

DIVERGENT PARALLELS:

**HUNGARY'S REFUGEE POLICY IN LIGHT OF
THE EU EFFORTS**

2015-2016

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**Presentation at the NOHA Spring School in Humanitarian
Action**

Budapest,

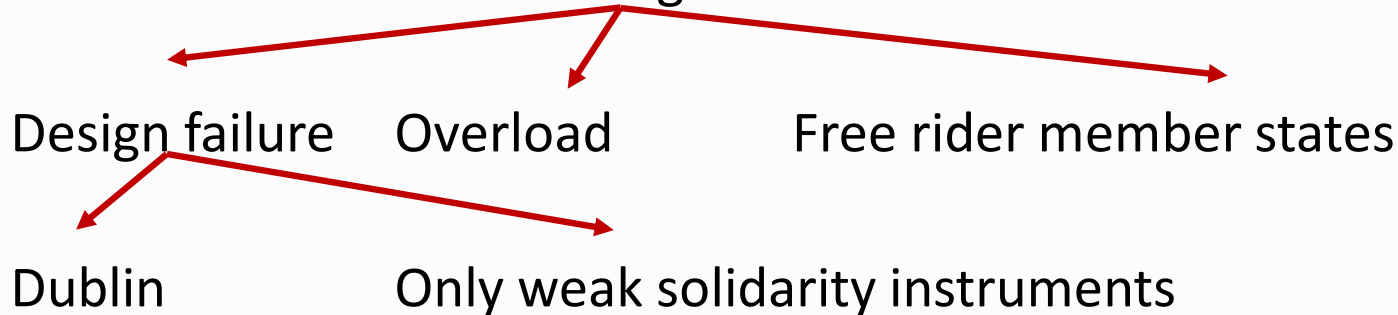
10 May 2016

THE ELEMENTS OF THIS TALK

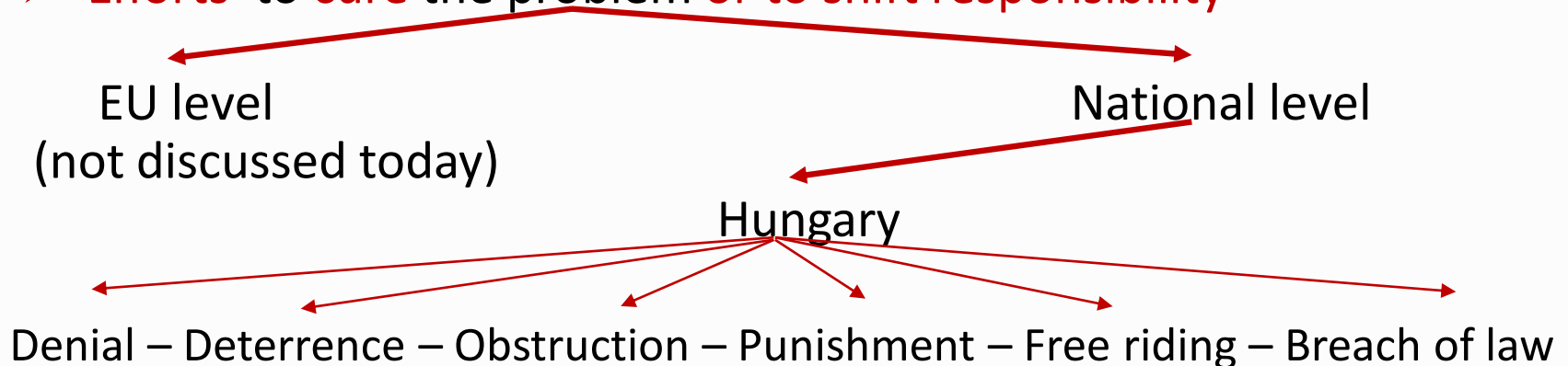
➤ The duty of **sincere co-operation** (loyalty clause, TEU 4 (3))

➤ **Symptoms** of malfunctioning of the CEAS

➤ **Causes** of malfunctioning



➤ **Efforts** to **cure** the problem **or to shift responsibility**



➤ Contextualisation (broader outlook) – as conclusion

THE UNION AND THE MEMBER STATES – THE DUTY OF SINCERE COOPERATION (ARTICLE 4 PARA 3 OF THE TEU)

„3. Pursuant to the principle of **sincere cooperation**, the Union and the Member States shall, **in full mutual respect**, assist each other **in carrying out tasks which flow from the Treaties**.

The Member States **shall take** any appropriate **measure**, general or particular, **to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union**.

The Member States **shall** facilitate the achievement of the Union's tasks and **refrain from any measure which could jeopardise the attainment of the Union's objectives.**”

Are Member States, and in particular Hungary meeting this requirement (e.g. by initiating a referendum against an already adopted Council Decision reacting to an emergency situation)?

SYMPTOMS OF MALFUNCTIONING OF THE CEAS

- Thousands of **deaths** at sea and inland
- The overall **impression of a „crisis“**, which is **seen as a European crisis**
- The increasing **tension between Member States** (e.g. Sweden-Denmark, Austria – Greece, Hungary – Austria, Slovenia, Croatia, etc.)
- **The uneasy relationship with Turkey**
- The grossly **unfair participation in the provision of protection** to refugees reaching EU territory
- The repeated, but **largely fruitless sweeping legislative and political efforts**, including negotiations with transit countries (Western Balkan conference, 2015) and states of the regions of origin (Valetta summit, 2015), decisions to resettle and relocate refugees and asylum seekers
- **The breakdown of the Dublin system**
- **Fences at the external and internal borders & reintroduction of border controls at Schengen internal borders**

THE CAUSES OF FAILURE - DESIGN

Dublin: after family and visa/residence permit the external border crossed → perimeter states exposed to large numbers of application → Greece defaults in 2011, Hungary and others in 2015

Minimal tools of **solidarity** before 2015

- AMIF - monetary
- EASO – sending expert teams
- Temporary protection: voluntary offers to take over (never used)

The Dublin regime on determining the state whose duty is to conduct RSD: **manifestly unjust**, NOT burden sharing but shifting

THE CAUSES OF FAILURE - OVERLOAD

Overload number of (first) applications, EU 27 or 28 + Iceland, Liechtenstein, Norway and Switzerland:

2011	2012	2013	2014	2015
341,795	373,550	464,505	662,165	1,322,145*

Source: Eurostat data (20160313)

But:

