



BALTIC JOURNAL OF LAW & POLITICS

A Journal of Vytautas Magnus University

VOLUME 9, NUMBER 1 (2016)

ISSN 2029-0454



Cit.: *Baltic Journal of Law & Politics* 9:1 (2016): 93–123

<http://www.degruyter.com/view/j/bjlp>

DOI: 10.1515/bjlp-2016-0005

EU REFUGEE RESETTLEMENT: KEY CHALLENGES OF EXPANDING THE PRACTICE INTO NEW MEMBER STATES

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Received: May 06, 2016; reviews: 2; accepted: July 11, 2016.

ABSTRACT

Refugee resettlement is not new to EU member states. But the EU only accounts for about 10 percent of resettlements globally. Before the 2015 European Council decisions to relocate about 160,000 persons from Italy and Greece only half of EU Member States participated in resettlement programs. Relocation of refugees has emerged as a new form of resettlement as an EU reaction to the growing refugee influx. It is likely to become a permanent part of Common European Asylum Policy. The refugee emergency has intensified discussions about the application of the solidarity principle to pressure member states not

yet engaged in relocation to contribute to the joint efforts of the EU. But this has created serious political controversy in many of the new (eastern) member states.

The article outlines key elements of refugee resettlement and relocation that have recently emerged in the EU and discusses the prerequisites for the sustainable use of this tool in an unfavorable political and unclear legal environment, with particular focus on new member states. The main goal of the article is to identify factors that need to be considered for the design of sustainable resettlement and relocation programs, considering the aspects of political salience, legal conditions, burden-sharing, and member states' capacity. The case study of Lithuania presented in this article suggests that such programs need to be carefully considered and adequately funded as there are ample pitfalls which can quickly discredit the idea among the citizens.

KEYWORDS

Refugee resettlement, refugee relocation, EU member states, asylum policy, policy capacity, solidarity principle

INTRODUCTION

Refugee resettlement is a procedure whereby asylum seekers and refugees are transferred from the country of first asylum to a country where their safety and security could be provided on a permanent basis.¹ The transfer of refugees from one EU Member State (MS) to another is referred to as intra-EU relocation. Relocation is a solidarity mechanism used to respond to emergencies. Relocation is a particular form of resettlement, which previously was used only in exceptional circumstances. However, over the coming years in the EU it may become a dominant form of solidarity in the burden-sharing of the influx of refugees. Even though the numbers of resettled refugees in the EU are rising, the EU contribution to the global resettlement statistics constituted only 8.3 percent in 2012 and 9 percent in 2013.² 14 member states of the EU implement annual resettlement programs. Among them countries which joined the EU between 2004 and 2013 are in the minority: Czech Republic, Hungary, and Romania. The ratio of the two regions of the EU in this regard is 3/13 vs. 11/15. However, more recently another five new EU MS have joined the relocation initiative: Bulgaria, Latvia, Lithuania, Poland, Slovakia and Slovenia. Some EU countries have never been involved in any of these activities.³

There are several resettlement models in the EU: (i) *ad hoc* resettlement and (ii) program resettlement. The difference between the two is that the latter is based on a quota system, while the former is applied to respond to specific challenges and quotas do not apply. A mixed model which would include both mechanisms also exists. A recent surge of migration to the EU via the Mediterranean has spurred political action for a greater sharing of the burden of migration among the MS as Italy and Greece are struggling to manage the influx of refugees. Thus the pressure on the MS not participating in resettlement schemes or those perceived as not contributing their fair share has increased. The launch of the European Commission Recommendations for a Voluntary Humanitarian Admission Scheme and for a European resettlement scheme in 2015, and the EU agreement reached with Turkey in March 2016, is proof of the increasing need for resettlement and other legal ways for refugees to enter the EU.

¹ However, as *Nakashiba* claims, there is no clear definition of resettlement and it has only loose support from the legal instruments (Haruno Nakashiba, "Clarifying UNHCR Resettlement. A few considerations from a legal perspective," *Research paper* No. 264 (November 2013): 1).

² ERN (European Resettlement Network), "Introduction to resettlement in Europe" // <http://www.resettlement.eu/page/introduction-resettlement-europe>.

³ *Ibid.*

Immigration to Europe has been at the top of the political agenda for decades⁴, and there is copious research on the policy, politics, and socio-economic aspects of immigration to Europe. But a pan-European action that got underway in 2014 raises a series of legal questions which the existing literature does not address. Only a few studies are available overall, and before 2013 none have analyzed resettlement mechanisms in relation to legal frameworks that exist in the EU.⁵ Additionally, there are a number of EU MS that do not carry out resettlement activities or their experience is limited to very small numbers of refugees. The institutional and legal capacity to conduct resettlement is lacking. On the one hand there is a need for a carefully considered process of developing these capacities, on the other the lack of capacity cannot be made an excuse for not engaging in the management of refugee emergencies, because greater commitment is precisely what creates capacity. In this article we outline the elements of the political and legal context in which a Europe-wide refugee resettlement (relocation) is being rolled-out, identify instances of good practice that could be applied in the new EU MS, and outline key challenges and prerequisites that need to be met in order to achieve successful and sustainable resettlement (relocation) programs.

1. ISSUES ASSOCIATED WITH THE APPLICATION OF THE SOLIDARITY PRINCIPLE IN THE DEVELOPMENT OF A EUROPEAN ASYLUM POLICY

When times in the EU are good, solidarity is something that may well be used as a synonym for 'synergy', 'economy of scale' and 'win-win outcomes'. However, once the need to address major policy challenges arises, solidarity may quickly be given connotations of 'injustice', 'bullying', and 'arm-twisting'. And in the latter situations all Europeanization needs to be very carefully considered, with resettlement (relocation) being no exception.

The key policy document that governs how the EU is supposed to tackle flows of asylum seekers among the Member States is the so-called Dublin III Regulation (No. 604/2013). However, in August 2015 Germany has publicly stated that: the "Dublin Procedures <...> are currently as far as possible factually not carried out <...>"⁶. This statement, explicitly retracted in November 2015, was widely portrayed by the media as the trigger for the start of a massive movement of people which is now labelled as the 'European migrant crisis'. Although in our estimation this event does not amount to a crisis and is better described as an

⁴ Gil S. Epstein and Shmuel Nitzan, "The struggle over migration policy," *Journal of Population Economics* 19:4 (2006).

⁵ Haruno Nakashiba, *supra* note 1: 1.

⁶ Felicity Capon, "Germany drops EU rule in order to welcome Syrian asylum seekers," *Newsweek*. (August 2015) // <http://europe.newsweek.com/germany-drops-eu-rule-order-welcome-syrian-asylum-seekers-332020>.

emergency, because the numbers and duration of elevated flow of refugees has not reached numbers that the EU as a whole would not have the capacity to deal with. From the background of ever-growing refugee flows coming over the Mediterranean, Greece and Italy requested that a relocation instrument be applied within the EU in early 2014. In May 2015 relocation was included as a provision of the European Agenda on Migration in the section on immediate action⁷, and a decision was only reached in September 2015⁸, well after the German statement on not applying the Dublin III regulation. The plan to relocate 120,000 (later raised to 160,000) persons in the context of migration flows that were becoming multiple-times larger by the month seemed a far cry from the 2014 EC President's 5-point statement, the first of which called for the creation of a Common Asylum System.⁹

The EC communication on this agenda stressed two important policy principles: solidarity and greater integration. The need for both is motivated by the unprecedented volume of people since the WWII, which no individual member state can tackle and the overflow with migrants does risk undercutting fundamental principles of the Union, such as the free movement of people.

