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on Article 80 TFEU – Solidarity and fair sharing of responsibility, including search and rescue obligations (INI report on the situation in the Mediterranean and the need for a holistic EU approach to migration)

Committee on Civil Liberties, Justice and Home Affairs

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I. Solidarity - Article 80 TFEU

The concept of solidarity can be defined as “unity or agreement of action that produces or is based on community of interests, objectives, and standards”.

In the context of the EU’s policies on asylum and immigration, the principle of solidarity is intended to ensure that support is given to those Member States which, on account of geographical and demographic factors, carry a heavier burden of responsibility than others. While the efficient implementation of common policies in these areas depends, to a large extent, on the ability of Member States to implement properly EU secondary legislation, a fair sharing of responsibility among all Member States will on occasion prove necessary in order for the objectives of the Union to be fully achieved. That, in itself, is a legal objective for the Member States laid down in Article 4(3) of the Treaty on the European Union ('TEU'). This Article requires the Union and the Member States, in full mutual respect, to “*assist each other in carrying out tasks which flow from the Treaties*” and to “*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*” and “*to facilitate the achievement of the Union’s tasks*”. As a result, according to the principle of sincere cooperation, which applies to all policy areas, the Union and the Member States have a duty to assist each other in the area of asylum and immigration.[1]

Solidarity is at the basis of the whole of the Union system and a failure by the Union and its Member States to implement solidarity, which by their very accession to the Union the Member States have accepted, strikes at the fundamental basis of the Union legal order[2].

The principle of solidarity is set out in Article 80 of the Treaty on the Functioning of the European Union ('TFEU') (building on the former Article 63, par.1 and 2 TEC[3]). It covers not only asylum policies - as was the case before the Treaty of Lisbon - but equally immigration and border control policies.

Article 80 clarifies that, whenever necessary, appropriate measures to give effect to the principle of solidarity and fair sharing of responsibility, including its financial implications, shall be adopted.

The rapporteurs believe that Article 80 TFEU provides a legal basis, “jointly” with Articles 77-79 TFEU, to implement the principle of solidarity in the area of asylum, immigration and border control where the use of Articles 77-79 alone would not expressly or impliedly provide powers for specific measures necessary to achieve the Union objective of solidarity and fair sharing of responsibility between Member States.

Solidarity can take many forms but falls broadly into two categories; internal solidarity and external solidarity. Internal solidarity relates to the solidarity shown from one Member State to another Member State, or from the European Union as a whole towards one of its Member States, or from EU citizens towards third country nationals present in the EU. External solidarity refers to solidarity by the EU towards those people, not on the territory of the EU,

[1] See European Parliament, *Article 80 TFEU Study*, at p. 31.
[2] See Joined cases 6 and 11/69, *Commission v France* [1969] ECR 525 and Case 39-72, *Commission of the European Communities v Italian Republic* [1973] ECR 101.
[3] Legal Opinion, SJ-0139/13, par.57.

who are affected by war, persecution, hunger or violent conflicts in their country of origin, those who are at risk of losing their lives in makeshift boats crossing the Mediterranean, and to solidarity with third countries that currently receive on their territories and in their communities huge numbers of refugees fleeing war, persecution and hunger in neighbouring countries.

While providing money to a person, an agency, a body or a Member State for the purpose of asylum and migration policies can clearly be helpful, Recent events in the Mediterranean area have shown that there is also a need for a more practical, tangible form of solidarity. The aim of this working document is primarily to examine practical forms of solidarity both internal and external in nature but also to call on the EU and its Member States to use more creatively tools for legal entry in the interests of persons in need of protection.

The rapporteurs believe that the *ultima ratio* of using solidarity and responsibility-sharing measures must be to enhance the quality and functioning of the Common European Asylum System in full respect for fundamental rights.

II. Internal Solidarity

A. Relocation

The most obvious form of practical solidarity within the European Union is a process known as relocation. Relocation is the transfer of an applicant for international protection, or a beneficiary of international protection, from one Member State to another Member State within the European Union.