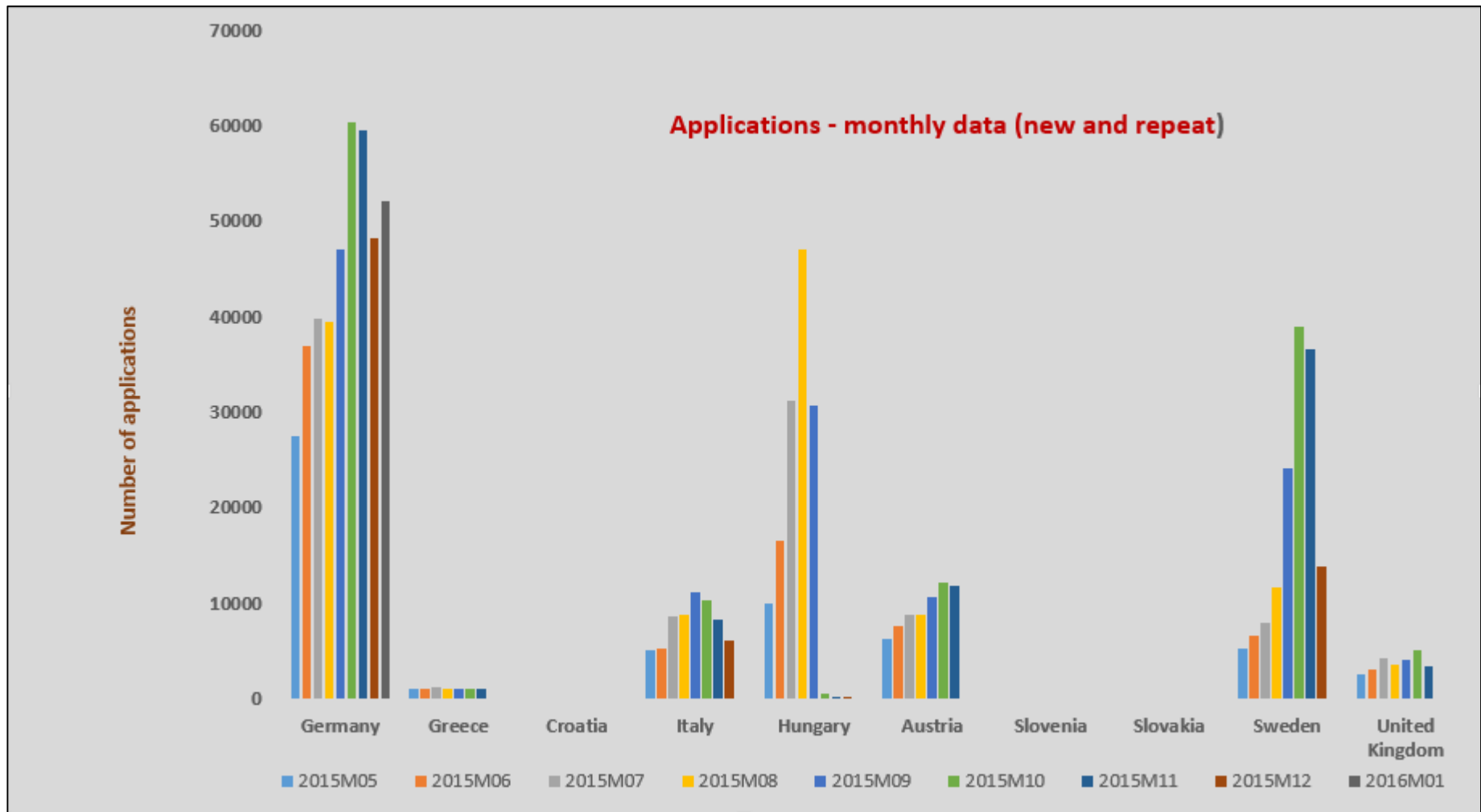
- **highly uneven distribution** UK 39,000, Poland 12,190 Spain 14,785 applications
- Germany 476,620*, Sweden 162,550, Austria 88,180
(All data from Eurostat as reported on 13 March 2016)
- Major groups with **unlikely claims** (Serbia, Kosovo, BiH, etc.)

* Only the formal applications are included. Primary registration includes a further 600,000 persons (altogether: 1,091,894)

<http://www.n-tv.de/politik/Fast-1-1-Millionen-Fluechtlinge-registriert-article16687996.html> (20160313)

Easo's figure
for 2015:
1,349,638
Source:
Latest asylum trends – 2015
overview, p. 1

THE UNEVEN DISTRIBUTION OF ASYLUM APPLICATIONS AND THE IMPACT OF THE HUNGARIAN RESTRICTIVE MEASURES



Source: Eurostat: **Asylum and new asylum applicants - monthly data**

<http://ec.europa.eu/eurostat/tgm/download.do?tab=table&plugin=1&language=en&pcode=tps00189> (20160211)

THE CAUSES OF FAILURE

Free rider member states

Greece, Italy, Hungary, Croatia, Slovenia, Austria

Ought to: register claim, submit fingerprint to Eurodac + start RSD procedure + keep within territory

Instead: **allowing to leave** or **actively transporting** to next MS

THE HUNGARIAN CASE

**SECURITISATION,
AND**

**DENIAL – DETERRENCE – OBSTRUCTION –
PUNISHMENT – FREE RIDING – BREACH OF
LAW**

THE NATIONAL LEVEL – FRAMING THE SITUATION AS A SECURITY ISSUE

Classic securitisation moves:

- creating a security narrative, then
- adopting laws, treating the situation as exceptional

The Copenhagen school: new notions of
security/insecurity

Border – migration – (organised) crime – terrorism
continuum

SECURITISATION – A CLASSICAL QUOTE

“Migration is identified as being one of the main factors weakening national tradition and societal homogeneity. It is reified as an internal and external danger for the national community or western civilization. This discourse excludes migrants from the normal fabric of society, not just as aliens but as aliens who are dangerous to the reproduction of the social fabric. The discourse frames the key question about the future of the political community as one of a choice for or against migration. The discourse reproduces the political myth that a homogenous national community or western civilization existed in the past and can be re-established today through the exclusion of migrants who are identified as cultural aliens.”

Huysmans, Jef: The European Union and the Securitization of Migration *Journal of Common Market Studies* Vol. 38 (2000) No. 5, pp 751-777, p .758

THE SECURITISING NARRATIVE

Generating xenophobia, establishing the migration - threat - terrorism continuum

1. The „questionnaire” 2015 May

NEMZETI KONZULTÁCIÓ
a bevándorlásról és a terrorizmusról

Töltsd ki a kérdőívet!

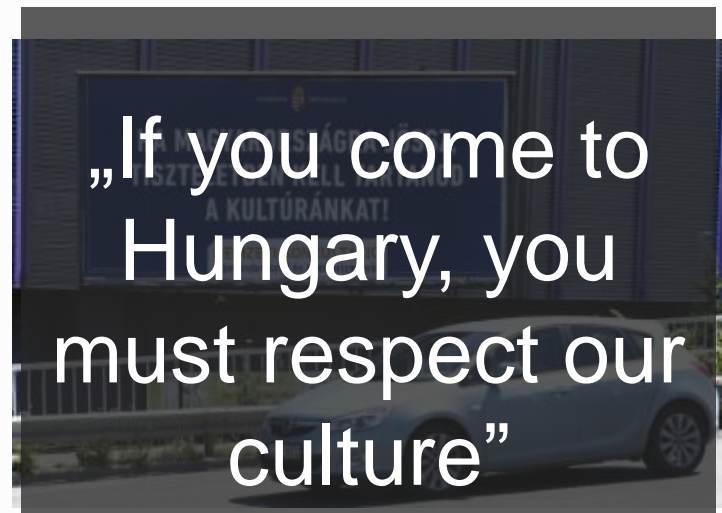
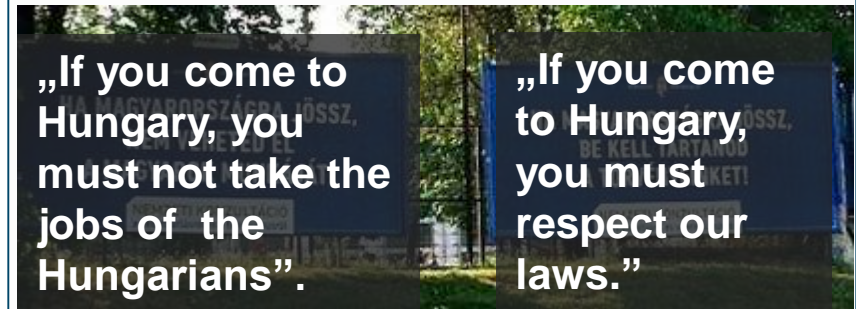
1) ...
2) ...
3) ...
4) ...
5) ...
6) ...
7) ...
8) ...
9) ...
10) ...
11) ...
12) ...