The decision to introduce a relocation program, albeit limited in time and scope, is a very contentious issue both politically and academically. Some countries, most notably Hungary, refused to join the relocation program; Hungary is in the process of carrying out a referendum in October 2016 on whether to accept any future European Union quota system for resettling migrants without the consent of the parliament.¹⁰ In academic writing the problems of European asylum policy have been known for decades. The EU's integration often runs into conflicts over jurisdiction between the EU and MS levels of governance. However, the EU is a union of 28 sovereign nations, and a state's ability to decide who is a citizen, and who can enter its territory, are at the core of the notion of sovereignty. Most new MS are particularly clear, even at the level of constitutional regulation, about their national myths, which often marginalize and exclude non-natives. The ability to control migration flows is part of what constitutes these countries' explicitly stated *raison d'être*. This and similar observations lead some to believe that attempts to force mathematically calculated relocation quotas on MS, instead of building a closer Union, risks undermining the entire European project. And alternative

⁷ *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European Agenda on Migration*, COM (2015) 240.

⁸ European Commission, "Statement following the decision at the Extraordinary Justice and Home Affairs Council to relocate 120,000 refugees," Press Release (September 2015) // http://europa.eu/rapid/press-release_statement-15-5697_en.htm.

⁹ Jean Claude Juncker, "My five point-plan on migration" (April 2014) // http://juncker.epp.eu/sites/default/files/attachments/nodes/en_02_immigration.pdf.

¹⁰ Marton Dunai and Krisztina Than, "Hungary to hold referendum on mandatory EU migrant quotas on October 2," *reuters.com* (July 5, 2016) // <http://www.reuters.com/article/us-europe-migrants-hungary-referendum-idUSKCN0ZL0QW>.

solutions (e.g. resource allocation to disproportionately affected countries) ought to be sought.¹¹ The debate on the issue of the Europeanization of migration (and particularly asylum policy, and its individual instruments such as relocation) is threefold: (i) is Europeanization desired, or attempts to do it may undermine the entire EU project; (ii) what are the criteria for a 'just' burden sharing; and (iii) do the countries that take on the burden have appropriate capacities in place, or will this discredit the European policy in the manner of a self-fulfilling prophecy?¹²

Table 1. Europeanizing the asylum policy: pro's and con's cited in academic debates¹³

	Pro's	Con's
Persistent political salience of migration issues (usually all topics conflated) in MS	'Humanitarian Superpower'; Would reduce political pressure cure of radical groups in MS	'Fortress Europe'; Would be based on the strictest national policy - a lowest common denominator effect
Burden sharing	Long term – asylum seekers that remain become an economic asset; Short term – realizes the principle of solidarity	Long term – large immigrant populations are a risk to national security and identity; Short term – some countries may have the funds, but lack capacity
MS capacity to implement burden sharing	It is not the first time Europe has faced sudden waves of migrants and the capacity in many of the MS already exist and only need to be transferred	The CEAS is open to abuse, and there are plentiful incentives for violation by MS with no clear institutional mechanism to keep them in check (see Langford, for a more detailed discussion)

Recent research on European asylum policy integration is not encouraging. The salience of the migration issue means that 'emergent' solutions through 'copycat' ¹⁴ means (or isomorphism facilitated by Commission-supported intergovernmental networks or the Open Method of Coordination) are only possible

¹¹ Joanne Van Selm, "Are asylum and immigration really a European Union issue?" *Forced Migration Review* 51 (2016).

¹² See Table 1 for a summary of conceptual differences on Europeanization of Asylum Policy.

¹³ Source: designed by authors.

¹⁴ Claudia Engelmann, "Convergence against the Odds: The Development of Safe Country of Origin Policies in EU Member States (1990–2013)," *European Journal of Migration and Law* 16:2 (2014).

in instances where clear policies do not exist at an MS.¹⁵ As Trauner and Wolff put it: "This process [national adoption of European policy instruments] may alter both the instruments' ideational (meaning and rationale) and the functional dimension."¹⁶ Earlier writing on 'emergent'¹⁷ asylum policy obviously is at odds with the reality in 2016, where eastern MS are reluctant to adopt the practices of western MS. Hatton identifies two diametrically opposite strands of literature suggesting that Europeanization of asylum policy might either lead to a more liberal and open approach (as a means to reduce political pressure on national governments) or that national institutional constraints may likely lead to the adoption of a very strict policy at the European level.¹⁸ Hatton, Epstein and Nitzan themselves side with the argument for Europeanization, basing their position on economic rational-choice analysis, but nonetheless they do recognize that rational arguments are offset by fears that local national cultures are challenged by migration processes. As Hix and Noury point out, politics trumps economics in this area of European affairs.¹⁹

The burden-sharing idea assumes that asylum seekers are an economic burden to societies. This assumption is also contested. It is clear that a fair, solidarity based, burden-sharing system should be based on 'objective criteria'²⁰, but what these actually are is very unclear. Some economic analyses suggest that the long-term impact of a large inflow of refugees who are likely to mostly permanently remain in their arrival countries will be beneficial economically²¹; therefore, the 'burden' argument is unfounded. The immigrants are to be considered an asset offsetting the ageing of European societies. But if we disregard the long-term impact, it is evident that there are drastic disparities in the costs incurred and numbers of arriving asylum seekers among the EU MS, even controlled for economic prosperity.²²

¹⁵ But Engelmann's conclusion maybe contested from evidence from Europeanization studies, which suggest that on policy topics where national-level policies are set, this trend cannot be considered to be typical (see Esther Versluis, "Explaining variations in implementation of EU directives," *European Integration online papers* 8:19 (2004)).

¹⁶ Florian Trauner and Wolff, Sarah. "The Negotiation and Contestation of EU Migration Policy Instruments: A Research Framework," *European Journal of Migration and Law* 16:1 (2014).

¹⁷ Roland Bank, "The Emergent EU Policy on Asylum and Refugees," *Nordic Journal of International Law* 68.1 (1999).

¹⁸ Timothy J. Hatton, "Asylum Policy in the EU: the case for deeper integration," *CESifo Economic Studies* 61:3-4 (2015).

¹⁹ Simon Hix and Abdul Noury, "Politics, Not Economic Interests: Determinants of Migration Policies in the European Union," *International Migration Review* 41:1 (2007).

²⁰ Philippe de Bruycker and Evangelia Lilian Trourdi, "In search of fairness in responsibility sharing," *Forced Migration Review* 51 (2016).

²¹ Marcel Fratzscher and Simon Junker, "Integration von Flüchtlingen: eine langfristig lohnende Investition" (Refugee integration: worth the investment in the long run), *DIW-Wochenbericht* 82:45 (2015).

²² Karl Brenke, "Distribution of refugees very uneven among EU member states-even when accounting for economic strength and total population," *DIW Economic Bulletin* 5:39 (2015).

However, those who think that there is more to burden-sharing put forward the idea that individual MS behave strategically in order to gain most from European opt-outs and loopholes.²³ The key issue for this reasoning is that Common European Asylum System (CEAS)²⁴ includes not only the Dublin III regulation, but also the Temporary protection directive, which should be activated in cases of a mass influx of displaced persons.²⁵ The question here is whether EU MS agree (or not) that the European migrant emergency constitutes grounds for the activation of this directive.²⁶ According to Babič Selanec the failure to activate the directive only illustrates the absence of a legal framework to implement CEAS, and causes individual MS either not to take decentralized action when needed, or, if they do it, it is in breach of 1951 Geneva Convention. The decision of addressing the European migrant emergency on the basis of Dublin III was a result of European leaders unwillingness to activate the Temporary protection directive, and the relocation scheme is a watered down alternative. Academically, this disconnect between abstract commitments to Universal Human Rights and simultaneously absence of a developed and functional legal mechanism to follow through with these commitments has been consistently pointed out in earlier research.²⁷ To some extent this is to do with securitization of some related policy aspects, which nation states retain.²⁸

The third question is MS capacity to follow through with European decisions. In some respects it is a secondary question, as lack of capacity can only be cited if we analyze the present European migrant emergency from the point of Dublin III, not the Temporary protection directive. In the latter case mechanisms for redundant capacity in various MS would be made more readily available. OECD contends that the present wave of migration is neither first nor unmanageable. There are precedents of sudden Europe-wide refugee influxes as recently as the Yugoslav wars in the 1990s, and individual MS have come across such waves in

²³ Andrew Geddes, "Getting the best of both worlds? Britain, the EU and migration policy," *International Affairs* 81:4 (2005).