1. Relocation of beneficiaries of international protection

Intra-EU relocation of beneficiaries of international protection means, in practice, that the Member State where the person first arrives carries out the examination of the application for international protection, leaving that Member State responsible for processing the application and, where the application is unsuccessful, for further action in respect of the person not eligible for international protection.

Article 5 of the Regulation establishing the European Asylum Support Office (EASO) and Article 7(2) of the Regulation establishing the Asylum, Migration and Integration Fund (AMIF) stipulate that relocation can be carried out only on an agreed basis between Member States and with the consent of the beneficiary of international protection concerned. Apart from money available through their national programmes under AMIF, the Member States can benefit from a lump sum of 6000 EUR per beneficiary relocated to that Member (Articles 15(1)(b),(2)(b) and 18(1) AMIF)[1].

With regard to successful relocation, the evaluation of the EUREMA[2] project that ran, on a voluntary basis, between 2009 and 2013 for relocation of beneficiaries from Malta to other EU Member States, showed the following:

[1] The legal basis for the AMIF should be Article 78 and 80 TFEU (see EP Declaration to EP Resolution adopting the AMIF of 13 March 2014).
[2] EASO fact finding report on intra-EU relocation activities from Malta.

- There was a low response rate by other Member States to this call for solidarity;
- For the beneficiaries of international protection concerned, trust in the system, including complete and correct information and cultural orientation sessions in advance of the relocation was essential;
- The existence of family relations and diaspora in another Member State were principle drivers for beneficiaries when they were choosing relocation destinations;[1]
- The preferred selection criteria of participating Member States were integration skills, family units/ties in relocating countries, language skills, vulnerable cases, education and vocational skills, work experience and readiness for employment.

2. Relocation of applicants for international protection

Articles 6, 7(2) & 9(2) of the AMIF Regulation provide the possibility for Member States to use the funding they receive from the Union budget for their national programmes to relocate applicants for international protection (asylum seekers).

Article 7(2) of the AMIF Regulation lays down that the consent of the applicant and of the Member State concerned is required for relocation.

As a part of the European Agenda on Migration, on 27 May 2015, the Commission issued a proposal for a Council Decision on the basis of Article 78(3) TFEU[2] aiming at a binding provisional relocation of Syrian & Eritrean applicants from Italy (24.000) and from Greece (16.000)[3] over the next 24 months. Before this relocation-option kicks in, applicants first have to be identified, fingerprinted, registered and fully processed through the Dublin criteria in Italy and Greece.

The rapporteurs recognise that the Commission's proposal for a European Relocation Scheme is a positive movement in the right direction. However, given the large and increasing numbers of people crossing the Mediterranean, the emergency relocation of 40.000 persons in clear need of international protection from Italy and Greece based on Article 78(3) TFEU is only an emergency response to an emergency situation and does not fulfill the EU Member States' responsibility to ensure the protection of people reaching the EU external borders. The rapporteurs therefore call on the Commission to come forward with a proposal on a future binding EU-wide permanent relocation mechanism for all Member States, which, in a first phase would come into effect once a certain threshold has been surpassed. The rapporteurs further call on the Member States to react positively to such a proposal. Such a proposal could also be important to prevent irregular migration from the southern borders of Italy and Greece to other EU Member States and to prevent further situations of violence, exploitation and abuse.

The current proposal[4] states that an applicant does not have the right under EU law to choose the Member State responsible for his/her application, and that to ensure respect for his/her

[1] See also EP Study on New approaches, alternative avenues and means of access to asylum procedures for persons seeking international protection, page 50 including footnote 110.
[2] Proposal for a Council Decision establishing provisional measures in the area of international protection for the benefit of Italy and Greece (COM(2015)286-2015/125(NLE)) establishing provisional measures in the area of international protection for the benefit of Italy and Greece provides for a temporary distribution scheme for applicants.
[3] Following a 75% threshold of the average rate at Union level of decisions granting international protection in the procedures at first instance.
[4] Recital 28.

fundamental rights, recourse should be had to the mechanisms of the Dublin Regulation[1]. Specific reference to a possible refusal to relocate where it is likely that there are concerns of national security or of public order is made. The selection criteria which Italy and Greece should use for choosing applicants for relocation are in the first place the vulnerability of the applicant, followed additionally by qualifications which would facilitate integration such as language skills.