No. 2: “Do you think that Hungary could be the target of an act of terror in the next few years?”;

No. 5 “We hear different views on the issue of immigration. There are some who think that economic migrants jeopardise the jobs and livelihoods of Hungarians. Do you agree?”;

9. “Do you agree with the view that migrants illegally crossing the Hungarian border should be returned to their own countries within the shortest possible time?”

2. The billboard campaign, starting in 2015 June



WIDESPREAD RESISTANCE

Hungary needs culture

If You come to Hungary You have to sustain our elders



VIKTOR ORBÁN'S SPEECH IN THE HUNGARIAN PARLIAMENT AFTER THE PARIS ATTACKS, 16 NOVEMBER THE SCHIZOPHRENIC RELATION TO THE EU

“We Hungarians have been advocating the closure of our borders to stop the flood of people coming from the Middle East and Africa.[Hungary was criticised for this]... Which approach is more humane: to close the borders in order to stop illegal immigration, or to put at risk the lives of innocent European citizens?”

“We feel that the very existence of Europe is at stake”

„We have warned the leaders of the EU not to invite these people into Europe”

Speaking about the quota of resettlement (or relocation – his language is unclear): „The binding quota...is illegal as the European leaders have no competence to adopt such a decision concerning this matter. They have no competence to force upon a member state a measure related to refugees or the matter of immigration, which the country concerned objects.”

VIKTOR ORBÁN'S SPEECH IN THE HUNGARIAN PARLIAMENT AFTER THE PARIS ATTACKS, 16 NOVEMBER THE SCHIZOPHRENIC RELATION TO THE EU

„A new European policy is needed. ... I suggest to push dogmas aside, **let us discard political correctness** and talk straight and openly. I suggest to return from the world of ideologies to natural reason...”

He then suggests four priorities:

- 1 „First we have to **defend the external borders** of the EU, as security starts with the defence of borders”
- 2 „We have to **defend our culture** as the essence of Europe is its spiritual and cultural identity.”
- 3 „We have to **defend our economic interests** as we, Europeans must remain in the center of the world-economy”
4. **People** must be given the right „**to influence European decisions**, because the union must be based on a democratic edifice.”

LET US DEFEND THE COUNTRY!

COLLECTION OF SIGNATURES, STARTING EARLY NOVEMBER 2015, STILL UNDERWAY!

The text of the signature collecting sheet:

*„Let us defend the country!
Petition against the compulsory settlement quota.*

An immigration wave of never seen magnitude has been launched towards Europe!

Based on the national consultation Hungary stood up for itself and defended its borders. However, Brussels is now preparing to settle [in Hungary] tens of thousand of immigrants. Say no to the senseless and illegal quota and join our petition!”

VÉDJÜK MEG AZ ORSZÁGOT!

Petíció a kötelező betelepítési kvóta ellen

[Ajánlom](#) [Megosztás](#)

Soha nem látott bevándorlási hullámot indítottak Európa irányába. A nemzeti konzultáció eredményei alapján Magyarország kiállt magáért, és megvédte határait. Brüsszel azonban most arra készül, hogy kötelező kvótákkal akár bevándorlók tízezreit telepítse le.

Mondjon nemet az értelmetlen és jogtalan kvótákra, csatlakozzon petíciónkhoz!

FIDESZ Tovább a fidesz.hu-ra

Név:*
E-mail:*
Életkor:* Mobil telefon:
Vezetékes telefon:

Kérjük, töltsse ki a *

Adatvédelm

TOVÁ

„PRESSURE IS MOUNTING ON HUNGARY”

Minister János Lázár's press conference, 11 February 2016

„The Hungarian government expects that it has **to fight with Brussels** in order **to defend the country** and in order to **avoid the coerced settlement**” (of refugees resettled from Turkey – but never named as refugees in the press conference –BN)

The government is prepared to build a **razor-wire fence** on its eastern **border with Romania**, due to the expected pressure of irregular migrants

„Even the **pressure from Brussels will not lead to concessions** with regard to our legal system which enables that the personal security closure /sic – (meaning the fence) BN/ and the legal guarantees /meaning the threats against refugees –BN/ **keep illegal immigrants away from Hungary**”

„**Germany** has not committed a larger mistake during the past ten years, than **having pressed for letting 170 thousand persons across Europe without registration and control**. He stated that this is was the largest security mistake having been committed in Central Europe the last ten years.”

**COMPREHENSIVE
INTERPRETATION OF THE
HUNGARIAN STEPS**

WHAT DOES HUNGARY DO INSTEAD OF PROTECTING THE REFUGEES?

1.
IT IS IN DENIAL

2.
DETERS

3.
OBSTRUCTS

4.
PUNISHES

5.
FREE RIDES
Denies solidarity

6.
BREACHES EU AND DOMESTIC LAW

DENIAL

IT IS IN DENIAL

HUNGARY DOES NOT ADMIT THAT MOST OF THOSE WHO ENTERED THE EU TERRITORY WERE (AND ARE) REFUGEES

Government's discourse

Facts /counter-arguments

„Hungary does not need livelihood immigrants” title of the parliamentary debate day on 22 February 2015

„National consultation on terrorism and immigration”

„These people do not come for safety, are not running away in order to save their lives” PM Viktor Orbán on channel TV2, September 2015

MTI the Hungarian News Agency labels any news on refugees as „illegal immigration”

Kosovars who came in that period did not want to immigrate, they transited with or without applying for asylum

Open letter of practically the whole Hungarian migration profession: the questions to be sent out as national consultation are “devoid of any professional or moral basis”.

UNHCR spoke of „people fleeing war and conflict” in its warning against hastened legislation on 3 July 2015

„Illegal immigration” - - „German -Polish program starts to alleviate the refugee crisis” MTI, 2016 February 12 15:31

„Crossing a border in order to seek asylum is not a crime” Antonio Guterres (former) UN High Commissioner for refugees, during his visit in Hungary, September 2015

IT IS IN DENIAL

HUNGARY DOES NOT ADMIT THAT MOST OF THOSE WHO ENTERED THE EU TERRITORY WERE (AND ARE) REFUGEES

Government's discourse

Facts /counter-arguments

Resolution of the Hungarian parliament entitled “**Message to the leaders of the European Union**”
36/2015. (IX. 22.) OGY

“**Waves of illegal immigration threaten Europe with explosion...The European Union is responsible for the emergence of this situation...Irresponsible are the European politicians, who with the illusion of a better life encourage the immigrants to leave everything behind and by risking their lives set out towards Europe... We have the right to defend our culture, language, values....**”

António Guterres UN High Commissioner for refugees, on 20 November 2015, a week after the Paris attacks:

„But let me make it clear that **refugee flows are the result of war and terror**, not its source. Refugees are fleeing events very **much like those of Paris or Beirut**, happening in their home towns, every month, **every week**, for the past few years. And fear and rejection of refugees – especially Muslim refugees – are precisely the **wrong answer** to extremist threats. This is above all **a battle of values**. If **you lose your values you lose the battle**. A Western world that would reject Muslim refugees would provide extremists the best propaganda tool they could wish for in the recruitment of new supporters, including inside the very countries that might close their borders to refugees.”



