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Article

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Jeroen Doomernik

Why All Benefit When Refugees Enjoy the EU's Freedom of Movement

KEY MESSAGES

- It is unwise and unproductive to impose asylum regulations that do not fully consider the resources and ambitions of refugees
- The 2016 Asylum and Migration Management Regulation (AMMR) does not solve the main problem: responsibilities lie with the country of first arrival
- The new accelerated border regime on the EU's external borders is likely to fail or create serious human rights concerns
- It would be wise to take the experiences with the Temporary Protection Directive (TPD) and its freedom of movement for Ukrainian refugees as best practice
- Recognized refugees should immediately have the freedom of movement as enjoyed by EU nationals

The 15 member states that concluded the 1997 Amsterdam Treaty decided that asylum and migration had to become subject of the EU's body of law, i.e., a joint responsibility. Since then, agreements were reached regarding mobility and regular migration, and a Common European Asylum System (CEAS) gradually took shape. This is built upon several directives, including one for temporary protection in case of mass displacement (which remained dormant until 2022) and two regulations. Where the agreements regarding migration are not particularly contentious those of the CEAS are, notably in their implementation where national governments remain important actors. This has dire consequences for the functioning as a truly joint endeavor, and for the protection and integration of refugees.

It is the latter issue this contribution seeks to focus on.

It is unwise and unproductive to impose asylum regulations that do not fully consider the resources and ambitions of refugees and their preferred destination country. Not doing so creates management failures embodied by so-called secondary movements, both before and after the asylum adjudication process is completed. Arriving asylum seekers who have

good reasons to seek resettlement in a particular state, because of cultural proximity or social networks, have more ease integrating than if they are forced to remain in their first country of arrival, as the CEAS's Dublin Regulation demands, although exceptions can be made when close relatives are already residing in another member state. Therefore, refugees may want to avoid being identified at arrival and be able to file their asylum application in their preferred destination country.

Having refugees learn a new language or their educational qualifications not recognized is a waste of human capital and increases welfare spending. In case states are not able or willing to provide welfare and other support (like housing or education), recognized refugees can use their freedom of travel to enter any other member state and attempt to reapply. This happens in substantial numbers with refugees recognized in Greece who are experiencing lack of opportunities and support. Immigration authorities are reassessing such applications because Greece's poor human rights record makes involuntary returns legally impossible. These are further secondary movements unforeseen by the CEAS.

The EU member states have agreed to replace the Dublin Regulation, presently the CEAS's cornerstone, with the Asylum and Migration Management Regulation (AMMR) in 2016. This is not likely to offer outcomes very different from today's as it retains the first country of arrival's responsibilities. This almost by definition puts the onus of reception and possible integration of refugees on the countries lying on the EU's periphery. This is not in the interest of these states' governments (unless they seek to invoke a sense of crisis for populist political gain). They pursue two types of solutions to this problem. Greece border authorities push back asylum seekers arriving by boat through the Aegean Sea or trying to arrive through the Turkish border. Since this is utterly illegal, the authorities deny any such actions. Italy opts for a different solution. It seems to ignore its obligations under the Dublin and Eurodac Regulations by letting potential asylum seekers through and thus enabling them to file for protection elsewhere in the EU. With Germany being a popular destination, political rhetoric from the German political middle to the right posits that Germany should reduce such unregulated immigration whilst also pursuing regulated labor migration. For the time being, the government imposes border checks, which are largely of a symbolic nature.

This problem is not new. Before the so-called refugee "crisis" of 2015–2016, the Dublin and Eurodac



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Regulations were also to varying extents ignored by border countries. To counter the “crisis,” “hot spots” were introduced in Italy and on the Aegean Islands. Notably the latter became notorious for detaining asylum seekers for months and often years under inhumane conditions before their case was heard and adjudicated. Meanwhile the European Council in 2015 worked out a quota system for a fair distribution of refugees between the member states. Such a solution was found and accepted by a majority of votes, which legally speaking was enough. However, some Central European states refused to comply and act in solidarity, thus effectively killing that agreement. The EU-Turkey Statement of May 2016 seemed to have solved the issue by bringing the numbers of arrivals down. With hindsight, we know this was a temporary lull and not a permanent fix and so the solidarity challenge between the EU’s member states resurfaced. The AMMR offers the solution of presenting member states options for flexible solidarity, which may mean not taking in a fair share of people but giving financial or other support to those states that do.