²⁴ In much of the literature CEAP as a body of regulation and policy measures implemented in the EU is differentiated from its effects, which lead many authors to conclude that in practice a 'Common European asylum policy' does not exist in the true meaning of the term.

²⁵ *Council Directive 55/EC (2001): On minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof*, OJEU L212/12 of 2001, 7.

²⁶ Nika Bacic Selanec, "A Critique of EU Refugee Crisis Management: On Law, Policy and Decentralisation," *Croatian Yearbook of European Law and Policy* 11:11 (2015).

²⁷ Jari Pirjola, "European Asylum Policy-Inclusions and Exclusions under the Surface of Universal Human Rights Language," *European Journal of Migration and Law* 11: 4 (2009).

²⁸ Lavenex differentiates between intensive transgovernmentalism and community method, claiming that community method would be more comprehensive, but MS are unwilling to cede management and regulation of asylum processes. In large part this tension is a result of attempts to de-securitize asylum within the human rights discourse, and the post 9/11 national security concerns (see Sandra Lavenex, "The Europeanization of refugee policies: normative challenges and institutional legacies," *JCMS: Journal of Common Market Studies* 39: 5 (2001)).

many other instances.²⁹ Only that new migration routes, most notably the 'West Balkan' route, has put pressure on countries with no prior experience.³⁰

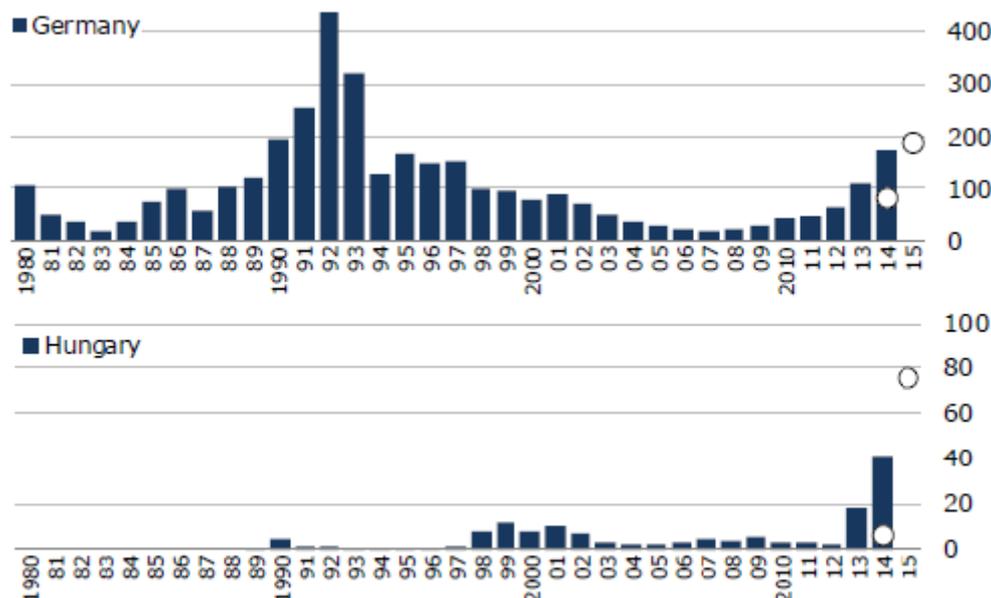


Figure 1. Number of asylum applications in Germany and Hungary between 1980 and 2015 (thousands)³¹ [Note: Hollow circles in 2014 and 2015 indicate the difference between mean of 1980 and 2015 and projected numbers in 2015]

A lack of experience of large scale migration management and high securitization of the asylum process in the new MS does constitute a capacity gap. However, it is also true that in view of mounting challenges few steps are being taken to build that capacity and utilize existing best practice elsewhere. In a sense low capacity becomes an excuse to avoid greater commitment. However, it's precisely greater commitment that can create that capacity. There are case studies suggesting that Dublin III encourages its violation by MS, because there are rational gains for a country at the expense of the Union.³² There even are proposals to frame the refugee asylum issue in a manner similar to greenhouse emissions management – through tradeable quotas.³³ This mechanism certainly undermines excuses of new MS to not invest in capacity development to manage asylum process. Another means of addressing the capacity gap in the process of being

²⁹ OECD, "Is this humanitarian migration crisis different?" *Migration Policy Debates* No. 7 (September 2015).

³⁰ See Figure 1 for the differences between the two most effected western and new MS.

³¹ Source: OECD, *supra* note 29.

³² Lillian M. Langford, "Other Euro Crisis: Rights Violations under the Common European Asylum System and the Unraveling of EU Solidarity," *The Harv. Hum. Rts. J.* 26 (2013). Note: our research for this article into the Lithuanian case supports many of Langford's conclusions.

³³ Jesús Fernández-Huertas Moraga and Hillel Rapoport, "Tradable refugee-admission quotas and EU asylum policy," *CESifo Economic Studies* 61: 3-4 (2015).

roled out is the European Asylum Support Office, which comes in the wake of perceived success of Frontex.³⁴

With this we arrive at a typology of policy mechanisms for the resolution of the asylum management in the EU, in line with the solidarity principle: (i) moving the people, i.e. relocation, (ii) moving the capacities, and (iii) paying the ones who can do it.³⁵ The two alternatives to relocation are quite clear cut: since there are existing capacities union-wide which are not utilized (e.g. the European migrant emergency has barely affected countries such as France or UK³⁶) there are plentiful redundant capacities available. These might be either moved to the countries where there is a lack of capacity, or the countries that have a capacity gap must cover the expenses of MS incurred in using these capacities. However, despite that both of these alternatives have a right to be evaluated economically, the political conditions for how to apply them are hard to envisage. Although this must be said with some caution, as in political rhetoric the coupling of structural support and the solidary participation in the effort towards the resolution of the emergency are being voiced.³⁷

Table 2. Types of refugee burden sharing mechanisms in line with EU Solidarity principle³⁸

Type	Examples
'Moving the people'	Relocation
'Moving redundant capacities'	Frontex; EASO
'Moving the money'	Tradeable refugee quotas; Deductions from EU structural support, or other 'Solidarity taxes'

In summary, Europeanization of asylum policy through appeals to solidarity is bound to be contentious, but upholding this principle, explicitly formulated in the Union Treaty, is a matter of existential importance to the Union.

³⁴ Lillian M. Langford, *supra* note 32.

³⁵ Also see Table 2.

³⁶ OECD, *supra* note 29.

³⁷ Francesco Guarascio, "No refugees, no money – Italy's Renzi threatens EU's east" (February, 2016) // <http://uk.reuters.com/article/uk-europe-migrants-italy-idUKKCN0VS01D>.

³⁸ Source: designed by authors.

2. RECENT DEVELOPMENTS OF EU RESETTLEMENT AND RELOCATION EFFORTS

Despite being presented as a genuine policy innovation, the relocation instrument is merely an attempt to solve a short term emergency without invoking the Temporary protection directive. It is clear that the agreement to relocate 160,000 persons over two years has been superseded by events and will not constitute a significant share of overall volumes of refugees. Nonetheless, this program is an important experiment for the Union in the process of trying to find a sustainable solution to similar events in the future.