War in peace
Images of Aris Messinis,
Late October 2015 <http://neoskosmos.com/news/en/aris-messinis-afp-photographer-blog-refugee-crisis-lesvos>



DETERRENCE

DETERRENCE

- **2015 February** Those voluntarily travelling onward towards the Austria taken off from the train. The campaign lasted for a few days only. (Probably to feed into the parliamentary debate)
- **In summer 2015** those arriving at the southern (EU external) border with Serbia were **not transported to the reception centres** inland but were expected to find their own way there. (With a free travel ticket)
- Cases are known in which asylum seekers were **not directed to any reception centre**
- Outside of the reception centres **no material conditions** envisaged by the Reception conditions directive (and by human rights standards) were provided.
- **Early July 2015: entering the trains towards Austria prevented by force**
- Crisis at the Keleti and at other railway stations – 4 September: thousands start to walk towards Vienna (250 km distance) – at midnight the government offers buses to transport the people to the border



I saw two Syrian men walking together - I will never forget it. The first was missing his right leg and was on crutches. The second was walking with a cane and carrying the first man's prosthetic limb over his shoulder; he was only wearing socks. When I asked him why he told me he'd given the other man his shoes. The two of them were planning on walking to Austria. They had already made it all the way to Hungary from Syria.

DETERRENCE – THE TEMPORARY SECURITY BORDER CLOSURE (TECHNICAL BORDER CLOSURE) – THE FENCE

Government's discourse

„Hungary has been the respected member of the large European family. **It is our historical and moral duty to defend Europe**, since thereby we defend ourselves. The inverse is also true: **when we defend the borders of Hungary**, at the same time **we protect Europe**”

Viktor Orbán, Parliament, 21 September 2015.

<http://www.parlament.hu/documents/10181/56618/2015.09.21.+napl%C3%B3/077af232-5782-4653-a36f-ee75ae4b6959>

Facts /counter-arguments

„one has to assume, that the **huge mass**, which earlier intended to get into Austria through Hungary, **will still pass by Hungary's southern borders**’ – he [V.O.] explained The question was - he continued – how the immigrants will continue their journey from Croatia. It is clear that **they plan one of the not minor routes through Hungary**. **’And we try to prevent that’** –he said”

Viktor Orbán, Radio station

„Kossuth” 18 September 2015.

<http://mno.hu/belfold/orban-epul-a-kerites-a-horvat-hataron-1304874>

DETERRENCE – THE CRISIS SITUATION CAUSED BY MASS IMMIGRATION – ARTICLE 80/A-G OF THE ASYLUM ACT

§ 80 A (2) „A crisis situation caused by mass immigration can be **declared in a Government Decree** on the proposal by the minister as initiated by the National Commander of the Police and the head of the refugee authority. A crisis situation caused by mass immigration can be declared **for the entire territory or defined areas of Hungary.**”

Alternative **preconditions**

- Arrivals: on average in excess of 500/day for a month, or 750/day for two weeks or 800/day for a week.
- Stock: the number of applicants in the special “transit zone”. If on average the number of persons in the zone exceeds 1000/day, for one month, 1500/day for two weeks, or 1600/day for one week.
- Unrest: „the development of any circumstance related to the migration situation **directly endangering the public security, public order or public health of any settlement**, in particular the **breakout of unrest or the occurrence of violent acts in the reception centre** or another facility used for accommodating foreigners located **within or in the outskirts of the settlement concerned.**”

DETERRENCE – THE CRISIS SITUATION CAUSED BY MASS IMMIGRATION – ARTICLE 80/A-G OF THE ASYLUM ACT

EXCEPTIONAL POWERS – THE PERMANENT STATE OF THE EXCEPTIONAL

Art 80/B

- „any movable item or real property owned or managed by the State or the local government, or owned or used by a company majority owned by the State or owned by a local government can be requisitioned temporarily but for not more than six months” (Objections to be „adjudicated” by the minister within 3 days)
- Suspension of the applicability of laws related to construction and public procurement. Every construction of shelters and other related buildings is considered as „constructions for national security purposes”.
- Although none of the conditions have been met after mid-October 2015 the crisis situation is still in force (on 10 May 2016) and on 9 March 2016 it was extended to the whole country without any precondition of the Act existing.

OBSTRUCTION

OBSTRUCTION – LACK OF CAPACITY BUILDING

Government's discourse /action

Facts /counter-arguments

For a long period **no new capacity** in the reception centres was created – leading to **overcrowding**

A government decree ordered the **closing down of the largest reception centre** in Debrecen **by 31 October 2015** without replacing it with another.

2016 March: a *tent* camp established in Körmend, Western Hungary, with a capacity of 280 spaces

During the civil war in Ukraine it was announced by the „Operative Board” in January 2014 that „Hungary can receive 170 000 refugees if needed”

http://index.hu/belfold/2014/01/30/a_kormany_felkeszul_ukraina_szetesesere/

The narrowing of the capacities is a clear message: the government does not intend to receive any refugees

OBSTRUCTION – CREATION OF THE SO-CALLED TRANSIT ZONES – LIMITED ACCES TO RSD PROCEDURES

From 15 September so-called “**transit zones**” - no access to Hungary before procedure on eligibility concluded. Ineligible applicants (if they do not submit an appeal) pushed back to Serbia in an informal way, through the green border. Based on the **untenable fiction** that the person has **not entered** (legally) **Hungary**. Practically only denials – **Serbia** considered **safe third country**



Government declares **Serbia and Macedonia safe third country** in a decree of 21 July 2015

Serbia is not a safe third country!

UNHCR: „Hungary has also begun to **return asylum-seekers to Serbia, against standing UNHCR advice to governments.** The argument that refugees can be denied entry because it is possible to be returned to Serbia does not take into account **the asylum system Serbia is currently building is not able to cope with the magnitude of the current inflow of people** who require effective protection.”

<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=printdoc&docid=55fa85705>

Council of Europe, **Commissioner for Human Rights** intervention in two ECtHR cases

(Appl. No. 4485/15 and 44944/1) 17 December 2015 (CommDH (2016)3 :

„The Commissioner considers **that this situation renders access to international protection in Hungary virtually impossible** and entails a real risk of *refoulement* of persons with international protection needs (including Dublin returnees) to Serbia, and of onward chain *refoulement*. It is therefore at variance with Hungary’s international obligations under the European Convention on Human Rights and 1951 Refugee Convention.”

<https://wcd.coe.int/com.instranet.instraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2875309&SecMode=1&DocId=2348808&Usage=2>

OBSTRUCTION – SERBIA AS A SAFE THIRD COUNTRY

The fundamental question is: Is it legal!

What **political –philosophical** support should support the expectation that more than **800 000** refugees should be taken over by a country?

Why would the EU be obliged to take over more than 800 000 refugees? The EU is not a state!