The AMMR goes hand in hand with a new accelerated border regime on the EU’s external borders where swift identification of asylum seekers and other migrants is to take place. To this end, reception and detention hubs will appear on those borders where the legal fiction is to be created that migrants have not yet reached EU territory. We do not know what this will look like in terms of under whose authority these centers will be run nor how they will be able to cope with large influxes, but if the experiences with the Greek “hot spots” are anything to go by, this may well prove challenging and may easily result in human rights issues. There are many more uncertainties, but should the stated aim of offering swift asylum proceedings and correct outcomes be realized, important gains would be made over the often-tardy national procedures of the present.

Tardiness is not only a feature of the asylum procedures, which is detrimental to future integration because of hospitalization effects. To take the Dutch case: it may take over a year before a request can be heard and months longer before a decision has been reached. Subsequently, the refugee needs to be able to move from the asylum reception facility. For this, regular social housing needs to become available. This may take many months. During this time the integration process, which is mandatory, cannot commence. Once it starts, refugees have to invest time in learning the language, and employment at this stage is rare. Usually, refugees enter the labor market only after the conclusion of their integration program, which takes up to three years. A cohort study of Syrian refugees shows that seven years after their arrival, 42 percent had found employment. Of those, 57 percent worked part-time and therefore are likely still in need of governmental support.

In view of this non-exhaustive list of challenges and drawbacks of the asylum process as we know at

present, it appears smart to remove obstacles that keep refugees from rapid integration, first and foremost in education and the labor market. It would then be wise to take the experiences with the CEAS’s previously dormant 2001 Temporary Protection Directive (TPD) for the benefit of displaced Ukrainians. The TDP offers them complete freedom of movement and access to support in every member state. This can be understood as a superior practice for it does not impose the logic of state sovereignty. Instead, it offers perfect space for the refugee’s own agency. In other words, they self-select instead of being subjected to a CEAS-informed selection. In effect, Ukrainians moved to where their networks reached. The largest populations (over 100,000) are presently found in Poland, the Czech Republic, Germany, Romania, Slovakia, Spain, Ireland, Italy, and the Netherlands and little if any contention in these countries has arisen, nor have there been attempts at “passing the bucket” on to the neighbors. To varying extents, integration appears to run smoothly.

Comparing the Netherlands with Germany, we see a surprising difference in labor market participation rates for Ukrainian refugees. In the Dutch case, already in 2023 close to 60 percent of Ukrainians are in employment; in Germany, this stood at a mere 16 percent and is currently at 27 percent. It is not entirely clear how this difference can be explained but it should be mentioned that welfare levels in Germany are equal for German citizens and Ukrainians. Furthermore, the German government’s aim seems to encourage settlement of Ukrainian families and is offering integration programs, whereas the Dutch government expects large-scale repatriations once the war is over and is less generous with welfare provisions, which increases the necessity to find work. The main point here is not that German policies are misguided, but rather that immediate access to employment can be a very significant contributor to successful integration. Refugees whose access to the labor market is seriously delayed because of governmental interventions, like the Syrians in the Netherlands, are doing considerably worse than the Ukrainians with their immediate entrée to work.

POLICY CONCLUSIONS

Above are excellent reasons for offering recognized refugees the freedom of movement as enjoyed by EU nationals who then can fully apply their utility on the European labor market while not necessarily having (immediate) access to welfare. This ought to go hand in hand with swift asylum adjudication. The flexible solidarity mechanism regarding reception, as foreseen under the AMMR, needs then to be applied solely but generously in support of those refugees who, because of vulnerabilities, needs, or other reasons, cannot fully benefit from the freedom to seek and take up employment. This is not a plea for the abolishment of

integration programs, on the contrary. These can be valuable and necessary tools towards optimal labor market integration once refugees have found their own way into European societies. And there is one other lesson we must draw from the TPD. A temporary measure is an appropriate response to an emergency but becomes counterproductive if it results in prolonged uncertainties. Even when another prolongation is agreed upon, this should not keep member states from opening avenues towards durable settlement.

Precisely a quarter of a century ago, at the 1999 Tampere Council Summit implementing the Amsterdam Treaty and creating the CEAS, the joint ambitions included this conclusion (#15): “In the longer term, Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union.” So perhaps it is high time.