

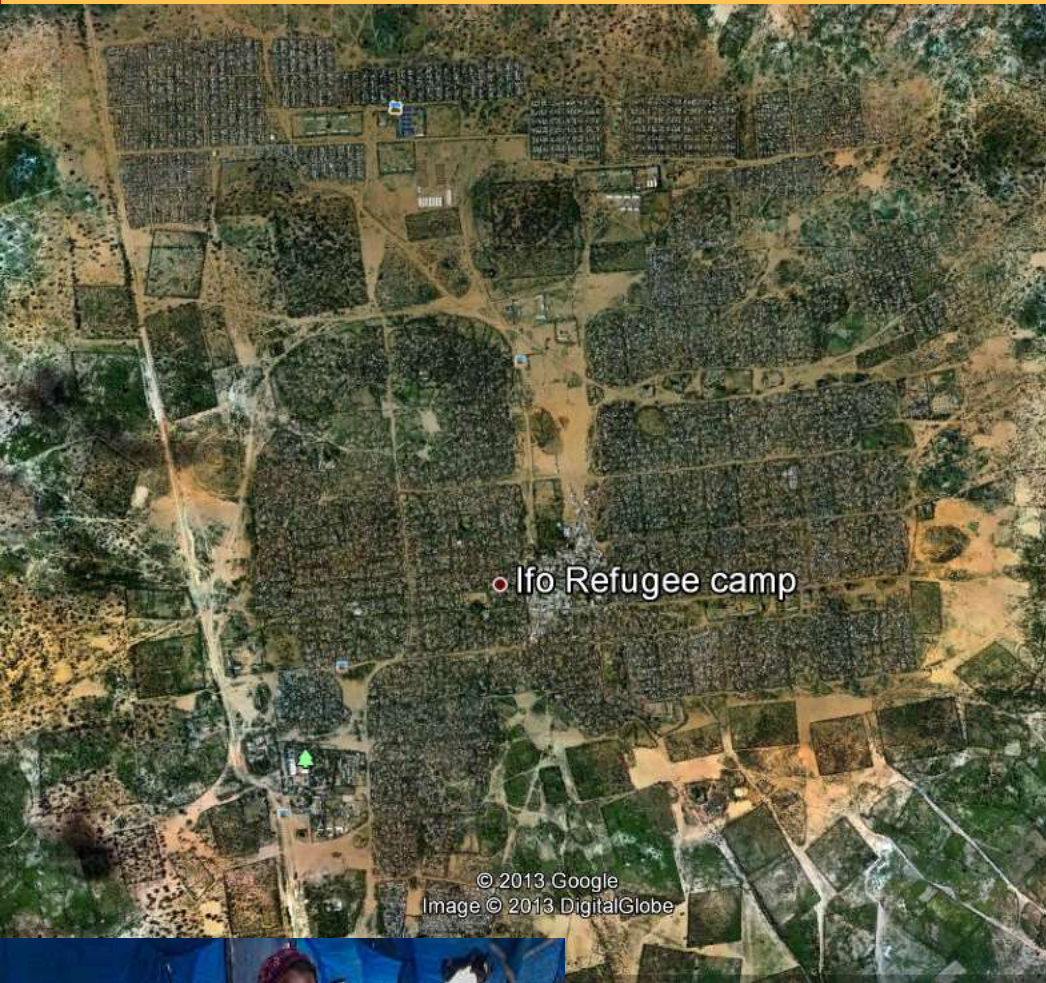
THE FUTURE OF THE INTERNATIONAL AND EUROPEAN REFUGEE REGIME

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at the Human Rights Master's Programme
of the Consortium of Russian Universities**

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**GENERAL
CONSIDERATIONS
-
GLOBAL ISSUES**

Dadaab - Ifo refugee camp, Kenya



Environmental conflict looms over Kenyan refugee camp
Published on : 15 July 2011 - 1:51pm | By S.N.G. Juma Dook (Editor: Saasiri Mohamed)

Global challenges

- The order of magnitude and the emergencies
 - 2012-2013 Syria – more than 1 million displaced
- Irrational allocation of resources (Hathaway)
- Lack of genuine responsibility and burden sharing
- Decreasing willingness to receive refugees – securitisation of refugee reception
- Deteriorating conditions
 - Women
 - Children
 - Detention
 - Xenophobia