From the legal perspective, participation in resettlement is not mandatory for states at the moment, neither under international nor EU law. Decisions adopted by the EU and Turkey in March 2016, which include resettlement from Turkey to the EU, lack proper legal basis. The European Commission's expectation that the number of Member States willing to embark on resettlement obligations will increase once irregular flows from Turkey to the EU will have come to an end does not have any legal backup.³⁹ Previously, the European Commission Communication on Improving Access to Durable Solutions of 2004 suggested a situation-specific resettlement scheme, where member state participation would be 'flexible'.⁴⁰ Resettlement was also included as a component of EU Regional Protection Programs, which are voluntarily implemented by the MS.⁴¹ The EU Joint Resettlement program adopted in 2009 also stated that MS participation in the resettlement program is voluntary. It did not determine any common European resettlement quota or other mechanisms for coordinating MS actions. The program, however, indicated joint EU resettlement priorities, established by the Commission every two years.⁴² Before 2015 no permanent resettlement program existed. But in June 2015 the Commission proposed a European resettlement scheme for 20,000 people in need of international protection, stressing that there is a significant imbalance between MS as regards their commitment to resettle refugees.⁴³ This

³⁹ *Communication from the Commission to the European Parliament, the European Council and the Council on Next operational steps in EU-Turkey cooperation in the field of migration*, Brussels, 16.3.2016 COM(2016) 166 final, p. 5.

⁴⁰ *Communication from the Commission to the Council and the European Parliament on the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin 'Improving Access to Durable Solutions'*, Brussels, 4.6.2004, COM(2004) 410 final, para. 25-26.

⁴¹ *Communication from the Commission to the Council and the European Parliament on Regional Protection Programmes*, Brussels, 1.9.2005, COM(2005) 388 final.

⁴² Rachel Westerby, et al., "Welcome to Europe! A Comprehensive Guide to Resettlement," ICMC Europe (2013): 118 // <http://www.resettlement.eu/sites/icmc.ttp.eu/files/ICMC%20Europe-Welcome%20to%20Europe.pdf>.

⁴³ *Commission Recommendation of 8 June 2015 on a European resettlement scheme*, Brussels, 8.6.2015, C(2015) 3560 final, Recital 3, Preamble // http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/asylum/general/docs/recommendation_on_a_european_resettlement_scheme_en.pdf.

can be viewed as the first attempt to develop an EU-wide resettlement scheme based on common criteria. In July 2015, 27 Member States agreed to resettle over two years 22,504 people in need of international protection from the Middle East, the Horn of Africa, and Northern Africa.⁴⁴ The resettlement places were distributed between Member States and Dublin Associated States according to states' commitments.⁴⁵ Although this marks real progress in boosting the numbers of MS actively conducting resettlement, even Greece and Italy, states that requested the adoption of this scheme, were divided about the feasibility of the proposal.⁴⁶ The proposal was based on voluntary pledges of MS and does not create a clear resettlement framework with common rules and procedures, and is mostly a compilation of national programs and procedures, which in some MS are only in preparatory stages.⁴⁷

Those countries that implement resettlement activities on a voluntary basis nevertheless follow the conditions established for resettlement under EU documents, if they want to tap on EU funding for these activities. Resettlement requirements are set in common provisions for financial support in the area of asylum, approved on April 16, 2014.⁴⁸ First, this document requires that a refugee is identified as needing resettlement by the United Nations High Commissioner for Refugees (UNHCR). Second, the resettled in the EU needs to be granted a refugee or equivalent status in the resettlement country. The resettled person's rights and benefits need to be similar to other persons with this status.⁴⁹ Just under half of the 28 EU Member States currently lack national legal basis for carrying out resettlement activities. These include countries new to resettlement (relocation) activities: Bulgaria, Croatia, Cyprus, Estonia, Greece, Lithuania, Malta, Poland, Slovakia and Slovenia. All of them are expected to have implemented the relocation program by the end of 2017. Many are lagging behind on this timeframe.⁵⁰ Among

⁴⁴ *Conclusions of the Representatives of the Governments of the Member States meeting within the Council on resettling through multilateral and national schemes 20 000 persons in clear need of international protection*, Council of the European Union, Brussels, July 22, 2015, Doc. 11130/15, ASIM 62 RELEX 633 // <http://data.consilium.europa.eu/doc/document/ST-11130-2015-INIT/en/pdf>.

⁴⁵ *Communication from the Commission to the European Parliament, the European Council and the Council, First report on relocation and resettlement*, Brussels, 16.3.2016 COM(2016) 165 final: 2 // http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160316/first_report_on_relocation_and_resettlement_en.pdf.

⁴⁶ Phillippe de Bruycker, Evangelia Lilian Tsourdi, "Building the Common European Asylum System beyond Legislative Harmonisation: Practical cooperation, Solidarity and External Dimension": 532; in: Vincent Chetail, Phillippe de Bruycker, and Francesco Maiani, *Reforming the Common European Asylum System: The New European Refugee Law* (BRILL, 2016).

⁴⁷ *Conclusions of the Representatives of the Governments of the Member States*, *supra* note 44: 17.

⁴⁸ *Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 Establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC*, Official Journal of the European Union, L 150/168, 20.5.2014.

⁴⁹ *Ibid.*, Preamble, para. 14, Art. 2 (a).

⁵⁰ *Conclusions of the Representatives of the Governments of the Member States*, *supra* note 44: 18.

the new countries joining these activities, only the Czech Republic has significant experience in refugee resettlement.⁵¹

There is a clear link between resettlement and relocation. The European Commission recently stated: “[t]he resettlement or other legal pathways for the admission of persons in clear need of international protection can be considered equivalent to relocation, as all are concrete expressions of solidarity with other Member States or third countries experiencing mass influx of migrants.”⁵² However, from the legal perspective the situation with relocation is somewhat controversial. In 2011 the European Commission⁵³ expressed the opinion that an EU relocation mechanism only for beneficiaries (not applicants) of international protection is useful and appropriate.⁵⁴ Therefore, legal obligations for relocation have been developed faster than for resettlement.

The process began with the creation of funding opportunities for certain relocation actions under Asylum, Migration and Integration Fund (AMIF) programs, which encouraged some MS to take part in voluntary relocation projects.⁵⁵ In 2015 a legally binding obligation for relocation was set for the first time on the basis of Art. 78 (3) of the Treaty on the Functioning of the European Union. This Article is implemented by two legally binding Council Decisions adopted in September 2015.⁵⁶ The decisions established a temporary and exceptional relocation mechanism for 160,000 applicants in clear need of international protection from two MS (Italy and Greece) to other Union members. Even though the quota system was introduced as temporary, it was met with resistance. Hungary, the Czech Republic, Slovakia and Romania voted against the scheme when the quota system was agreed upon; and later, in early 2016, Hungary and Slovakia lodged actions before the Court of Justice of the European Union asking to review the legality of this Council Decision on relocation.⁵⁷ The feasibility of implementation of this

⁵¹ ICMC Europe (International Catholic Migration Commission), “Resettlement in Central and Eastern Europe and in the Baltics,” *SHARE Network Magazine* (February 2016) // http://resettlement.eu/sites/icmc.ttp.eu/files/Final%20SHARE%20Magazine_issue%205.pdf.

⁵² *Proposal for a Council Decision amending Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece*, Brussels, 21.3.2016, COM(2016) 171 final: 2.

⁵³ *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Enhanced Intra-EU Solidarity in the field of asylum. An EU Agenda for better responsibility-sharing and more mutual trust*, Brussels, 2.12.2011, COM(2011) 835 final // http://ec.europa.eu/dgs/home-affairs/news/intro/docs/201112/1_en_act_part1_v6.pdf.

⁵⁴ *Ibid.*: 7-8.

⁵⁵ Relocation was first put in practice between 2009 and 2011, when the Commission proposed an EU-wide pilot, the EU Relocation Malta Project (EUREMA) with 227 beneficiaries of international protection being relocated from Malta to six other Member States (see *ibid.*: 8).

⁵⁶ *Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy*, OJ L 239, 15.9.2015 [hereafter – Council Decision 2015/1523]; and *Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece*, OJ L 248/80, 24.9.2015 [hereafter – Council Decision 2015/1601].

