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Breaking the deadlock on the EU asylum front?

Lucas Rasche Policy Fellow at the Jacques Delors Institute Berlin

With the Austrian EU Presidency coming to an end, two proposals have provided a new impetus to the stalled negotiations over a reform of the Common European Asylum System (CEAS).

In a hurry to deliver on its promises, the outgoing European Commission effectively gave up on concluding all seven files of the CEAS. Instead, [it urged the Council and Parliament](#) to adopt at least five out of the seven legislative texts before the European Parliament elections on 23-26 May 2019. At the same time, France and Germany made an advance to soften the stalemate in current talks over a reform of the Dublin regulation. In an attempt to forge a compromise with the Visegrad countries, France and Germany suggested that member states can take '[alternative measures of solidarity](#)' instead of relocating asylum seekers.

At a first glance, both initiatives appear to provide new hope that months of fruitless negotiations have finally come to an end. But are expectations that part of the CEAS reform will be concluded before the European Parliament elections justified? And what does the Franco-German advance add to previous attempts of breaking the Dublin gridlock?

Five out of seven

For a while now the Commission has repeated that five out of the seven CEAS files are near completion. Its recent remarks must therefore be seen as a final foray to tick boxes before the current Commission is leaving office.

However, the proposal fell short on delivering progress at the recent European Council meeting on 14 December 2018 and is unlikely to succeed in the near future. A [political agreement among EU institutions does indeed exist](#) with regard to the European Asylum Agency Regulation, the Eurodac Regulation, the Qualification Regulation, the Reception Conditions Directive and the Union Resettlement Framework Regulation. However, this is not to say that the files can be concluded individually without agreement on the two more controversial files. In the talks about reforming the Dublin Regulation member states are still at loggerheads over the relocation of asylum seekers and the Asylum Procedures Regulation remains on hold due to disagreement about a list of safe third countries.

A major obstacle to the Commission proposal is that a so-called ‘de-coupling’ of the files does not enjoy sufficient support from the member states or the European Parliament. Sweden, Hungary, Italy and Greece [opposed the idea at the December European Council](#). This unlikely alliance of member states exemplifies why the proposal is unrealistic. In an attempt to secure the best possible deal for themselves, the member states, as well as the European Parliament, each use the different files as leverage for their own agenda. Countries at the EU’s external border, for example, demand concessions on their call for a mandatory relocation quota (Dublin Regulation) if they instead allow the proposed new Asylum Agency (European Asylum Agency Regulation) to operate more autonomously on their territory. Separating the files would deprive member states of an important bargaining chip and will therefore hardly secure their support.

The proposal also risks indefinitely postponing an agreement on the more controversial aspects. According to the Commission, a safety net of so far unspecified ad-hoc measures should substitute for the delay of the Dublin reform.

A twofold approach

Impatience with the dragging negotiations over the Dublin reform has also been the main driver behind the Franco-German pitch.

Their proposal is interesting because it uses a twofold approach that tries to accommodate both ends in the current negotiations. On the one hand, the proposal offers the more reluctant member states, such as the Visegrad countries, the option to take ‘alternative measures of solidarity’ and thereby signals a softening of Germany’s position in the negotiations. Thus far, the German government has been a firm opponent of watering down the proposed mandatory relocation mechanism. On the other hand, the text makes concessions to the southern member states. It offers to prolong the time until responsibility for processing asylum claims shifts from the country of first arrival to that of actual residence from six months to eight years – not to ten years as previously demanded by France and Germany. Whether this will appease countries of first arrival is uncertain though. The proposal therefore floats the idea of a separate relocation mechanism, exclusively for people rescued at sea.

No giant leap for the Dublin reform

There are two aspects that put the Franco-German advance and its impact on the Dublin negotiations into perspective.

First, the possibility to opt-out of a proposed relocation mechanism already exists in the two previous attempts to forge a compromise in the Council. Both the Bulgarian and Austrian EU presidencies each presented a compromise that includes an opt-out option. Under the Bulgarian proposal, relocation becomes mandatory only if a country is experiencing more than 160% of its regular arrival numbers for a period of two years. This relatively high threshold is complemented with an opt-out for up to 50% of the asylum seekers allocated to a member state, if that country instead makes financial contributions. The Austrian proposal abandons the idea of mandatory relocation quotas altogether. Instead, it suggests that member states decide themselves how they would like to contribute to responsibility sharing exercises. None of the two proposals have been able to move the negotiations forward. It is therefore unclear whether the re-framing of previous ideas in the Franco-German proposal can help make progress on the Dublin file.

Second, the proposal leaves essential questions unanswered. It remains unclear what exactly is meant by taking ‘alternative measures of solidarity’. The most likely scenario is that member states using the opt-out make financial contributions to a separate EU fund instead, which then distributes the money to countries deciding to take in asylum seekers. However, that would require determining how such payments are weighed against the number of asylum seekers that a country refuses to relocate. To arrive at a fair sharing of responsibility, member states must agree on the financial equivalent of relocating x amount of asylum seekers. As we have seen with Commission proposals going in this direction though, such numbers can likely add fuel to the fire rather than breaking the deadlock.

To guarantee the functioning of a relocation mechanism, it is further necessary to ensure that a critical mass of member states is participating. The 2015 emergency mechanism has shown that relocation is a highly sensitive issue. Countries such as Hungary, Poland or the Czech Republic [relocated either none or very few asylum seekers](#). Only a small number of member states, such as Ireland, Malta or Luxembourg, actually fulfilled their initial commitments. However, the Franco-German proposal fails to address this aspect. It does not outline how many member states must participate in the relocation of asylum seekers in order to ensure that responsibilities are distributed more equally. Neither does it answer the question, how a situation can be avoided, in which the majority of member states make use of the opt-out option.

What to expect?

The Commission’s proposal and the Franco-German suggestion clearly show the frustration about a lack of progress on the CEAS reform. However, the two initiatives are unlikely to lead to a breakthrough in the cumbersome negotiations.

Should the Commission still want to tick boxes on migration before leaving office, it is more likely to succeed in an aspect that is negotiated outside the CEAS package. Strengthening the EU’s border agency Frontex offers such a possibility. Although the file [received a setback](#) at the recent December European Council, strengthening external border control continues to be the lowest common denominator among EU member states.

As long as there is no majority for a de-coupling of the seven CEAS files, the stalemate in negotiations about the Dublin regulation is thwarting any reform ambitions. While Italy and Hungary remain deeply opposed on the issue of relocation, national governments in Rome and Budapest have both aptly used the consequent deadlock to fuel their Eurosceptic policies. This paradox is making it even more difficult to forge a cross-camp compromise along the lines of the Franco-German proposal. Aligning Italy and Hungary behind a common proposal will nevertheless be essential if member states want to ensure the integrity of the Dublin system.