THE EUROPEAN PACT ON IMMIGRATION AND ASYLUM

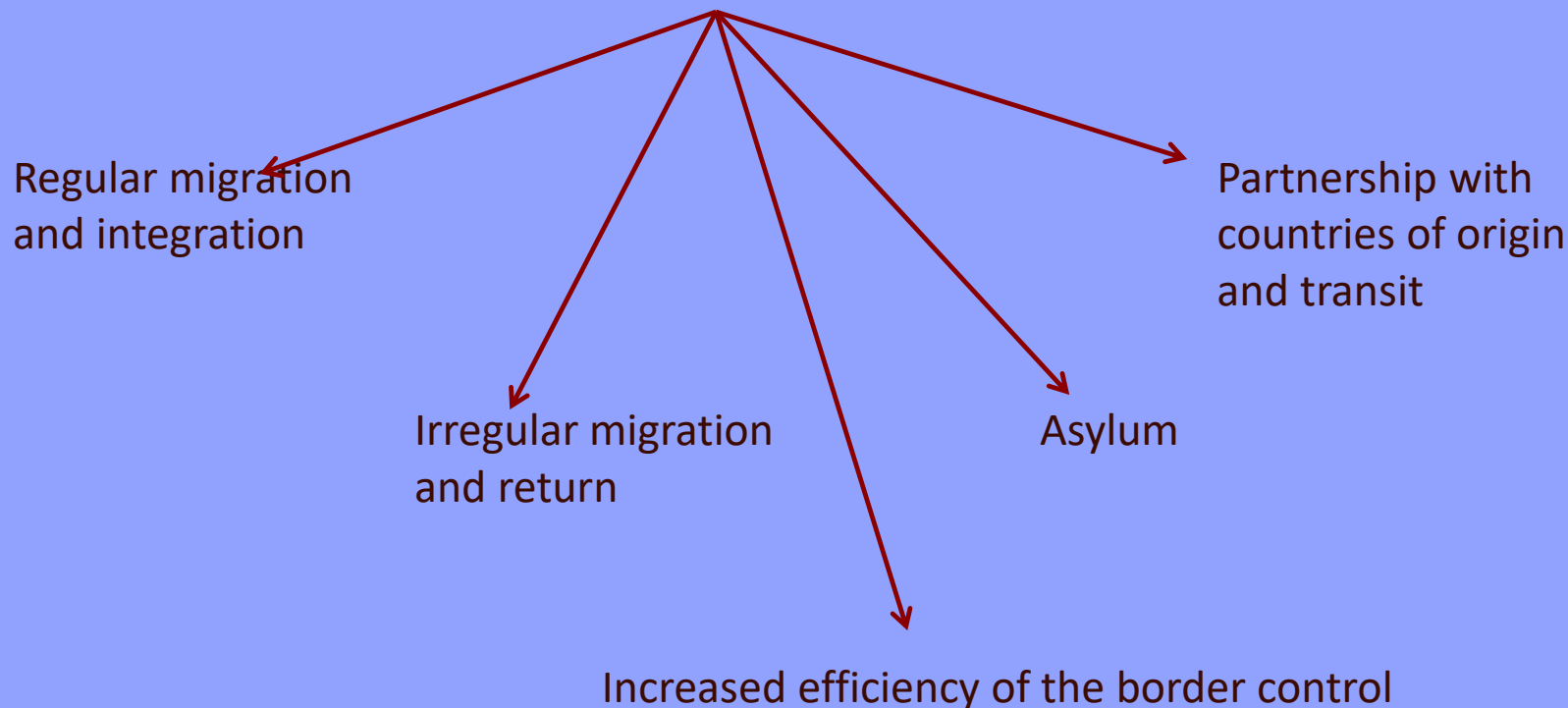
**Council Doc 13440/08 of 24 September 2008,
formally endorsed by the European Council on
15/16 October 2008.**

Never published in the OJ

The (French) Pact on Immigration and Asylum

- French proposal, adopted by the JHA Council on 25 September 2008, formally adopted by the European Council meeting in October 2008 - legally not binding

The five priority areas of the pact



The Pact on Immigration and Asylum

- **Approach:**

- Migration is a reality, aiming at zero migration is unrealistic and dangerous,
- Europe's reception/integration capacity is limited
- Solidarity and shared responsibility among member states
- Migration is an opportunity and a danger