The rapporteurs believe that the preferences of the applicant should as much as practically possible be taken into account when carrying out relocation and efforts made to find a solution suitable to both the applicant and the Member State of relocation Member States should however not abuse the concept of preferences to disincentivise applicants from relocating to their territory.

This is one way of avoiding secondary movements and of encouraging the applicant themselves to accept the relocation decision.

As to funding, a limited and temporary derogation from the AMIF Regulation[2] is established, allowing for funding of 6000 EUR per relocated person under this programme. However, it is highly dubious that the legal basis of Article 78(3) can be used to amend the AMIF Regulation, as that regulation was adopted under Article 78(2) which requires the ordinary legislative procedure.

While the Rapporteurs are not convinced by the use of Article 78(3) as the sole legal basis for establishing a relocation mechanism, they recognise the urgency of the situation and the need for immediate action and so do not object to the use of such a legal basis in this specific instance. Nevertheless, any future binding permanent relocation mechanism would clearly need to be adopted under Article 78(2)(e) - which stipulates the ordinary legislative procedure – jointly with Article 80.

3. Relocation of applicants for international protection – distribution key

Since 2009, the European Parliament has been calling for a binding quota for the distribution of asylum seekers among all the Member States.

Several distribution keys have been discussed over recent years, with criteria such as economic strength, population, population density compared to the land mass, size of territory and unemployment rate of the different Member States, each of which could be weighted differently. The implementation of this system has been studied and some commentators have suggested permitting Member States to pay compensation if they do not relocate the number required under the distribution key.

According to available studies, there would be relatively little difference in the actual outcome when applying the distribution keys in their different compositions.

The current Commission proposal for a temporary distribution scheme for applicants is based on GDP and size of population (each 40 % weighting), unemployment rate and past numbers of asylum seekers and of resettled refugees (each 10 % weighting). The rapporteurs believe that consideration should be given to other potential criteria for the distribution key, notably

[1] Recital 28.
[2] The legal basis for AMIF is Article 78(2) TFEU (Ordinary legislative procedure).

the size of the territory of the Member State and the population density of the Member State.

In its Agenda on Migration the Commission admits that "*the EU needs a permanent binding system for sharing responsibility for large numbers of refugees and asylum seekers among Member States*". The Rapporteurs can only reinforce that message and believe that such a permanent binding system should not exist to deal just with emergency situations, where there is a mass influx of asylum seekers and refugees. A binding EU-wide permanent system should be established, which, in a first phase, would come into effect once a certain threshold has been surpassed, and would give proper effect to the principle of solidarity and fair sharing of responsibility in EU asylum and immigration policies. Such a system should be flexible so that it can be easily adjusted in the event of emergency. As stated above, the legal basis for any such mechanism on relocation must be Article 78(2)(e), which requires the ordinary legislative procedure, jointly with Article 80.

4. Role of the European Asylum Support Office

The EU has a specific agency for promoting, facilitating and coordinating exchanges of information and other activities related to relocation within the Union, and especially for those Member States which are faced with specific and disproportionate pressures on their asylum and reception systems, due in particular to their geographical or demographic situation. EASO is also charged with supporting the development of solidarity within the Union to promote a better relocation of beneficiaries of international protection between Member States, while ensuring that asylum and reception systems are not abused[1].

However, the EASO budget for 2015 for relocation, resettlement and the external dimension[2] is a mere EUR 30 000. It is clear that this very small budget cannot be taken seriously in the light of current events in the Mediterranean and in the light of the multiple references made to EASO in the Commission's current proposal for an urgent relocation mechanism. Significant increases in the budget of EASO, in its human resources and in the amounts it allocates in respect of relocation and resettlement, will be needed in the short, medium and long-term.