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OBSTRUCTION – BLOCKING THE ROAD TO STARTING AN INDEPENDENT LIFE AFTER RECOGNITION – DENYING ALL INTEGRATION ASSISTANCE

Bill No T9634 submitted to Parliament in March 2016

Abolition of ALL integration measures (including the so-called integration contract) (Now: if needed: 300 euros/month for ½ year, then decreasing sum)

Still **no provision of language course**

Maximum stay at the reception centre, after recognition: **30 days**

Review of refugee and subsidiary protection **status: every 3rd year**

The **withdrawal of the monthly 2850 HUF (9 euros)** cash support of the **asylum seekers**

Expected consequence:

Homelessness

Irregular secondary movement (even of recognised persons)

Justification of the bill: to prevent abuse and not to offer better conditions than what Hungarian citizens enjoy

Absurd – **integration** affected persons **recognised to be in need of international protection**

PUNISHMENT


PUNISHMENT

Three new crimes, related to the security border closure (the fence) (352 A-C §)

- Illegal crossing of the fence – 3 years imprisonment
- Damaging of the fence – 5 years maximum
- Obstructing the construction of the fence - 1 years



Art. 31 of the Geneva Convention

- **Expulsion from** the territory of the **whole EU**
- An extended interpretation of **human smuggling, encompassing Austrian volunteers** helping to get to Austria, but not to the government provided buses/trains doing the same – further undermining the trust in the rule of law
- **Illegal detention in the transit zone**, without judicial control (habeas corpus).
Asylum Act, § 71/A „If a foreigner submits his/her application **before entering the territory of Hungary**, in the transit zone specified in the Act on the State Border (hereinafter: “transit zone”)” she can be held there for a maximum of 4 weeks  *Amuur v. France*. Judgment, 1996 (App. No. 19776/92)

Between 16
September 2015
and 6 March 2016:
1964 criminal
procedures started

<http://mno.hu/belfold/tobb-mint-kekszaz-migranst-allitanak-birosag-ele-1331780> (20160313)

FREE RIDING – LACK OF SOLIDARITY

FREE RIDING – THE LACK OF SOLIDARITY

The closure of the border by the razor-wire fence has **not diminished the number** of asylum seekers and migrants arriving into the EU, it simply **diverted** them to the Serbia- Croatia – Slovenia – Austria – Germany route

After 15 September 2015 (but before the completion of the fence at the Hungarian – Croatian border) it allowed to those, arriving from Croatia to **continue the journey** to Austria **without registration**, **obstructing** the application of **the Dublin system**.

177,135 applications for international **protection** in 2015

More than **414,000 irregular border crossings** in 2015 **→** approximately a quarter of a million travelled through Hungary unregistered.

Hungary stated that it **rejects the relocation decisions**. Instead of taking over 1294 asylum seekers (and receiving almost 8 million euros) it will spend money on lawyers while suing the Commission.

FREE RIDING – THE LACK OF SOLIDARITY

Formal attack against the second relocation decision (Council Decision (EU) 2015/1601 of 22 September) envisaging the relocation of altogether 120 000 asylum seekers in two years

Hungary v Council of the European Union (Case C-647/15) OJ C 38/43, 1.2.2016

See also *Slovak Republic v Council of the European Union* (Case C-643/15) *ibid*, p. 41

Main pleas of Hungary. ((S) = Slovakia also pleas more or less the same):

- Art 78(3) TFEU **does not empower the Council to adopt a legislative act, so the decision ought not have amended** the Dublin III. regulation (604/2013) (S)
- Measures lasting/having effects for 3 or more years are **not provisional** as required by 78 (3) (S)
- The decision making **ought have been unanimous** as Council departed from the Commission proposal
- As the decision is a legislative act because of its content, **national parliaments ought to have had a right to form an opinion** (S)
- After changing the content of the proposal the **European Parliament was not consulted again** (S)
- The decision **contradicts to the conclusions of the European Council** adopted on 25 and 26 June 2015 envisaging voluntary relocation and so **violates Art 68 TFEU**.
- The decision infringes the principles of **legal certainty and legislative clarity** as rules of procedure and selection for relocation were left in dark
- **Violates 51 Geneva Convention guaranteed right of the asylum seekers to stay** in the country in which the application was submitted if no material links to the state whereto transfer is envisaged
- The measure is contrary to the principle of **proportionality** (S)

**BREACHES OF LAW
(DOMESTIC, INTERNATIONAL
AND EU)**

BREACHES OF LAW – HUNGARIAN DOMESTIC LAW

The construction of the fence was started **without conforming** to the applicable **environmental, nature conservation and construction laws**, including the prescribed procedures.

Waiver from under these rules was subsequently ex post facto granted by Act CXL, **when the fence was almost complete**

Legal remedies in the asylum procedure are extremely curtailed deadlines short, access to legal assistance cumbersome. The rights of minors in the criminal law procedures may not be compatible with the relevant domestic Acts and principles. (E.g. a court secretary /junior judge/ may decide instead of a fully fledged judge, language use is limited, documents of the criminal law procedure not translated)

BREACH OF LAW – INTERNATIONAL AND EUROPEAN

- The **systematic detention** of every asylum seeker who applies at the border is contrary to international law and presumably infringes Article 31 of the Geneva Convention
- Pushing back from the transit zone to Serbia under the heading of safe third country, **forcing to re-enter Serbia without a legal permit** violates good neighbourliness, the 2007 Serbia – EU return agreement and the Return directive. Not providing the applicant with a document in Serbian language informing the Serbian authorities of the ground for return (stc.) breaches the Procedures directive
- **Returning persons to Croatia** could only happen under the Dublin III regulation not by direct refoulement

BREACH OF LAW – INTERNATIONAL AND EUROPEAN

- Hungary **rarely removes those who have no right to stay** (and are no longer asylum seekers) to the country of origin – breaching the return directive.
- It announced on 23 June the „**suspension**” of taking charge/taking back of asylum seekers under the Dublin regulation. This was revoked a few days later. However, it **administratively hinders large scale returns** to Hungary.
- Systemic refusal of taking charge/ taking back at the political level: Viktor Orbán in Parliament, 16 November 2015: „I’d like to inform every citizen of Hungary that here, as long as this government can breathe, neither quota, **nor deportation back** [meaning taking charge or taking back – BN] **will take place**”. Applause on the FIDESZ side

BREACH OF LAW – INTERNATIONAL AND EUROPEAN

- The Commission's concern – **on the road to establishing infringement.**
- **6 October 2015:** Commission sent a 9 pages long „administrative” letter listing its concerns
 - Is there still **fair procedure**, access to legal representation, **effective remedy**?
 - Can the **prohibition of reviewing the facts** by the appeal court be legal?
 - Are **reception conditions** met?
 - Are legal guarantees concerning **detention** in the transit zone met?
 - Does **automatic expulsion** not breach the principle of voluntary departure enshrined in the Return directive (2008/115/EU)?

BREACH OF LAW – INTERNATIONAL AND EUROPEAN

10 December: **letter of formal notice** = start of **the first set** of infringement procedures http://europa.eu/rapid/press-release_IP-15-6228_en.htm

- No possibility to refer to **new facts** and circumstances in the context of appeals and
- **No automatic suspension of decisions** in case of appeals - effectively forcing applicants to leave the territory before the time limit for lodging an appeal expires, or before an appeal has been heard.
- Decisions on the appeal against finding an application inadmissible are taken by **court secretaries (a sub-judicial level)** lacking judicial independence
- The rules on **interpretation and translation** in the criminal law procedure violate the relevant directive.

BROADER (EU) CONTEXT

**WHAT SOLIDARITY IS CONCEIVABLE *AMONG* EU
MEMBER STATES GOING BEYOND AMIF? =
RELOCATION, HOTSPOTS**

RELOCATION DECISIONS

Relocation: distributing among Member States those asylum seekers who are already within the EU and have a good chance of being recognised – i.e. members of groups with 75% recognition rate in the previous quarter (Syrians, Iraqis and Eritreans)

2 decisions:

- COUNCIL DECISION (EU) 2015/1523 of **14 September** 2015
40 000 persons **24,000 from Italy, 16,000 from Greece**
- COUNCIL DECISION (EU) 2015/1601 of **22 September** 2015
120 000 persons First year: **15,600 from Italy and 50,400 from Greece** Second year: 54,000 either from the same two or from other Member States.