Opportunity

- Fulfils individual aspirations
- Contributes to economic development of MS
- Counteracts ageing of the European population
- Generates remittances to sending countries

Danger

The badly managed immigration undermines social cohesion

The decision of a MS affects all the others in a borderless area

THE STOCKHOLM PROGRAM

The Stockholm Programme -

**An open and secure Europe serving and
protecting the citizen**

**Formally adopted by the European Council on
10/11 December 2009**

**See Council Conclusions of 11 December 2009
(EUCO 6/09) and the programme in Council
register doc 17024/09)**

The Stockholm Program

6.2 Asylum: a common area of protection and solidarity

The European Council remains committed to establishing a **common asylum procedure and a uniform status for those granted international protection.**

6.2.1 *A common area of protection*

Starting points/Goals

The development of a Common Asylum Policy **should be based on a full and inclusive application of the Geneva Convention on the status of refugees and other relevant international treaties.**

The European Asylum Support Office (EASO) will be an important tool strengthening all forms of practical cooperation between the Member States. EASO should further develop a common educational platform for national asylum officials.

The Dublin System remains a cornerstone.

Stockholm - 6.2.1 A common area of protection

Proposals

The Council and the European Parliament intensify the efforts to establish a common asylum procedure and a uniform status in accordance with Article 78 TFUE for those who are granted asylum or subsidiary protection by 2012 at the latest,

The Commission to consider (after 2012) the possibilities for creating a framework for the transfer of protection of beneficiaries of international protection when exercising their acquired residence rights under EU law,

A feasibility study on Eurodac as a supporting tool for the entire CEAS, while fully respecting data protection rules,

Finalise Commission study on the joint processing of asylum applications.

Stockholm - 6.2.2 Sharing of responsibilities and solidarity

6.2.2 Sharing of responsibilities and solidarity between the Member States

Starting points/Goals:

Effective solidarity with the Member States facing particular pressures should be promoted.

Proposals

Developing mechanism for **sharing responsibility** between the Member States

Creating instruments and coordinating mechanisms for MS to support **each other** in **building capacity**,

A **more effective use of existing EU financial systems** aiming at reinforcing internal solidarity,

Secondment of officials in order to help those Member States facing particular pressures of asylum seekers.

Stockholm - 6.2.3 The external dimension of asylum

6.2.3 The external dimension of asylum

Starting points/goals

Partnership and cooperation with third countries hosting large refugee populations.

A common EU approach and cooperation with the UNHCR and other actors

The EU should promote its accession to the 1951 Geneva Convention

Solidarity with third countries: capacity building and help in protracted refugee situations

Proposals

To enhance capacity building in third countries

Develop and expand the idea of Regional Protection Programmes.

Encourage the voluntary participation of Member States in the joint EU resettlement scheme and increase the total number of resettled refugees. (Commission to report on resettlement yearly)

Strengthen EU support for the UNHCR

Enhance access to asylum procedures in main transit countries - Member States could participate on a voluntary basis.

SUMMARY

- The new buzzword: principle of **solidarity** and **fair sharing of responsibility**
- **EASO, relocation within Europe, increased co-operation with third states** are the genuine priorities, all targeting the asylum seeker in with a view to **diminish his/her impact** on Europe or the member States
- The absurd (non) functioning of the Dublin system, the hectic reactions to the Arab Spring, the extremely unequal distribution of asylum seekers and the wide margin of decisions concerning the same groups show that **the system is not working (properly)**.

„Delivering an area of freedom, security and justice for Europe's citizens”

9 pages of text , 59 pages of tables with the suggested measures in the whole AFSJ field

Asylum related measures

Maintaining the fiction of achieving the CEAS (by 2012) but actually setting more modest goals

- European Asylum Curriculum
- Development of Eurodac into supporting tool for the entire Common European Asylum System
- Investigating the possibility of joint processing of asylum applications within the Union
- Evaluation report on the EASO's impact on practical cooperation and on the Common European Asylum System
- Communication on a framework for the transfer of protection of beneficiaries of international protection and mutual recognition of asylum decisions
- Development of a common methodology with a view to reducing disparities of asylum decisions
- Communication on enhanced intra-EU solidarity
- Evaluation and development of procedures for facilitation of the secondment of officials in order to help those Member States facing particular pressures of asylum seekers
- Strategic partnership with UNHCR
- Mid-term evaluation of the EU Resettlement Programme and proposal to improve it
- Communication on new approaches concerning access to asylum procedures targeting main transit countries
- Launching and developing new Regional Protection Programmes, including in the horn of Africa