⁵⁷ *Hungary v. Council*, Court of Justice of the European Union case C-647/15, 15/01/2016.

decision was also questioned due to low capacities in Greece in Italy for identifying persons for relocation, and the slow pace with which other MS were scheduling relocation.

As the relocation program for 2016 and 2017 was set in motion, the EC announced its intention to introduce a permanent 'quota system'. The proposals of the Commission for substantial amendments to the Dublin Regulation⁵⁸ place the main focus on the "state with which the asylum seeker holds a substantial link". If there is no such link, MS with the fewest accepted refugees would be obliged to admit the asylum seeker.

Clearly, a return to the old Dublin system is highly doubtful, as its failures are evident. The commission's proposal promises to reform the coercive nature of the Dublin system, which some authors have cited as the primary cause of its failure⁵⁹, because it had few considerations for both MS and asylum seekers' interest. The proposal is based on the development of objectivized criteria, such as the link with a particular state through existence of family relations, job offerings, language skills, etc., and engages the applicant who would be required to prove this link. But it 'punishes' MS that are not active in the quota system – they will receive refugees with few or no social links in the country, making their integration more complicated.⁶⁰ But in the context of persistent economic disparities between the new MS and the western MS, and the fact that the relocation in the new MS would start at a low base (i.e. there are very few people who could demonstrate links to these countries), the 'punishment' of the new MS in effect is a default, and this may even further political tensions, Euroscepticism and xenophobia. Reactions of political establishments in the new MS seem to have become a certain 'race to the bottom'. While internationally expressing solidarity, increasingly unfavorable policies are discussed or adopted, e.g. cutting benefits by 50% in Lithuania and Latvia, or proposing to prioritize Christians for resettlement in Slovakia and Poland. In the context of EU free movement of persons such policies will create strong incentives for resettled persons to move to countries with more favorable conditions.

⁵⁸ European Commission, "Refugee crisis: Commission reviews 2015 actions and sets 2016 priorities," *Press Release* (January 13, 2016) // http://europa.eu/rapid/press-release_IP-16-65_en.htm.

⁵⁹ More about coercion of the system read in: Maarten den Heijer, Jorrit Rijpma, and Thomas Spijkerboer, "Coercion, prohibition, and great expectations: The continuing failure of the Common European Asylum System," *Common Market Law Review* 53(3) (2016).

⁶⁰ Marcello di Filippo, "From Dublin to Athens: A Plea for a Radical Rethinking of the Allocation of Jurisdiction in Asylum Procedures," Policy Brief, International Institute of Humanitarian Law (January 2016): 8–9 // <http://statewatch.org/news/2016/feb/eu-from-dublin-to-athens-reforming-dublin-reg-1-16.pdf>.

3. ELEMENTS OF FUNCTIONAL AND SUSTAINABLE RESETTLEMENT SCHEMES

The resettlement of applicants and beneficiaries of international protection is a complex process where state, international organizations, NGO and other actors cooperate. Resettlement process can be divided into three main stages: pre-departure, travel and post-arrival. This process includes a variety of specific actions, from identification and selection of refugees to case processing, decision-making, pre-departure orientation, reception and integration and other other actions in the countries of both transit and asylum.⁶¹ On top of the need to ensure good coordination of this process, some general conditions need to be met for a successful and durable resettlement scheme: (i) it must be grounded securely in legislation and policy, (ii) have political and public support, and (iii) dedicate secure and stable funding to resettlement processing and integration of resettled beneficiaries. To be as effective as possible, integration programs should be flexible, adapted to address deficiencies identified through experience, and responsive to changing needs and populations.⁶²

Implementing resettlement programs has impact for legal frameworks: adoption of formal decisions at national level in the resettlement country and legislative adjustments related to the status of resettled refugees. Legal acts, policy documents and administrative procedures need to be reviewed and updated, including the possibility of naturalization.⁶³ It should be noted that most legal acts regulating refugee status determination procedures refer to persons who are on the territory of the state, not extraterritorialy. Thus, among other legal amendments adjustments to visa and entry policy, as well as issuance of documentation, may be needed. However, some states prefer to handle resettled refugees as those who received protection in the host state, thereby applying a regular legal framework.

Also noteworthy is that some states include the formal basis of resettlement in their legislation (e.g., Poland, Denmark, Romania and the UK), while in others it is contained in executive regulation (Belgium, Bulgaria, the Netherlands), or in both (Czech Republic, Germany, Hungary, Portugal, Ireland, Slovenia, Spain, Sweden), or as part of international agreements with UNHCR (France, Romania, Slovakia).⁶⁴ For example, the Czech Republic has taken part in several emergency refugee resettlement programs since 2005, while it implements its own resettlement

⁶¹ Rachel Westerby, et al., *supra* note 42: 73.

⁶² UNHCR (The UN Refugee Agency), "The integration of resettled refugees. Essentials for establishing a resettlement programme and fundamentals for sustainable resettlement programmes" (June 2013): 22 // <http://www.refworld.org/pdfid/51b81d9f4.pdf>.

⁶³ *Ibid.*: 24.

⁶⁴ Delphine Perrin and Frank McNamara, *Refugee Resettlement in the EU: Between Shared Standards and Diversity in Legal and Policy Frames* (European University Institute, 2013), 43–47.

program since 2008.⁶⁵ In 2008, the Government adopted a resolution approving the concept for a National Resettlement Program, which contains the legal basis of resettlement, procedural aspects and the role of various subjects in resettlement process.⁶⁶ The Government also approves an annual resettlement plan, on the basis of which the Czech Ministry of Interior makes a decision on each resettlement action, which stipulates the size of the future resettled group, the region of origin and an approximate timeframe for implementation.⁶⁷ In December 2015 the Government adopted a resolution for resettlement of 153 persons from Iraq and Lebanon (Christians).⁶⁸

The experience of EU MS shows that resettlement and, more recently, relocation involves a number of challenges that need to be taken into account. Where resettlement is not regulated at all, as a minimum (i) priority setting and criteria for persons to be resettled need to be set, as well as (ii) means of identifying and selecting them, and creating a decision-making procedure. Resettlement priorities and groups to be resettled are usually determined by EU MS based on UNHCR annual priorities (e.g. this is done by UK, Sweden, and Ireland), and national regulation at statute level can be avoided. Executive regulation in this instance is more appropriate. Setting a decision-making procedure is another key element of implementing resettlement. Lithuania, for example, has adopted a model whereby the decision on resettlement is adopted by the Government, while a decision for each asylum seeker is made by the Migration Department.⁶⁹ We maintain that the following distinctive elements in any functional and sustainable resettlement scheme need to be developed: national priorities, status of resettled persons, engagement with international actors, documentation, reception and integration.

First, national priorities on who to resettle might be very different from those mentioned in the EU Joint Resettlement Scheme. There are no international standards for national priority setting. MS often need to choose whether they prefer focusing on countries in which they have economic, geopolitical or other interests, or those that are a priority for the entire EU, and which open up additional funding. As demonstrated by a public opinion survey in Lithuania, persons from countries

⁶⁵ UNHCR (The UN Refugee Agency), "UNHCR Resettlement Handbook, Country chapter: The Czech Republic" (August 2014): 1.

⁶⁶ Directorate General for Internal Policies, "Comparative Study on the Best Practices for the Integration of Resettled Refugees in the EU Member States" (2013): 52.

⁶⁷ Delphine Perrin and Frank McNamara, *supra* note 64, 1–2.

⁶⁸ Interview with Ms. Věra Honusková, Charles University in Prague, 04-04-2016.

