of rescued asylum seekers into a *de jure* 'coalition of the committed'.

As long as a sustainable relocation mechanism among all EU member states remains attainable, moving forward with a limited number of EU countries represents only a second-best option. The envisioned coalition should therefore remain open for other member states and municipalities to join. However, the persisting deadlock in the Dublin negotiations and the humanitarian crisis in the Mediterranean underline the need for new models of cooperation to address the existing solidarity impasse.

> DELIVERING A 'FULLY EFFICIENT, FAIR AND HUMANE' ASYLUM POLICY REMAINS A KEY CHALLENGE

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