No relocation to Denmark, Ireland, UK, Greece and Italy – 23 MS take up the 40 plus 120 thousand

Relocating MS get 6000 Euros/head

In exchange: Greece, Italy must develop „roadmap”

MEMBER STATES' SUPPORT TO EMERGENCY RELOCATION MECHANISM

28 JANUARY 2016 COMPARED TO 15 MARCH 2016

Member States' Support to Emergency Relocation Mechanism

(Communicated as of 28 January 2016)

Member States	National Contact Points Appointed	Liaison Officers Appointed		Reply to EASO call - Experts	Reply to Frontex call - Border guards	Relocation			
		Italy	Greece			Places Made Available	Relocated from Italy	Relocated from Greece	Remaining Places from the 160,000
Austria	✓	✓	✗	45	26	✗	✗	✗	1953
Belgium	✓	✓	✓	15	4	30	14	✗	3798
Bulgaria	✓	✓	✓	1	✗	1302	✗	✗	1302
Croatia	✓	✗	✗	2	11	✗	✗	✗	968
Cyprus	✓	✓	✓	✗	✗	30	✗	✗	320
Czech Republic	✓	✗	✗	35	8	✗	✗	✗	2691
Denmark	N/A	N/A	N/A	5	50	✗	✗	✗	N/A
Estonia	✓	✓	✓	1	1	✗	✗	✗	329
Finland	✓	✓	✓	1	2	150	96	44	1958
France	✓	✓	✓	6	59	900	19	43	19651
Germany	✓	✓	✓	13	50	40	11	10	27515
Greece	✓	N/A	N/A	1	✗	✗	✗	✗	N/A
Hungary	✓	✗	✗	1	4	✗	✗	✗	1294
Ireland	✓	✓	✓	2	✗	20	✗	10	590
Italy	✓	N/A	N/A	✗	4	✗	✗	✗	N/A
Latvia	✓	✓	✓	✗	✗	481	✗	✗	481
Lithuania	✓	✓	✓	1	14	40	✗	4	667
Luxembourg	✓	✓	✓	6	✗	90	✗	30	527
Malta	✓	✓	✗	2	✗	131	✗	✗	131
Netherlands	✓	✓	✓	6	23	100	50	✗	5897
Poland	✓	✓	✗	✗	18	100	✗	✗	6182
Portugal	✓	✓	✓	✗	12	130	10	16	2925
Romania	✓	✓	✓	11	23	300	✗	✗	4180
Slovakia	✓	✓	✓	2	20	✗	✗	✗	902
Slovenia	✓	✓	✓	1	✗	✗	✗	✗	567
Spain	✓	✓	✓	30	41	50	18	✗	9305
Sweden	✓	✓	✗	2	6	300	39	✗	3727
United Kingdom	N/A	N/A	N/A	10	29	N/A	✗	✗	N/A
Norway	✗	✗	✗	2	3	✗	✗	✗	tbc
Switzerland	✗	✗	✗	✗	2	✗	✗	✗	tbc
Liechtenstein	✗	✗	✗	✗	✗	43	✗	✗	tbc
Iceland	✗	✗	✗	✗	✗	✗	✗	✗	tbc
TOTAL	All concerned EU Member States have now notified	20	17	201 experts (of 374 requested)	447 border guards (of 775 requested)	17 Member States 4237 places (of 160,000)	257 (out of 39,600)	157 (out of 66,400)	97,860 (of initial 98,256)¹

RELOCATION (state of play as of 15 March 2016)

937 people have been relocated since the launch of the scheme

Member States	Relocated from Italy	Relocated from Greece
Austria	✗	✗
Belgium	24	✗
Bulgaria	✗	2
Croatia	✗	✗
Cyprus	✗	6
Czech Republic	✗	✗
Denmark	✗	✗
Estonia	✗	✗
Finland	95	77
France	41	242
Germany	20	37
Hungary	✗	✗
Ireland	✗	10
Latvia	✗	6
Lithuania	✗	6
Luxembourg	✗	30
Malta	15	6
Netherlands	50	40
Poland	✗	✗
Portugal	65	64
Romania	✗	15
Slovenia	✗	✗
Slovakia	✗	✗
Spain	18	✗
Sweden	39	✗
TOTAL	368	369

Red circle: increased value between 28 January and 15 March

RELOCATION AS OF APRIL 21

Member States' Support to Emergency Relocation Mechanism

(Communicated as of 21 April 2016)

Member States	National Contact Points Appointed	Liaison Officers Appointed		Reply to open EASO calls - Experts	Reply to Frontex call – Poseidon Rapid Intervention	Reply to Frontex call – joint operations (closed)	Reply to Frontex call – joint operations (ongoing)	Relocation			Remaining Places from the 160,000
		Italy	Greece					Places Made Available	Relocated from Italy	Relocated from Greece	
Austria	✓	✓	✗	48	✓	✗	✓	✗	✗	✗	1953
Belgium	✓	✓	✓	15	✓	✗	✗	30	24	✗	3788
Bulgaria	✓	✓	✓	2	✓	✗	✗	1302	✗	4	1298
Croatia	✓	✗	✗	2	✗	✗	✗	✗	✗	✗	968
Cyprus	✓	✓	✓	✗	✓	✗	✗	30	✗	6	314
Czech Republic	✓	✗	✗	45	✓	✓	✗	30	✗	✗	2691
Denmark	N/A	N/A	N/A	5	✓	✓	✓	✗	✗	✗	N/A
Estonia	✓	✓	✓	2	✓	✓	✓	46	✗	7	322
Finland	✓	✓	✓	1	✗	✗	✗	270	148	111	1819
France	✓	✓	✓	20	✓	✗	✓	1300	137	362	19215
Germany	✓	✓	✓	22	✓	✓	✗	40	20	37	27479
Greece	✓	N/A	N/A	1	✗	✗	✗	✗	✗	✗	N/A
Hungary	✓	✗	✗	2	✓	✗	✗	✗	✗	✗	1294
Ireland	✓	✓	✓	4	✗	✗	✗	50	✗	10	590
Italy	✓	N/A	N/A	✗	✓	✗	✓	✗	✗	✗	N/A
Latvia	✓	✓	✗	7	✓	✗	✗	481	1	21	459
Lithuania	✓	✓	✓	5	✓	✗	✗	100	✗	6	665
Luxembourg	✓	✓	✓	7	✓	✗	✗	150	✗	30	527
Malta	✓	✓	✗	5	✗	✗	✗	131	15	6	110
Netherlands	✓	✓	✓	13	✓	✗	✗	200	50	142	5755
Poland	✓	✓	✓	7	✓	✓	✓	100	✗	✗	6192
Portugal	✓	✓	✓	✗	✓	✗	✗	1642	107	89	2752

Source: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf (20160422)