B. Mutual recognition of asylum decisions[3]

According to Article 67(2) TFEU, the Union shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. Article 80 TFEU further states that the policies of the Union on borders, asylum and immigration will be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. In other words, the Lisbon Treaty has called for the development of a common European asylum policy, taking forward the first stage of European integration in the field achieved post-Amsterdam. Such common asylum policy is not synonymous however with a uniform asylum system across the EU marked by a single asylum procedure or a single refugee status across the Union. Rather, the determination of asylum applications continues to take place at the national level, with national procedures and national determination outcomes.

[1] Recital 7.
[2] Budget line 3204
[3] See EP Study on New approaches, alternative avenues and means of access to asylum procedures for persons seeking international protection, page 58.

Already in 1999, the European Council Tampere Conclusions stated that '*in the longer term, Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum throughout the Union*.' However, 15 years later, asylum applications in the EU are still examined by individual Member States following a national asylum procedure. The abolition of internal borders in the Area of Freedom, Security and Justice has thus not been followed by a unification of European asylum law.

At present, Member States mutually recognize asylum decisions from other Member States only when they are negative. They do so when they decide to apply the Dublin rule to request a take back of an applicant for international protection who was refused asylum already in another Member State.

It is the view of the rapporteurs that mutual recognition of positive asylum decisions would be a logical step to properly implement Article 78(2)(a) TFEU, which calls for a uniform status of asylum valid throughout the Union.

Such a measure should increase trust between Member States. Further thought should be given as to the consequences of such mutual recognition on the right of free movement. It could be a useful tool for encouraging internal solidarity in the context of a future permanent relocation mechanism.

C. Operational support – joint/supported processing[1]- hot spots

EASO has set up several pilot projects in 2014 covering the early pre-stages to joint processing of asylum applications[2].

The Commission proposal for a temporary distribution scheme envisages operational support to Italy and Greece when the applicants first arrive, including for registration and the initial processing of applications. This forms part of a new 'Hotspot' approach, announced in the Agenda on Migration, involving inter-Agency cooperation, including national experts, also for those not in need of protection and for dismantling criminal smuggling and trafficking networks. The rapporteurs take the view that great care needs to be taken to ensure that the categorizing of migrants at those hotspots is carried out in full respect for the fundamental rights of all migrants. They also believe that the role of the European Parliament in ensuring that those hotspots are properly supervised and that the Parliament should be more closely involved in relevant agreements being entered into with third countries.

D. A pro-active interpretation of the Dublin Regulation[3], giving an instrument without solidarity a first glimpse of it[4]

At present the Dublin Regulation is the only legal instrument for determining the Member

[1] Commission Study on the Feasibility and legal and practical implications of establishing a mechanism for the joint processing of asylum applications on the territory of the EU (February 2013).

[2] Cyprus hosted experts from Sweden on unaccompanied minors, Hungary experts from Austria on Country of origin information, Italy experts from the Netherlands, Romania and Sweden on Dublin determination, Swedish and Danish experts exchanged on registration and case-management, German and Austrian experts exchanged on Dublin determination, UK, Norway and Slovenia exchanged on vulnerability assessment and France and Belgium, and Belgium and the Netherlands exchange on registration and case management.

[3] UNHCR Proposals to address current and future arrivals of asylum seekers, refugees and migrants by Sea to Europe, point 2.2.

[4] This could also be used in the hot spot practices.

State responsible for examining an application for international protection. The operation of the Dublin Regulation has raised a number of questions involving fairness and solidarity in the allocation of such responsibility. While the Preamble to the Dublin Regulation stresses the need to 'strike a balance between responsibility criteria in a spirit of solidarity' (Preamble, recital 8), the rapporteurs believe that the system established by the Regulation does not take into sufficient consideration the particular migratory pressure that certain EU Member States situated on the EU external border are facing, and that it results in these Member States being allocated a disproportionate number of asylum applicants compared with other Member States.

In this regard, the UNHCR suggests a proactive and efficient use of the enhanced Articles 8-11 and 17(2) as follows:

- EASO-expert teams facilitate the processing of Dublin take-charge requests by Member States of arrival for family-reunification, unaccompanied minors and dependents; The minor use of take-charge procedures rather than the current take-back procedures so far is, according to the findings of UNHCR, due to capacity issues.