EASO

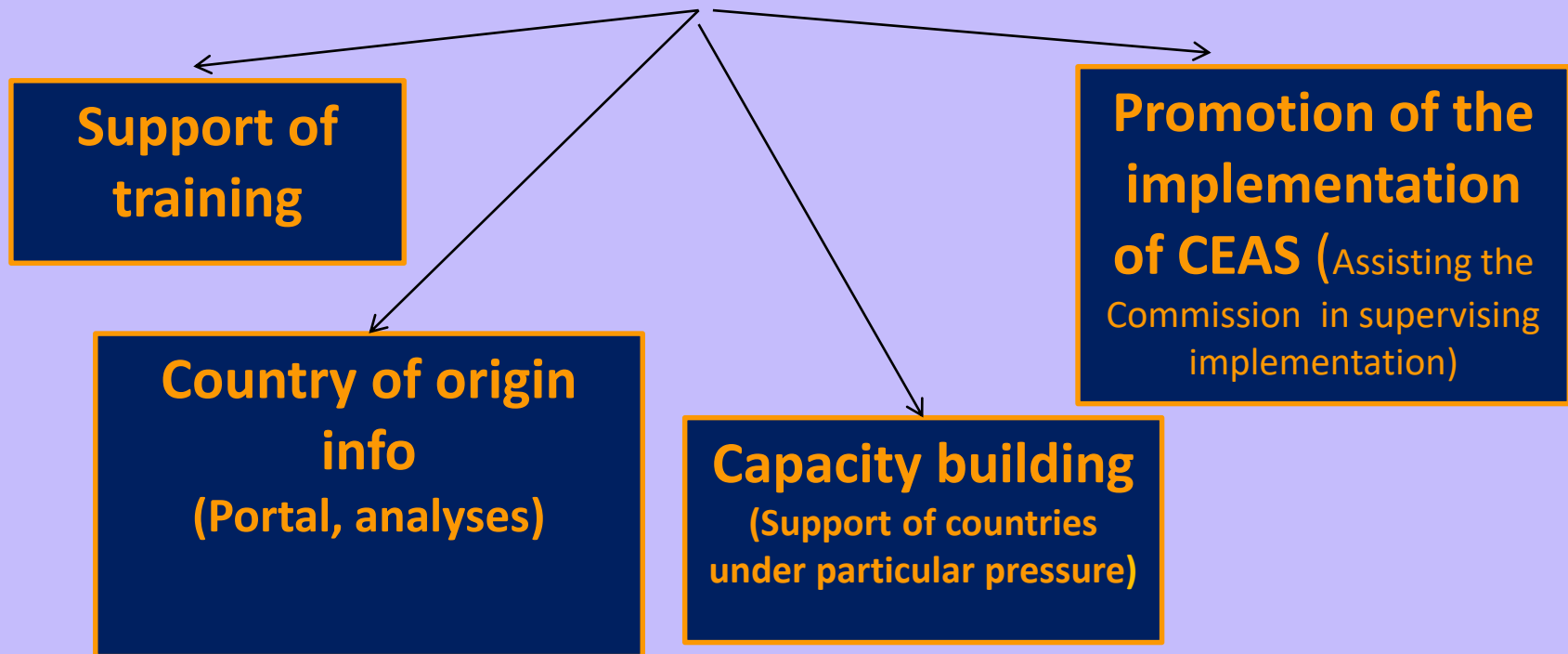
Commission's proposal: (COM (2009) 66 final)

- Regulation: 439/2010/EU establishing a European Asylum Support Office, OJ L 132/11, 29.5.2010

Purposes

- Coordinate and strengthen **practical cooperation** among Member States and improve the implementation of the CEAS;
- **Operative support** to MS subject to **particular pressure** on their asylum and reception systems
- **Scientific and technical assistance** in regard to the policy and legislation of the Union

Priorities



- First meeting of the Management Board : Malta, 25-26 November 2010
Start of operation: 19 June 2011.
- For developments check: <http://easomonitor.blogspot.com/>
and <http://easo.europa.eu/>

Progress or slow motion

In asylum and (regular) migration rather slow motion

- The EU is fragmented in an increasing fashion – the move to qualified majority decision making has not increased efficiency
- In the field of regular migration member States are unwilling to give up their national preferences and specialities
- Dividing lines: :
 - States at the external borders exposed to disproportionate pressure - more protected central (and Western) states
 - Liberal, human rights based approach – pragmatist realists
- Changing geometry (Great Britain, Ireland, Denmark, Iceland, Norway, Switzerland, Liechtenstein) hard to identify the actual obligations of MSs
 - Illegal migration
 - Fight against illegal migration – fitting well with the securitisation spirit
 - Human rights constraints!