RELOCATION AS OF APRIL 21

Member States	National Contact Points Appointed	Liaison Officers Appointed		Reply to open EASO calls - Experts	Reply to Frontex call – Poseidon Rapid Intervention	Reply to Frontex call – joint operations (closed)	Reply to Frontex call – joint operations (ongoing)	Relocation			
		Italy	Greece					Places Made Available	Relocated from Italy	Relocated from Greece	Remaining Places from the 160,000
Romania	✓	✓	✓	14	✓	✗	✗	515	6	29	4145
Slovakia	✓	✓	✓	3	✓	✓	✓	✗	✗	✗	902
Slovenia	✓	✓	✓	1	✓	✗	✗	40	✗	✗	567
Spain	✓	✓	✓	36	✓	✓	✓	200	18	✗	9255
Sweden	✓	✓	✗	3	✓	✗	✗	300	39	✗	3727
United Kingdom	N/A	N/A	N/A	13	✗	✗	✗	N/A	✗	✗	N/A
Norway	✗	✗	✗	10	✓	✗	✗	✗	✗	✗	<i>tbc</i>
Switzerland	✗	✓	✗	2	✓	✗	✗	30	✗	✗	<i>tbc</i>
Liechtenstein	✗	✗	✗	✗	✗	✗	✗	43	✗	✗	<i>tbc</i>
Iceland	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	<i>tbc</i>
TOTAL	All concerned EU Member States have now notified	22	17	294¹ experts (of 5224 requested)	759 offers (of 1112 requested)	107 border guards offered	461 border guards offered (of 1412 requested)	22 Countries 7030 places (of 160,000)	565 (out of 39,600)	860 (out of 66,400)	96,788 (of initial 98,256)²

Source: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf (20160422)

AMIF, HOTSPOTS,

AMIF: Asylum, Migration and Integration Fund

2014-2020: 2,75 billion Euros for Member States!

To support

the reception of

asylum seekers and

the integration

of refugees and beneficiaries

of subsidiary protection

Hotspots = in Italy and Greece: complex sites where experts from different EU MS work together in receiving and screening the applications and organising the return of those not in need of international protection. 6 planned in Italy, 5 in Greece.

Original plan: open sites. Actually: detention centers

THE STATE OF PLAY WITH THE HOTSPOTS EARLY MAY, 2016

HOTSPOTS IN GREECE					
	LESVOS	CHIOS	SAMOS	LEROS	KOS
Total Reception Capacity	1500	1100	850	1000	1000
EU Presence	Frontex: 293 Officers (Debriefing, screening, fingerprinters and registration teams, Border Surveillance Officers, Advance Level Document Officer, Team Leaders, Frontex Supporting Officers)	Frontex: 95 Officers (Debriefing, screening and Advance Level document expert teams, Border Surveillance Officer)	Frontex: 84 Officers (Screening and debriefing teams, Border Surveillance Officer and Advance Level Document Officer)	Frontex: 32 Officers (Screening and debriefing teams, Border Surveillance Officer and Advance Level Document Officer)	Frontex: 35 Officers (Screening and debriefing teams, Border Surveillance Officer and Advance Level Document Officer)
	EASO: 51 Member State experts under the EU-Turkey Agreement, 3 members of EASO staff, and 55 interpreters, 2 press officers, 1 expert for information provision on relocation	EASO: 4 Member State experts under the EU-Turkey Agreement, 1 member of EASO staff, 4 interpreters	EASO: 4 Member State experts for preparation of the EU-Turkey Agreement, 1 member of EASO staff, 1 interpreter	0	0
	Europol: 4 officers	Europol: 2 officers	Europol: 1 officers	Europol: 2 officers	

GREECE



ITALY

Actually functioning:

Lampedusa (14 Frontex officers, 4 EASO experts and staff)

Pozzallo (14 Frontex officers, 4 EASO experts and staff)

Taranto (4 Frontex officers, 4 EASO experts and staff)

Trapani (15 Frontex officers, 4 EASO experts and staff)



**WHAT SOLIDARITY WITH THOSE STATE WHO
HOST MOST REFUGEES? RESETTLEMENT, EU
TRUST FUND FOR SYRIA /"MADAD TRUST
FUND"/, EMERGENCY TRUST FUND FOR
AFRICA**

SOLIDARITY WITH THOSE HOSTING REFUGEES AND SUPPORT FOR OTHER AFFECTED STATES

- **Resettlement of 22 thousand** refugees from outside of the EU in the next two years finally decided on 1 October 2015.
- **Trust Fund to support Syrian refugee hosting countries** (500 million Euros from the budget of the EU in 2015, to be matched by another 500 million donated directly by the MS) (See also the later Turkey – EU deal)
- **Emergency Trust Fund for stability** and addressing **the root causes** of irregular migration and displaced persons **in Africa**. „The Commission considers that national contributions should match the **€1.8 billion EU funding.**”

4,555 people have been resettled since the launch of the scheme*

Austria	1395
Belgium	212
Czech Republic	52
France	15
Ireland	251
Italy	96
Netherlands	231
United Kingdom	1864
Norway	6
Liechtenstein	20
Switzerland	413

*Based on information made available by Member States and Associated Countries as of 15 of March 2016

COM(2015) 510 final COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL Managing the refugee crisis: State of Play of the Implementation of the Priority Actions under the European Agenda on Migration, p. 10.)

SOLIDARITY WITH THOSE HOSTING REFUGEES AND SUPPORT FOR OTHER AFFECTED STATES

Financial pledges to Trust Funds, € million

(Communicated as of 22 March 2016)

Member States	Africa Trust Fund	Syria Trust Fund ¹	Total
Total Pledged	81.71	60.05	141.76
Contribution from EU financing	1800	500	2300
Total required²	3600	1000	4600
Shortfall	1718.29	439.95	2158.24

Source: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_member_state_pledges_en.pdf (20160329)

No further pledges were made until 3 May 2016!

THE STEPS IN THE EU – TURKEY ARRANGEMENTS

First step: 29 November 2015

EU's offer: More frequent summits, **high level dialogue** on economic and other matters, **accession negotiations** revived, **visa** liberalisation accelerated + establishment of a Refugee Facility for Turkey with an extra **3 billion euros**.

Turkey's offer: common fight against irregular entry (into Turkey and into the EU) and intention to improve the socio-economic situation of the Syrians under temporary protection. (No obligation to take back third country nationals!)

Second step: 7 March 2016:

The European Council meeting (with Turkey) New elements beyond 2015 November:

Return all new irregular migrants (not in need of international protection!) crossing from Turkey into the Greek islands with the costs covered by the EU;

Resettle, for every Syrian readmitted by Turkey from Greek islands, **another Syrian from Turkey** to the EU Member States, within the framework of the existing commitments

THIRD STEP: THE EU-TURKEY „STATEMENT” – THE DEAL OF 18 MARCH 2016

„[A]ny application for asylum will be processed individually by the Greek authorities in accordance with the Asylum Procedures Directive, in cooperation with UNHCR”

- right to stay till first instance decision, unless inadmissible
- right to appeal

„All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey. This will take place in full accordance with EU and international law, thus excluding any kind of collective expulsion.”

- Contradicts to the promise to process every claim
- EU law: return directive = voluntary departure preferred, appeal against removal decision, strict conditions for detention

„[T]emporary and extraordinary measure”

- For how long? Does extraordinariness waive rights?

„Migrants not applying for asylum or whose application has been found unfounded or inadmissible in accordance with the said directive will be returned to Turkey”

- So far very few applied in Greece (11 370 out of 880 000), now they will
- Inadmissibility: is Turkey a safe third country and/or a country of first asylum?!

THE EU-TURKEY „STATEMENT” – THE DEAL OF 18 MARCH 2016

„For every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU taking into account the UN Vulnerability Criteria”

- How can Syrians be returned if they applied for asylum (recognition rate in EU above 98% in Q4 of 2015)?