- A pilot-project for utilizing the possibility to bring together any family relation on humanitarian grounds based in particular on family or cultural considerations, even where that Member State is not responsible under the strict Dublin rules. This way of processing would be an incentive for applicants to register at arrival and could prevent further trafficking through the Union.

In the long term, the European Union needs to take stock of the on-going difficulties with the Dublin logic and develop options for solidarity both among its Member States and the migrants concerned. The European Union should build upon current initiatives and support the countries receiving the most asylum claims with proportionate and adequate financial and technical support.

The rapporteurs believe that, in the long term, the Dublin Regulation will need to be reviewed and then overhauled by way of a binding permanent relocation mechanism within the EU.

E. Temporary Protection Directive (TPD)[1]

1. Concept

In the event of a mass influx, the Commission, on its own initiative or after examination of a request by a Member State, can propose to trigger the TPD[2]. This requires a Council Decision adopted by a qualified majority.

A mass influx is defined in the Directive as "*the arrival in the Union of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Union is spontaneous or aided, for example through an evacuation*

[1] Council Directive 2001/55/EC of 20 July 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 (OJ L212 of 7.8.2001, p. 12).
On the implementation of the Directive in national legislation: see Study on the "Conformity checking of the transposition by Member States of 10 EC Directives in the sector of Asylum and Immigration" done for DG JLS of the Commission end 2007.
[2] Article 4 TPD.

programme."[1]

In its proposal for a Council Decision, the Commission must describe the specific groups of persons eligible for temporary protection and give an estimation of the scale of movements of displaced persons.

The Council Decision is to be based on[2] an examination of the situation and the scale of movements of displaced persons, an assessment of the advisability of temporary protection, taking into account the potential for emergency aid and action on the ground or the inadequacy of such measures and information received from Member States, Commission, UNHCR and other relevant international organisations. The maximum duration of temporary protection is three years.

The European Parliament has the right to be informed of this decision.

2. Interpretation of when to trigger the TPD

The TPD has never been triggered. The current approach of the Member States and the Commission[3] to the concept of mass influx is based on linking its triggering to the absorption capacity of the national systems for international protection. In the definition of temporary protection (not in the definition of "mass influx"), reference is made to the risk to the Union asylum system. The possibility that the Union asylum system would be unable to cope with the mass influx or imminent mass influx of displaced persons would be a reason for invoking the procedure. The rapporteurs wonder whether the asylum systems of some frontline Member States are not already overburdened and whether then TPD could not already have been triggered.[4,5].

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[1] Article 2(d) TPD.
[2] Article 5(4) TPD.
[3] See Statement by Commission during the LIBE-Committee of 26/2/2015 on Question for written answer E-008507-14 and Commission's answer of 28 January 2015: " According to the Council Directive 2001/55/EC, a mass influx is an arrival in the EU of a large number of displaced persons from third countries who are unable to return to their country of origin, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation. According to Eurostat statistics, almost 100 000 Syrians have applied for asylum in the EU between January and October 2014. In view of the scale of the influx and the manner in which these persons' asylum applications have been handled, the Commission considers that a proposal to trigger the EU-wide temporary protection regime provided by the TPD would not be justified in the present circumstances. In line with the Commission's communication on 'An open and secure Europe: making it happen', in 2015 the Commission will evaluate the existing framework on temporary protection in order to enhance the preparedness of the Union to handle mass influxes. If necessary, the Commission would propose a revision to make it a more practical and flexible instrument. A study has been commissioned in 2014 to assist in the foreseen evaluation of the directive."
See Letter of Commissioner Malmström of 5 April 2011 to the heads of Governments (http://www.statewatch.org/news/2011/apr/eu-com-council-libya-frontex-letter.pdf) : Measures to be taken in the short term (…) "In case of a massive inflow of persons who are likely to be in need of international protection and if the conditions foreseen in the Directive are met, the Commission would be ready to consider proposing the use of the mechanism foreseen under the 2001 Temporary Protection Directive, so as to provide immediate protection and reception in the territory of EU Member States for persons concerned, to give a "breathing space" for the national asylum systems and to promote voluntary solidarity measures between Member States.".
[4] See however also current case law on reception conditions, i.a.in Italy and Greece. Is the system not overburdened?
[5] This interpretation is confirmed in the same Article 2(a) that refers to the temporary protection mechanism not only for current mass influxes but also for "imminent" mass influxes.