⁶⁹ *Law on Legal Status of Foreigners in the Republic of Lithuania*, No. IX-2206 (April 29, 2004), Art. 87¹ (2, 3) // <https://www.e-tar.lt/portal/lt/legalAct/TAR.42837E5A79DD/uxRiWifTgy>.

where the state has national interests are better received by the society.⁷⁰ For instance, Lithuania's priority countries are Eastern Partnership members (Belarus, Georgia, Moldova and Ukraine),⁷¹ whereas the EU resettlement scheme is focused on North Africa, the Middle East, and the Horn of Africa. Although it may be reasonable for smaller new MS to concentrate their limited resources towards refugees from the region with closer cultural and economic affiliations, the resettlement mechanism as it is proposed now requires a radically different geographical focus.⁷²

One legal challenge when setting resettlement priorities is making sure that the selection criteria are not discriminatory, such as age, religion, disability or disease, foreign language skills, work experience and professional skills, etc. States may be willing to introduce such criteria on the grounds that they are helpful in the process of integration and may reduce the costs of integration.⁷³ Non-discriminatory criteria may include willingness to be resettled and integrate, applied in the Czech Republic.⁷⁴ The Danish legislation provides for that, after a person is recognized as fulfilling resettlement criteria, additional 'integration' criteria are assessed, such as knowledge of languages, education, work experience, family situation, relationships, age, and motivation.⁷⁵ However, these additional criteria are difficult to assess. Past experience and generalization of social groups may not apply to individuals. As an alternative, various methods may be used to facilitate the integration process, such as needs assessment prior to departure, orientation courses and information about the host country, including social services and guarantees in the hope to align expectations of refugees to the realities in the host country.⁷⁶

However, negative public opinion, not the refugee's social or cultural background and motivation, may prove to be the main obstacle for successful integration,⁷⁷ and therefore facilitation of integration needs to engage the receiving community. It has been demonstrated by research that various integration factors affect different refugee groups differently.⁷⁸ The most significant hurdles to

⁷⁰ Lyra Jakuleviciene, et al., *Impact assessment for the implementation by Lithuania of resettlement programmes of third country nationals from the EU Member States or third countries*, Research Report, (Vilnius, 2015): 77 [on file with the authors].

⁷¹ *Ibid.*, 54.

⁷² *Ibid.*, 11.

⁷³ Marcello di Filippo, *supra* note 60: 12–14.

⁷⁴ Delphine Perrin and Frank McNamara, *supra* note 64, 3.

⁷⁵ *Aliens (Consolidation) Act*, Art. 8(4) // http://www.nyidanmark.dk/NR/rdonlyres/2A42ECC8-1CF5-4A8A-89AC-8D3D75EF3E17/0/aliens_consolidation_act_863_250613.pdf.

⁷⁶ Marcello di Filippo, *supra* note 60: 12–14.

⁷⁷ European Commission, "Commission Implementing Decision of 20.3.2015 No. C(2015) 1731 approving the national programme of Lithuania for support from the Asylum, Migration and Integration Fund for the period from 2014 to 2020": 6.

⁷⁸ Karolis Žibas, *Lietuvoje prieglobstį gavusių užsieniečių socialinės integracijos tyrimas. Tyrimo ataskaita* (Survey on social integration of foreigners having granted asylum in Lithuania. Research Report) (Vilnius, 2013), 3 //

successful integration can be listed as language barriers, lack of access to the labor market and education, negative public opinion, reception and integration policy of the state and, very importantly, social networks and resources of refugees.⁷⁹

In the context of relocation, the European Council decision included a possibility of preferences, but these were focused on assessments of specific qualifications and characteristics of individual applicants, such as their language skills and other factors such as demonstrated family, cultural or social ties, which could facilitate their integration into the host society.⁸⁰ However, even such preferences may be abused. Some MS have expressed long or constraining lists of preferences for the profile of the applicants to be relocated. In effect they use priority setting as a means to exclude potential candidates, rather than to allow for better integration.⁸¹

Another important issue is the decision on what status a relocated person will be granted: refugee or subsidiary protection. In the context of a resettlement country it is essential to ensure that resettled refugees enjoy the same legal status as recognized refugees. As the UNHCR stresses, the resettlement definition itself carries an obligation of the host state to admit resettled persons as refugees with *permanent residence status* (emphasis added).⁸² The status should ensure durable security, possibility to obtain citizenship and should not restrict the implementation of certain rights. The EU law also requires that the person to be resettled to an MS territory is granted refugee or equivalent status with the same rights and privileges.⁸³ Security and durable solutions for refugees highly depend on the right to permanent residence, which allow applying for citizenship and family reunification rights.⁸⁴ Many states limit resettlement to refugees, thereby excluding non-refugee stateless persons, persons for whom resettlement is the most appropriate durable solution, and for certain non-refugee dependent members so as to retain family unity.⁸⁵ Sweden, for example, is one of the states that accepts persons who are refugees under the 1951 Convention and subsidiary protection

http://www.sppd.lt/media/mce_filebrowser/2015/09/11/PGU_socialines_integracijos_tyrimo_ataskaita_2013.pdf.

⁷⁹ *Ibid.*, 13.

⁸⁰ *Proposal for a Council Decision amending Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece*, *supra* note 52: 1–3.

⁸¹ *Communication from the Commission*, *supra* note 45.

⁸² Delphine Perrin and Frank McNamara, *supra* note 64.

⁸³ *Conclusions of the Representatives of the Governments of the Member States meeting within the Council on resettling through multilateral and national schemes 20 000 persons in clear need of international protection. Council of the European Union*, *supra* note 44: preamble, Art. 2 (a).

⁸⁴ Rachel Westerby, et al., *supra* note 42: 15, 24.

⁸⁵ European Resettlement Network, "Identification Phase" //

<http://www.resettlement.eu/sites/icmc.ttp.eu/files/ERN%20Factsheet%20RST%20Identification%20Phase.pdf>.

criteria. No additional selection criteria apply.⁸⁶ It is important to stress that refugee status better reflects the essence and meaning of resettlement, because subsidiary protection usually is associated with temporary solutions, which do not guarantee permanent right of residence and offer less social guarantees.⁸⁷

Third, the issue of transferring persons who do not yet enjoy protection is a situation not typical to resettlement, and which could result in serious legal challenges. The EU relocation program was introduced as a reaction to a 'crisis' and foresaw a possibility to transfer persons without full determination of status, as asylum seekers only. This aspect is critical for two reasons: (i) it may place the asylum seeker in legal uncertainty, and (ii) it may discredit the scheme, if the public perceives it as being used to relocate persons who are not in need of protection. In Lithuania, legislative amendments were passed stating that the decision to grant protection shall be adopted within 24 hours from arrival of relocated person to Lithuania.⁸⁸ In the absence of proper determination of status before entry and with such short time constraints, arbitrary decisions may be the result. A similar practice is also applied in the Czech Republic, where resettled persons should formally apply for international protection within 2 days of arrival and receive refugee status within 3-4 weeks, meanwhile being treated as asylum seekers.⁸⁹ Adopting a decision on granting protection together with a decision on relocation (resettlement) would eliminate the legal uncertainty that may arise. However, some states are also concerned that persons who are granted protection before arrival to the resettlement country may choose to travel to a different MS. However, these concerns may be offset by withholding the issuance of residence permit or documents confirming protection status until arrival.⁹⁰

Another legal issue that may arise in the context of relocation is the issue of consent of the person to be resettled. While this issue has never arisen in the context of traditional resettlement, newly introduced relocation procedures in the EU raise certain questions, since the request of the person is not formally required.⁹¹ Although legally the relocation decision is considered as constituting a transfer decision within the meaning of Article No. 26 of the Dublin III Regulation⁹²,

⁸⁶ Dephine Perrine, ed., *Refugee Resettlement in the EU 2011-2013 Report* (European University Institute, 2013), 266.

⁸⁷ In Lithuania the first relocated family was granted subsidiary protection, a decision which they appealed in court. The appeal was dismissed, but more importantly served to further build negative public perceptions of the entire scheme.

⁸⁸ *Law on Legal Status of Foreigners in the Republic of Lithuania*, *supra* note 69: Art. 87¹ (4).

⁸⁹ Interview with Ms. Věra Honusková, *supra* note 68.