Solidarity within the European Union

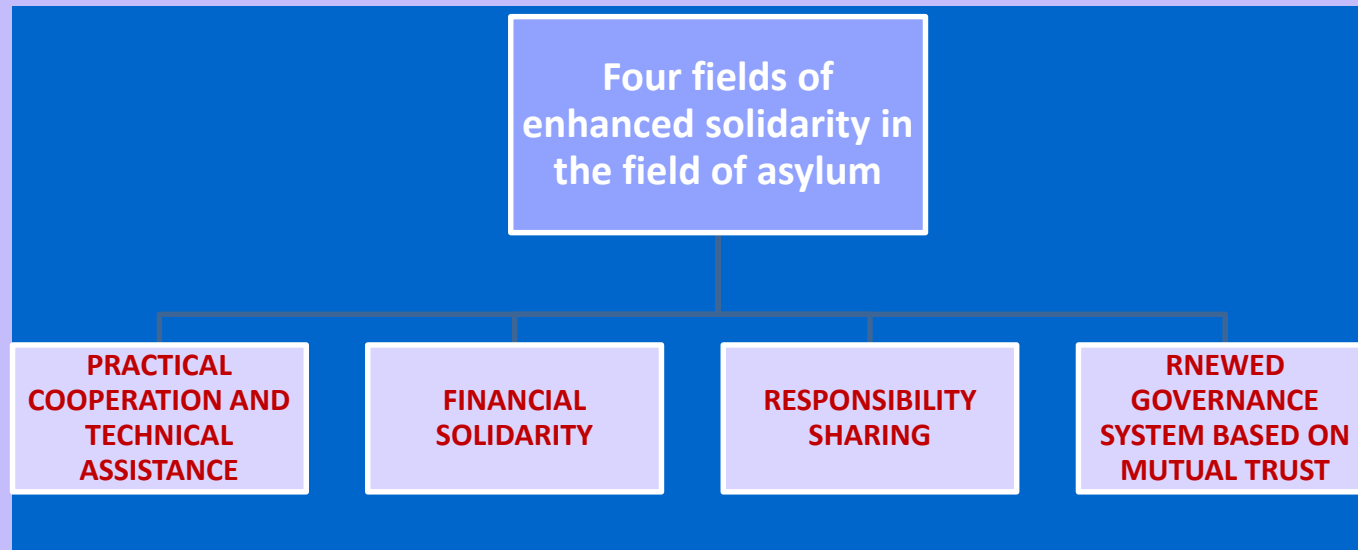
Commission Communication of 2 December 2011 (COM /2011/ 835 final)

„On enhanced intra-EU solidarity in the field of asylum

An EU agenda for better responsibility-sharing and more mutual trust”

Based to TFEU 80§

Solidarity – responsibility when implementing obligations - mutual trust



See also the **Council conclusion** of 8 March 2012 on **a common framework for genuine and practical solidarity** towards Member States facing particular pressures due to mixed migration flows. (Doc 7485/12)

The Council conclusions of 8 March 2012

11 areas of solidarity

- **Solidarity through responsibility and mutual trust**
 - Member States should respect in fact and law their EU and international obligations in asylum and migration law
 - MS should ensure that fair and efficient asylum systems are in place which is capable to respond to migratory fluctuations and be able to receive solidarity measures
- **Early warning, preparedness and crisis management within the Dublin system**
 - To be built into the Dublin system
 - EASO should become capable to issue early warnings MS should be entitled to request solidarity measures
- **Preventive co-operation**
 - EASO and MS to cooperate in training,, MS should support EASO by providing human and material resources
- **Emergencies**
 - MS-s should assist other MS-s exposed to particular pressure with the involvement of EASO and Frontex, or on a bilateral basis (experts, equipment, know-how, actual guarding of the border and processing of applications)
- **Better co-operation of EASO and Frontex**
- **Financial solidarity**
 - Further discussions on the Asylum and Migration Funds, Internal Security Fund and the Horizontal Regulation on these funds should proceed swiftly.
- **Voluntary relocation of beneficiaries of international protection within the EU**
- **Solidarity through the Temporary Protection Directive**
- **Joint EU Processing of asylum claims**
 - Commission to prepare a study on ~
- **Solidarity in the area of returns**
- **Solidarity through strengthened cooperation with key countries of transit, origin and first countries of asylum**