3. Intra-EU solidarity aspect

The TPD provides for both financial solidarity and practical solidarity in the form of the sharing of reception of the displaced persons.[1] The modalities are well described: after the Member States have indicated in figures or in general terms their capacity to receive[2], reception is shared for arrivals in one or more particular Member States[3] (including for arrivals organised from third countries[4]). Transfers of displaced persons between Member States are subject to the consent of the persons concerned. Members States have an obligation to reunite spouses/partners and minor unmarried children (and dependent close relatives under certain conditions) if they are in another Member State under temporary protection or if they are in a third country and if they are in need of protection. Both Member States and persons under temporary protection must agree to offer/be offered temporary protection in that Member State.

4. External solidarity aspect Evacuation

The TPD provides for the possibility of evacuation of displaced persons from third countries[5]. This evacuation would allow for using humanitarian corridors, in cooperation with UNHCR[6], with an obligation on Member States - where necessary - to provide for every facility for obtaining visas, with formalities and charges reduced to a minimum.

III. External solidarity

A. Resettlement

1. General

Resettlement is one of the "durable solutions" for refugees in the absence of a sustainable situation in the country of first arrival. It is also the Rapporteurs' preferred option for granting lawful access to the EU for refugees and those in need of international protection. Resettlement is used in situations where refugees cannot return to their home country ("repatriation"), nor can they receive effective protection or be integrated into the host country (local integration). Although a complex [7] solution, resettlement has been used since the early days of refugee protection.[8]

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[1] See Recital 20.
[2] Article 25(1)TPD.
[3] Article 26(1)TPD.
[4] Article 25(2)TPD.
[5] Art. 2 (c) and (d).
[6] References to UNHCR: Article 3(3), Article 3(d) and 4(c), Article 25(1), Article 26(2)
[7] Less than 1 percent of refugees benefit from resettlement every year.(Niapele Project, p. 15).
[8] During the 1920's, some 45,000 White Russians who had fled China after the Russian Revolution were subsequently resettled elsewhere (Resettlement Handbook, I/8). Resettlement following the second world war was focused on a durable solution for its victims, particularly from Germany (Study on the Feasibility of setting up resettlement schemes in EU Member States or at EU Level, against the background of the Common European Asylum system and the goal of a Common Asylum Procedure, Migration Policy Institute, 2003, p. 7.) assisted by the International Refugee Organization (IRO). In 1956 the UNHCR organized resettlement for 200.000 Hungarians in European countries, in the 1970s, the US resettled the majority of approximately two million refugees in Thailand, from Vietnam, Laos and Cambodia. Globally the number of persons benefitting from resettlement dropped sharply after the September 11th attacks (Migration Policy Institute, *Ibidem*, p. 7.).

Resettlement is seen as an area that combines foreign policy, development policy and justice policy.[1] In that way "*offering a rapid access to protection without refugees being at the mercy of illegal immigration or trafficking gangs or having to wait years for recognition of their status*"[2] can coincide with the current desire of states to manage orderly arrivals of persons in need of international protection. Resettling states can choose the regions from where to resettle and, in their own selection criteria, resettling states may reflect also their national priorities such as foreign policy or domestic ethnic politics[3].