- What about Dublin and the right to join family and be processed there?

„[R]esettlement under this mechanism will take place, ... honouring the commitments [of 20 July 2015], of which 18.000 places for resettlement remain. Any further need for resettlement will be carried out through a similar voluntary arrangement up to a limit of an additional 54.000 persons.” ... The Commission's will propose an amendment to the relocation decision of 22 September 2015 to allow for any resettlement commitment undertaken to be offset from non-allocated places under the decision... Should the number of returns exceed the numbers provided for above, this mechanism will be discontinued.”

- A mechanism up to 72 000 resettlements. No plan for afterwards

- Purely voluntary

Visa liberalisation among Schengen states for Turkey by the end of June 2016

Opening Chapter 33 in the accession negotiations

FUTURE MOVES OF THE EU

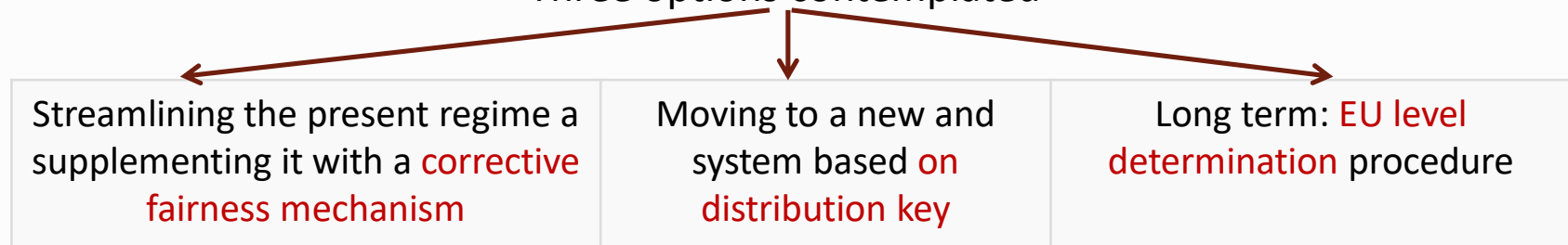
THE 6 APRIL COMMUNICATION AND THE 4 MAY PACKAGE

„Towards a reform of the Common European Asylum system and Enhancing Legal Avenues to Europe” COM (2016) 197 Final, 6.4.2016

Priorities

- 1) Establishing a **sustainable and fair system** for determining the Member State **responsible for** asylum seekers

Three options contemplated



- 2) **Reinforcing the Eurodac** system: expanding the data stored and uses extended beyond asylum
- 3) **A new mandate for the EASO** : a new policy-implementing role as well as a strengthened operational role and providing sufficient financial resources and legal means for that purpose

Proposals on these three items published on 4 May 2016

- COM(2016)270 = Dublin recast
- COM(2016)271 = Replacing EASO with the European Union Asylum Agency
- COM(2016)272 = Extending Eurodac

FUTURE MOVES OF THE EU

THE 6 APRIL COMMUNICATION AND THE 4 MAY PACKAGE

Further plans to amend CEAS

4) Achieving **greater convergence** in the EU asylum system

Objective: **Strengthening and harmonising** further the Common European Asylum System rules, so as to ensure **more equal treatment** across the EU and **reduce** undue **pull** factors to come to the EU.

Actions: The Commission will propose a new **Regulation** establishing a **single common asylum procedure** in the EU and **replacing** the Asylum Procedures Directive, a new **Qualification Regulation replacing** the Qualification Directive and targeted **modifications** of the **Reception Conditions Directive**.

5) **Preventing secondary movements** within the EU

Objective: Ensuring that the functioning of the **Dublin** mechanism is **not disrupted by abuses and asylum shopping** by applicants for and beneficiaries of international protection.

Actions: The Commission will include **strengthened procedural measures** in its proposals under the new Asylum Procedures and Qualification Regulations as well as the Reception Conditions Directive, **to discourage and sanction irregular moves** to other Member States.

FUTURE MOVES OF THE EU

THE 6 APRIL COMMUNICATION AND THE 4 MAY PACKAGE

The content of the May 4 package - Dublin

- shorter deadlines for requesting, responding, transferring
- only „notification” in take back situations – no need for approval
- first responsible state can not be relieved later (by passing of time, e.g.)
- secondary movement sanctioned by deprivation from reception conditions
- appeal automatically has suspensive effect
- safe third country and country of first asylum to be applied before a Dublin transfer
- early warning mechanism and conciliation procedure abolished
- corrective mechanism:
 - Target figure: previous 12 months, MS's share calculated only on the basis of brutto GDP and population relative to the total of EU (50-50% weight)
 - If above 150% of the so calculated numbers: automatic taking over by other MS
 - Possibility to abstain from the system for a year - 250 000 euros to be payed after every person not processed
 - Rolling calculation based on weekly EASO (EUAA) data
 - Inadmissible calculations not counted
 - Handed over procedures still start with finding the responsible state – person may be moved twice, before procedure on the merit!

FUTURE MOVES OF THE EU

THE 6 APRIL COMMUNICATION AND THE 4 MAY PACKAGE

The content of the May 4 package

EURODAC

- Re-conceiving it as a **general tool in the response to irregular migration** , including returns. Fingerprints of migrants without the right to stay may be collected and compared
- Extending the storage to include **facial images**
- Minors may be fingerprinted earlier (**6 years** instead of 14)
- Extended categories of persons to be fingerprinted: **illegal stayers added** to illegal crossers of the external borders and to applicants for international protection

EASO/EUAA

Increased role in controlling Country of origin information

Asylum support teams and intervention teams: own staff + MS experts

If a MS is subject of particular pressure EUAA intervene based on an implementing decision of the Commission

Enhanced role in the Dublin corrective mechanism

CONCLUSIONS

CONCLUSION ON THE ACTIONS OF HUNGARY

Government and the Parliament intentionally replaced the figure of the refugee with the (imagined) illegal migrant, who is arriving in an unlawful manner and only has sinister intentions, against whom “Hungary has to be defended”.

The ‘logical’ response: the fence, criminalisation, ignorance, exposure to the harshest conditions, and a total lack of support, except for the support provided by civil society.

That civil society is now under attack, accused of being a vehicle for unfettered “immigration” threatening the destruction of Europe.

So the parallel reality is now complete: there were “illegal migrants”, who only came to destroy Hungary and Europe, but against whom Hungary (and Europe) has been defended.

In the reality on the ground, the brutal violation of many refugee related obligations is coupled with the most myopic political move of diverting the arriving people to neighbouring countries and pretending that the “refugee problem” has been “solved”.

The ambitions of the Hungarian Government and of the EU are widely divergent, they do not run in parallel as they should.


The words uttered are about “defending Europe”, but the deeds actually destroy it.

BROADER CONTEXT

Experiencing a large influx, **not unusual in other regions** (Afghanistan, Rwanda, earlier Bangladesh)

Real novelty: states (Turkey, Greece, Macedonia, Serbia, Croatia, Slovenia, Hungary, Austria) renouncing claim to control the presence of foreigners on their territories.

Fundamental issue: into which direction will the EU move:

- 
- * Dismantling Schengen
 - * Retreat into national existence
 - * Inter-state competition
 - * Shifting responsibility to others MS

FRAGMENTATION

- * Creating a genuinely united European space
- * Asylum seeker arrive thereto and the European demos offers them protection

UNION

Thanks!

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