⁹⁰ UNHCR (The UN Refugee Agency), *supra* note 65: 10.

⁹¹ *Proposal for a Council Decision amending Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece*, *supra* note 52: 1-3.

⁹² *Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an*

practically, it is not reasonable to move persons for permanent or event temporary settlement to a particular state, in which they are not willing to stay and most probably will not stay.

Fourth, resettlement entails close cooperation with international organizations and even recognition of their decisions on refugee status. Lithuania, for example, amended the legislation in 2015 by introducing the discretion of the national authorities to recognize UNHCR decisions to grant refugee status.⁹³ In some new MS existing cooperation does not allow for a similar UNHCR role. Although all EU states are bound to cooperate with UNHCR in drafting new legislation on refugees, or allowing for a possibility to monitor the well-being of refugees, there are no international obligations establishing cooperation procedure on resettlement. Thus entering into bilateral agreement with UNHCR and/or expanding the scope of cooperation with it needs to be legislated. This is especially relevant if the resettlement selection process will be based on a dossier provided by the UNHCR. Cooperation with other international governmental and non-governmental organizations may also be essential in carrying out medical checks, cultural orientation, assistance during the travel, etc.

Fifth, documentation of resettled persons is indispensable. Persons need to have travel documents, visa, and residence permit. Resettled persons who are nationals of countries for which entry visa is required and who do not hold EU residence card need to receive a national or Schengen visa. One of the obstacles here is a requirement in some states that visa application can only be submitted by persons who are lawfully staying in a third country, and many refugees may lack a legal status, not least because the processing systems in countries such as Greece is overwhelmed with backlogs lasting from months to years.

The sixth and final point is the inclusion of resettled persons in legal acts regulating public and social services. Research demonstrates that faster placement of refugees to municipalities lowers the risk of social marginalization.⁹⁴ However, reception standards may be regulated by a variety of legal acts related to health care, education, social services, etc. and may not necessarily include those who were not granted protection within the territory, thus may need adjustments. While it is reasonable to seek for similar integration support for resettled refugees as those recognised in-country, sometimes this consolidation may lead to adverse effects. MS have discretion on what services and for how long to include in the integration support programs, and an expected rise in the number of refugees may

application for international protection lodged in one of the Member States by a third-country national or a stateless person, Official Journal of the European Union, L 180, 29.6.2013.

⁹³ *Law on Legal Status of Foreigners in the Republic of Lithuania*, *supra* note 69: Art. 871 (4).

⁹⁴ European Commission, *supra* note 77: 7.

lead them to adopting measures that reduce integration expenses, lower their attractiveness, and create risks for marginalization of both resettled persons and other refugees. For example, the Lithuanian Government reduced integration support for all refugees in November 2015, in the wake of expected significant increase of relocated refugees.⁹⁵ As a result, refugees now receive integration support for a 12 month period, as opposed to many western countries running 2 or 3 year programs.

4. THE RISKS AND PROMISES OF THE EUROPEAN RELOCATION SCHEME: THE CASE OF LITHUANIA

In 2015 Lithuania agreed to relocate 1105 persons from Greece and Turkey during 2016 and 2017. And this number is a two- to three-fold increase in the mean number of annual asylum requests over the past decade. This means that relocation will become the main element of asylum policy. At the point of writing this article (five months into the relocation program) only 10 persons have actually been relocated. Lithuania is a case-in-point in the new MS in a variety of aspects that stack against the success of Europeanization of asylum policy in general and the relocation program in particular.

Both the migration and asylum policy debates are highly salient in Lithuania. Moreover, Lithuania experiences the highest levels of intra-EU emigration, which is widely perceived as an existential threat to the state.⁹⁶ Therefore immigration policy is highly restrictive. Lithuania does not have any strategic policy documents that plan and finance immigration. Lithuania has a migration policy guideline⁹⁷ in line with which three-year social integration programs for refugees are developed.⁹⁸ Therefore the administrative process is run to comply with a bare minimum of international standards⁹⁹ that may be defended in a court of law. On top of that, the Lithuanian asylum process is highly securitized¹⁰⁰, and even the integration

⁹⁵ *Order of the Minister of Social Security and Labour of the Republic of Lithuania Amending the Order of the Minister of Social Security and Labour No. A1-238 of 21 October 2004 on Approval of the Order of Provision of State Support for Integration of Foreigners Having Obtained Asylum in the Republic of Lithuania*, no A1-668 (November 18, 2015) // <https://www.e-tar.lt/portal/legalAct.html?documentId=a94de1c08dec11e5a6f4e928c954d72b>.

⁹⁶ Laima Nevinskaitė, "Emigracijos ir diasporos profesionalų potencialo atspindėjimas žiniasklaidoje: Delfi.lt atvejis" (Representations of emigration and professionals of the diaspora in the media: the case of Delfi.lt); in: Dangis Gudelis, ed., *Diasporos profesionalai: kaip juos telkti kuriant Lietuvos gerovę* (Professionals of the diaspora: how to mobilize them in the creation of welfare of Lithuania) (Vilnius: Saulelė, 2015).

⁹⁷ *Government of the Republic of Lithuania decision on Lithuanian migration policy guideline*, TAR, 2014-01-30, no. 722.

⁹⁸ *Order of the Minister of Social Security and Labor of the Republic of Lithuania on the 2015-2017 Action Plan for the Implementation of Integration Policy of Foreigners*, TAR, 2014-12-31, no. 21297. Note. Not to be confused with integration support to refugees themselves as discussed in Section 3.

⁹⁹ The guideline explicitly states that EU regulation in principle all the necessary elements.

¹⁰⁰ Lisa Marie Borrelli and Annika Lindberg, "Lithuania's 'Hotel' with Special Guests" (April 2016) //

process begins in an isolated military-base town, before the refugees are offered the opportunity to move to municipal housing. Lithuania, having been previously engaged in a voluntary relocation scheme under EUREMA project, found that of 6 relocated persons 5 moved on to western EU MS.

Although Lithuanian GDP adjusted for power purchasing parity accounts for 75 percent of the EU average, the average salary differs by a factor of 5 to its neighbors Sweden and Germany, making it a highly unattractive destination for refugees. Politically, it is also next to impossible to create an incentive mechanism which would be more beneficial to the relocated refugee than to an unemployed Lithuanian citizen. This analogy is provided for by the migration policy guideline, stating that a job may be offered to a foreigner only if an unemployed Lithuanian is not found.¹⁰¹ This provision will not apply to resettled refugees, but in effect it sets the ceiling of support refugees can expect.

The circumstances described above puts the Lithuanian case firmly in the 'Cons' column of Table 1. However, there are several bright spots. A survey conducted in February 2015, admittedly well before the 'European migrant emergency' began in earnest, suggested that relocating a limited number of refugees is feasible if the communication around it is managed appropriately.¹⁰² One key finding was that just over 50 percent of people would agree to Lithuania's participation in the program¹⁰³. Furthermore, mercantile considerations such as expenses being covered by EU, refugee's ability to immediately join the labor force, and having a profession in high demand, were outweighed by humanitarian considerations: providing support to vulnerable persons, women and families. Another finding suggested that as many as 40 percent of persons would allow municipal governments to decide on the scope of persons relocated to it, with another 24 percent setting a limit of persons a municipality could take between 10 and 100 persons. This data suggests that a program of relocating just over 1000 persons would not have severe political backlash, even if these volumes were set on an indefinite basis.

Another important consideration for the NATO 'frontline states', those bordering Russia, is the coupling of the refugee emergency with Russia's aggressive

<https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/04/lithuania's>.

¹⁰¹ *Government of the Republic of Lithuania decision on Lithuanian migration policy guideline, supra* note 97.

¹⁰² *Law on Legal Status of Foreigners in the Republic of Lithuania, supra* note 69.