In Union law, resettlement was defined under the AMIF Regulation as, "*the process whereby, on a request from the United Nations High Commissioner for Refugees ('UNHCR') based on a person's need for international protection, third-country nationals are transferred from a third country and established in a Member State where they are permitted to reside with one of the following statuses:*

(i) 'refugee status' within the meaning of point (e) of Article 2 of Directive 2011/95/EU;

(ii) 'subsidiary protection status' within the meaning of point (g) of Article 2 of Directive 2011/95/EU; or

(iii) any other status which offers similar rights and benefits under national and Union law as those referred to in points (i) and (ii).[4]*"*

Most resettling countries depend on the UNHCR to determine general resettlement needs worldwide and to prioritise the order in which refugees need to be resettled on the spot, and on the IOM to carry out medical checks and other administrative aspects of pre-departure periods, except for the issuance of required travel documents and/or visa, which is carried out by local embassies.

Successful resettlement depends on the capacity for refugees to integrate in the host country.[5] Countries which resettle more often have developed a well-oiled mechanism, involving cooperation with several support organisations in order to assist the refugees to get integrated in all different facets of society.

Article 17(1) of the AMIF Regulation provides that Member States receive a EUR 6 000 lump sum for every person resettled (in addition to the monies they receive for resettlement in their national programmes). This lump sum is increased to 10.000 EUR per resettled person, where the Member State resettles on the basis of the common Union resettlement criteria.

The Union resettlement criteria consist of geographical criteria (Article 17(3))[6] on the one

[1] Migration Policy, *Ibidem*, p. 121.
[2] Migration Policy Institute, *Ibidem*, p.v.
[3] Migration Policy Institute, *Ibidem*, p.vi.
[4] Article 2(a) AMIF. And it is clearly separated from the concept of ''humanitarian admission programmes' which are ad hoc processes whereby a Member State admits a number of third-country nationals to stay on its territory for a temporary period of time in order to protect them from urgent humanitarian crises due to events such as political developments or conflicts (see Article 2(b) AMIF.
[5] The Niapele Project, p.16.
[6] Geographical criteria: (a)persons from a country or region designated for the implementation of a Regional Protection Programme; (b)persons from a country or region which has been identified in the UNHCR resettlement forecast and where Union common action would have a significant impact on addressing the protection needs (according to Annex III: The Regional Protection Programmes in Eastern Europe (Belarus, Moldova, Ukraine), in the Horn of Africa (Djibouti, Kenya, Yemen), in North Africa (Egypt, Libya, Tunisia),

hand and/or on criteria of vulnerability (Article 17(5))[1] on the other hand.

For the first two years of the AMIF, sixteen Members States pledged to resettle a total of 14 500 refugees (corresponding to additional funding of EUR 137 million in addition to what they receive for their national programmes).

On 27 May 2015, the Commission published a Recommendation on a European resettlement scheme, aiming at the resettling 20 000 persons in need of international protection over a two year period 2016-2017. The priority regions for resettlement include North Africa, the Middle East and the Horn of Arica, with particular focus on countries where Regional Development and Protection programmes are implemented. EASO is again called upon to be involved on the ground in the implementation of the scheme, and report regularly on the implementation. An additional budget of EUR 50 million has been made available.

Given the unprecedented flows of migrants continuing to reach the Southern European shores, and the steady increase of the number of people asking for international protection, the rapporteurs consider that the European Commission's recommendation proposing an EU-wide resettlement scheme to offer a single EU pledge of 20,000 places in 2 years to people in clear need of international protection represents a primary response that must be guaranteed by European Member States and should be, explicitly, in addition to the resettlement pledges already made. However, this is clearly not enough. Member States must strengthen their resettlement programmes as well as other safe and legal routes for migration to the EU.

The rapporteurs endorse the idea included in the Commissions Agenda on Migration to come up with a binding and mandatory legislative approach on an EU-wide resettlement programme. They are convinced that, to have an impact, the programme must provide for resettlement of a meaningful numbers of refugees with regard to the overall numbers of refugees seeking international protection from the EU.

2. A distribution key

The distribution criteria which the Commission proposes in its recommendation on resettlement are GDP, size of population, unemployment rate and past numbers of asylum seekers and of resettled refugees. The rapporteurs believe that consideration should be given to other potential criteria for the distribution key, notably the size of the territory of the Member State and the population density of the Member State.