The planned Asylum and Migration Fund

Proposal for a regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund
COM/2011/0751 final 15 November 2011

- Replaces European Refugee Fund, the European Fund for the Integration of third-country nationals and the European Return Fund
- 2014-2020 (seven years) EUR 3,869 million (in current prices) for Asylum and Migration Fund.
 - Indicatively more than 80% of this amount (EUR 3,232 million) should be used for national programmes of Member States
 - while EUR 637 million should be centrally managed by the Commission to fund Union actions, emergency assistance, European Migration Network, technical assistance and the implementation of specific operational tasks by Union agencies.

The planned Asylum and Migration Fund

Allocation

Fix 5 million to each MS

Basic amount: first asylum applications, positive decisions granting refugee or subsidiary protection, number of resettled refugees, stock and flows of legally residing third-country nationals, number of return decisions issued by the national authorities and the number of effected returns

- **Variable amount** e.g. joint processing of asylum applications, joint return operations, setting up of joint migration centres, the implementation of resettlement and relocation operations.
 - In 2018 Mid term review
- Union agencies (EASO, Frontex) will also receive financial support from the fund

Asylum activities to be funded

Article 5 - asylum systems –reception

- provision of material aid, education, training, support services, health and psychological care;
- provision of social assistance, information or help with administrative and/or judicial formalities and information or counselling on the possible outcomes of the asylum procedure, including on aspects such as voluntary return;
- provision of legal aid and language assistance;
- specific assistance for vulnerable persons such as minors, unaccompanied minors, disabled persons, elderly people, pregnant women, single parents with minor children, victims of trafficking, persons with serious physical illnesses, mental illnesses or post-traumatic disorders, and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence;
- information for local communities as well as training for the staff of local authorities, who will be interacting with those being received;
- provision of integrative actions from the list set out in Article 9(1), where this is combined with the reception of persons referred to in points (a) to (e) of Article 4(1).

In the new Member States accessing the Union as of 1 January 2013 and in Member States faced with specific, structural

- establishment, development and improvement of accommodation infrastructure and services;
- setting up of administrative structures, systems and training of staff and relevant judicial authorities to ensure smooth access to asylum procedures for asylum seekers and efficient and quality asylum procedures.

Asylum activities to be funded

Article 7 Resettlement and relocation

- establishment and development of national resettlement and relocation programmes;
- establishment of appropriate infrastructure and services to ensure the smooth and effective implementation of resettlement and relocation actions;
- setting up of structures, systems and training of staff to conduct missions to the third countries and/or other Member States, to carry out interviews, medical and security screening;
- assessment of potential resettlement and/or relocation cases by the competent Member States' authorities, such as conducting missions to the third country and/or other Member State, interviews, medical and security screening;
- pre-departure health assessment and medical treatment, pre-departure material provisions, pre-departure information measures and travel arrangements, including the provision of medical escort services;
- information and assistance upon arrival, including interpretation services;
- strengthening of infrastructure and services in the countries designated for the implementation of Regional Protection Programmes

Questions for discussion

1. Is the European **culture** so valuable and in need of protection?
 - Think of the religious wars, colonisation, fascism, communism, civil wars, ethnic clashes.
 - Or do we want to defend achievements of the last 68 years?
2. Why is **migration** seen as a problem?
 - isn't it part and parcel of human history?
 - was Europe not the region with the largest number of poor emigrants seeking betterment of their life in other continents?
 - Is the European Union not based on the desirability of migration (freedom of movement)?
3. Is **exclusion of asylum seekers** compatible with «our ethics »?
4. Is the imposition of **visa** a collective stigma?
5. Should the Union have a common (integrated) **border guard** replacing national units?

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Thanks!

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