¹⁰³ Please note that results of the cited survey are in some contrast to findings in most other surveys. We believe the difference is caused by the fact that this questionnaire was formed in a way which did not ask approval for resettlement *per se*, but rather questions were framed in the context of inevitability of a resettlement decision and respondents were asked to present their preferences for the content of such a decision. The crucial finding from this survey, we believe, is that although a general negative attitude to resettlement does exist, it does not mean that there aren't possibilities to reverse it, or that this attitude offers support to political forces radically opposing resettlement.

foreign and military policy in Europe and the Middle East.¹⁰⁴ A fear of use of migration as a political 'weapon' gives much clout to the idea of solidarity, which in Lithuania, as a perception that it too could end up at the receiving end of a wave of refugees, is seen as plausible.

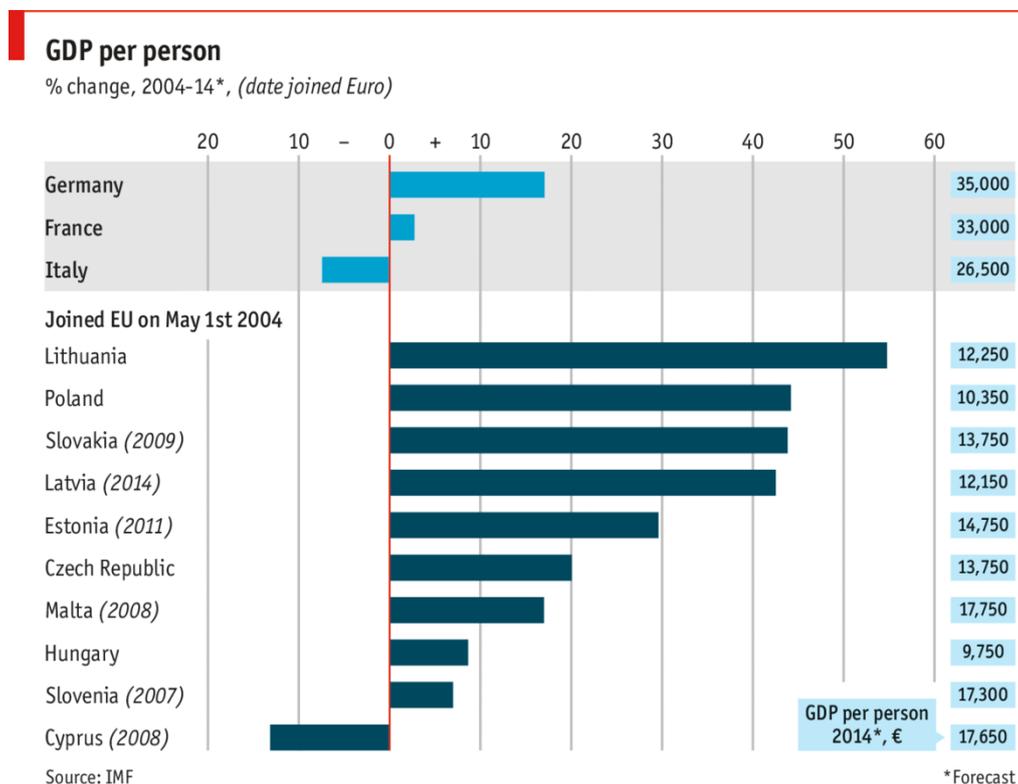


Figure 2. Growth of GDP in new MS (EU-10) during the first 10 years of their membership¹⁰⁵

Lithuania has benefitted tremendously from the structural support it received since 2004¹⁰⁶, and as a result EU has serious leverage for encouraging Lithuania to divert part of these funds for an enhanced refugee integration program and greater engagement in relocation, or to threaten to introduce deductions on that support. Yet capitalizing on this potential to leverage Lithuania into greater contribution to the development of a sustainable asylum policy is unlikely without the strong role of EU-level decision-making bodies, which in a unanimous voting system and the current political climate seem farfetched. This said, we believe that the end of the 2016-2017 relocation program will provide comparative data allowing for the

¹⁰⁴ Lisa Fernandon, "Breedlove: European security situation 'serious', 'complicated'," *DoD News, Defence Media Activity* (March 2016) // <http://www.defense.gov/DesktopModules/ArticleCS/Print.aspx?PortalId=1&ModuleId=753&Article=683569>.

¹⁰⁵ Source: No author named, "Growing up fast: daily chart," *The Economist* (May 2014) // <http://www.economist.com/blogs/graphicdetail/2014/05/daily-chart>.

¹⁰⁶ See Figure 2 for the change of GDP during the first 10 years of Lithuania's membership in the EU.

creation of a continuation program with a system of fines and incentives to MS which most would undersign. Based on Table 2 we maintain that a relocation mechanism is the only one realistically available to the EU, but supplementary elements of other asylum policy instrument types also need to be enforced.

CONCLUSIONS

In the EU a tendency is emerging to create legal obligations with regard to intra-EU refugee transfers and an increasing formation of 'soft law' on resettlement from third states. For most of new EU MS (acceded post 2004) the implementation of the relocation program of 2016-2017, if it is followed through, will make relocation the dominating form of resettlement; in many instances it will be the primary cause of refugee arrival to these countries. This decision is not without its discontents, and that applies both to policy-makers in the new MS and to academia. As relocation is a new legal concept in EU law and in some respects departs from certain principles and established practice of resettlement, it may raise additional concerns from the legal point of view. States should refrain from placing persons to be relocated in a situation of legal uncertainty whereby they are transferred to host countries without a decision on their status, as well as without their consent.

There are several key risks of Europeanizing asylum policy further. Everything hinges on solidarity, but there is no clear concept of what that actually constitutes. A case in point are considerations by many that in the long run large scale immigration will be beneficial to the hosts relative to other MS that avoid taking on the burden in the short term, rendering the whole concept of solidarity inapplicable. However, growing divergences in European policy are unwanted because the idea behind the Union is economic and social conversion.

We propose a typology conceptualizing possible policy innovations for the European asylum policy differentiated by who or what is being moved: persons, capacities or funds. We believe there is good reason to assume that the instrument of relocation, currently applied as a temporary and extraordinary measure in the face of alternatives, has the greatest chance of success and odds are it will become a routine practice. Yet from the point of view of new MS a measure of coercion is necessary to ensure that MS do not manipulate their way out of the problem through claims of lack of capacity or outright discreditation of the instrument in the eyes of their citizenry. However, this path must be tread very carefully so as not present the EU as a bully, and the introduction of policy elements—specifically, elements that would appropriately support MS in the development of capacities and, if necessary, sanction (or 'tax') MS for not participating—could do the trick.

This applies especially with regard to new MS which are highly dependent on structural support. The utilization of innovative funding schemes may supplement the Commission's proposal of institutionalizing relocation in order to ensure that a common denominator is reached among all MS about the substance of what a just distribution of refugees is.

Nonetheless, we have serious reservations about the feasibility of institutionalizing relocation in the current climate of mistrust among the member states. From the point of view of new MS which are only in the process of developing their relocation mechanisms, it is highly advisable to make every effort to ensure that all elements of it are in place before starting the program in earnest. Conducting resettlement has implications for the legal framework in the countries concerned and raises challenges that need to be addressed. Many of these challenges, such as making a decision on resettlement, deciding on national priorities, decision making structures, level of regulation, status of the persons resettled (relocated) and others, need to be decided prior to launching the resettlement (relocation) programs. Additionally, other challenges may emerge with the arrival of refugees and may include access to social and economic rights, as well as recognizing their education and qualifications, family reunification, and entering the naturalization process in the longer run. For necessary decisions to be made, the *modus operandi* of the elites in the new MS needs to be overcome. That is a situation in which the principle of solidarity is accommodated rhetorically, while using sovereign policy tools to worsen conditions for resettled persons—in effect 'free riding' on the principle of free movement of persons.

At the point of writing this article the 24-month program was 4 months underway, with just a tiny fraction of the total persons relocated and much of the homework still to be done.

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