B. Humanitarian admission

'Humanitarian admission programmes' are *ad hoc* processes whereby a Member State admits a number of third-country nationals to stay on its territory for a temporary period of time in order to protect them from urgent humanitarian crises due to events such as political developments or conflicts (see Article 2(b) AMIF).

These programmes do not give a long term perspective to the refugee, but allow people to be

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Refugees in the region of Eastern Africa/Great Lakes, Iraqi refugees in Syria, Lebanon, Jordan, Iraqi refugees in Turkey and Syrian refugees in the region) and (c) persons belonging to a specific category falling within the UNHCR resettlement criteria.

[1] Vulnerable Groups: (a) women and children at risk; (b) unaccompanied minors; (c) persons having medical needs that can be addressed only through resettlement; (d) persons in need of emergency resettlement or urgent resettlement for legal or physical protection needs, including victims of violence or torture.

transferred to a safe harbor in the Union. The Member States may fund such admissions through their national programmes in the context of AMIF. Currently seven member states[1] are applying humanitarian admission programmes for Syrian refugees. In so far as resettlement is not available for third-country nationals, the rapporteurs encourage all EU member states to establish and implement humanitarian admission programmes.

C. Search and rescue

Under the Charter of Fundamental Rights of the European Union[2] human dignity and the right to life are established as core fundamental rights which should[3] apply to every human being, independently of his or her place of origin or place of residence. It is a basic right and a cornerstone of our European values and societies.

Clearly the saving of lives is an act of solidarity with those at risk. It is also a legal obligation under international law. Article 98 of the United Nations Convention on the Law of the Sea (UNCLOS), which is ratified by all Member States and by the Union itself, requires assistance to be given any person in distress at sea. The Mediterranean route into Europe remains the most dangerous and lethal in the world (Fatal journeys – IOM report).

A permanent, robust and effective EU response in search and rescue operation at sea is crucial to prevent the escalating death toll of migrants attempting to cross the Mediterranean Sea

The search and rescue operations initiated by Mare Nostrum in Italy, followed at EU level by the Triton and Poseidon operations - which might now match the scope of Mare Nostrum following the adoption of the Agenda on Migration - have the full and continued support of the Rapporteurs and the European Parliament. The rapporteurs welcome the increase in EU funding for the Triton and Poseidon Operations in 2015 and 2016

The rapporteurs are of the view that search and rescue capacities should be strengthened and that European governments must deploy more resources – in term of financial assistance and assets – in the context of an EU-wide multi-national humanitarian operation dedicated to finding, rescuing and assisting refugees and migrants in peril, bringing them to the closest place of safety and ensuring their access to international protection, while also respecting the principle of *non-refoulement*; providing information, care and support to migrants; processing asylum claims equitably; and supporting commercial vessels in exceptional circumstances to carry out rescue operations without risk of retaliation or harassment for being considered accessories to smuggling operations.

Private shipmasters assisting persons in distress at sea should not risk punishment for aiding smuggling, as this may discourage them for providing assistance. While obligations under international law must always be fulfilled, Merchant shipping should not be considered to be an option in lieu of Member States' obligations in terms of search and rescue.

Finally, with regard to search and rescue, the rapporteurs believe that operational plans and other guidance for joint operations or patrols with third countries should be drafted or prepared in such a way so as to save lives in full respect of fundamental rights. Where the EU and its Member States provides any assets, equipment and other maritime border management

[1] UNHCR Syria Fact Sheet http://www.unhcr.org/52b2febafc5.pdf
[2] 2010/C 83/02.
[3] Article 1 and 2.

facilities to third countries, priority should be given to assets and equipment that can be used to enhance their search and rescue capacities.

In its resolution of 29 April 2015, the European Parliament called for the EU and Member States to provide the necessary resources to ensure that S&R obligations are effectively fulfilled. Serious consideration should be given regarding how best to provide EU funding for search and rescue operations in the medium to long term. We believe that saving lives must be a first priority and proper funding for search and rescue operations is a clear means of encouraging Member States to provide assets and personnel to assist in that aim.