

The EU Resettlement Framework: From a humanitarian pathway to a migration management tool?

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Executive summary

The Resettlement Framework, currently in the final stages of negotiations, holds the potential to shape how the European Union (EU) will welcome asylum seekers in future. With this new piece of legislation, the European Union attempts to approach resettlement in a systematic, structural and sustainable way. If administered boldly, it is an opportunity for the EU to offer a safe way for individuals in need of international protection to access asylum in the member states.

During the negotiations on the file, tensions emerged between two different and conflicting approaches as to the primary aim and conceptualisation of this policy instrument: as a humanitarian pathway for the most vulnerable or as a migration management tool as part of an increasingly control-oriented Common European Asylum System (CEAS). While the Parliament strongly opposed the latter, the Council sees a great potential in the Resettlement Framework to control the numbers and profiles of individuals being granted protection under this legislation.

However, turning the Resettlement Framework into an instrument of migration management is interlinked with several problematic issues:

- ▶ First, member states have displayed a lack of ambition and realism in pushing for non-binding resettlement commitments as well as no compulsory quantitative targets to be included in the Resettlement Framework. Given the significant and growing resettlement needs worldwide, it raises the question to what extent member states are motivated to establish the Resettlement Framework as a viable alternative to dangerous crossings via the Mediterranean.
- ▶ Second, the legislation contains provisions that could potentially be used in a discriminatory fashion to exclude some vulnerable individuals from accessing asylum through resettlement. Among these are specific eligibility and ineligibility criteria as well as procedural aspects and the inclusion of humanitarian admission programmes.

- ▶ Third, other elements of the Resettlement Framework go even further to form the basis for discouraging spontaneous arrivals in the first place and deterring individuals from seeking protection through resettlement altogether. These include again ineligibility criteria, but also the link to the Eurodac regulation, and, importantly, the use of conditionality in relations to third countries with the aim to manage and reduce migration.

These problematic provisions, taken together, show a strong push by member states to turn the Resettlement Framework into an instrument of migration management. Against this background, member states should take steps to uphold the universal right to asylum and meet the protection needs of vulnerable people.

- ▶ As such, they must demonstrate greater ambitions as regards the quality of protection and the number of beneficiaries under the Resettlement Framework. Related to this is a scaling up of resettlement pledges and a commitment to uphold the quality of protection coming with refugee status.
- ▶ In particular, humanitarian admission programmes should be used in a complementary fashion to resettlement.
- ▶ Moreover, and when linking third countries' cooperation on asylum and migration to EU commitments on resettlement, the EU should not build a sustainable relationship with third countries based on migration control.
- ▶ Most crucially, the EU should not use the Resettlement Framework to outsource protection responsibilities to third countries.

While there is a strong inclination to use the Resettlement Framework as an instrument of migration management control, the reservations listed above should be considered against the background of the traditionally humanitarian dimension of resettlement as a pathway to shelter for the most vulnerable.

Introduction

Following the migration management crisis of 2015-16, the EU set out to reform the Common European Asylum System (CEAS). It intended to harmonise asylum standards across member states further and make the policy framework more robust to large-scale migration flows. One of the approaches is resettlement:¹ the transfer of refugees from an asylum country to another state with the aim of permanent settlement.² Emerging at the EU level, the Union's resettlement efforts so far have taken the form of voluntary schemes for which member states pledged their commitment in an *ad hoc* manner.³

In this context, a new policy instrument appeared on the European agenda: the EU Resettlement Framework. The European Commission presented its legislative proposal during the summer of 2016 with the aim to “create a more structured, harmonised, and permanent framework for resettlement across the Union.”⁴ The European Parliament adopted its position in autumn 2017 on the basis of a report by MEP Malin Björk.⁵ The Council's mandate for bilateral negotiations followed shortly after.⁶ Negotiations on the proposal began in December 2017. During the Bulgarian Presidency, there were five trilogues, the last of which took place in late May 2018.

For the European institutions and the member states, the Resettlement Framework proposal is an essential step towards establishing a comprehensive instrument for resettlement at EU level. One of the declared aims of the Framework is to offer a safe alternative to individuals in need of international protection before they resort to dangerous crossings via the Mediterranean at the hands of smuggling networks. In introducing the Resettlement Framework proposal, Commissioner Avramopoulos stated that the EU was “opening a genuine legal window in our efforts to close the irregular backdoor”.⁷

The legislative proposal has garnered much criticism from civil society organisations.⁸ Some of the most contentious issues include the mention of maximum,⁹ rather than minimum numbers for resettlement beneficiaries. Furthermore, the extent to which member states' resettlement commitments would be voluntary or mandatory fuels doubts as to whether the Resettlement Framework can become a sustainable and adequate channel to asylum, especially given the large resettlement needs from a global perspective.¹⁰ These questions illustrate the tensions on the fundamental definition of resettlement as a humanitarian pathway or as a migration management tool.

This paper first introduces the historical context of resettlement and discusses the way it has become a European issue. Second, it lays out the general debate about adding a migration management approach to this legislative work as opposed to preserving its traditional use as a humanitarian pathway. In a third section, it analyses to what extent the Resettlement Framework proposal is moving towards such an approach, looking at the most controversial provisions in the Commission's proposal. In doing so, it focuses on the most contentious elements of the legislation that expose its moral and intellectual flaws, namely the clauses that could lead to excluding or deterring individuals in need of international protection. By mapping these discussions, the paper aims to uncover how this overarching tension between the humanitarian and the migration management approach is emerging during negotiations on this piece of legislation. It concludes on the extent to which resettlement has moved away from its traditional use as a humanitarian pathway.

1. Resettlement: towards a new direction?

Resettlement has had its place amongst migration policies in one way or another since the two World Wars. After the founding of the International Refugee Organisation (IRO) in 1946, resettlement and repatriation¹¹ helped high numbers of refugee groups in and beyond Europe to gain protection. Four years later, and with the IRO taken over by the newly founded United Nations High Commissioner for Refugees (UNHCR), resettlement became a primary tool of the organisation to protect refugees internationally.

Following the Vietnam War (1955-1975) and the resettlement of large groups of Vietnamese refugees in the 1970s and 1980s, states' support for resettlement shifted to individual cases and became more systematic.¹² Such commitments were significant in the context of conflicts in the Middle East in the 1980s, the first Gulf War (1991), the collapse of Yugoslavia (1992) and the Kosovo War (1999). During these conflicts, states looked increasingly to UNHCR to identify, submit and resettle refugees. The UNHCR thus began developing specific resettlement criteria.¹³ Starting in 1995, Annual Tripartite Consultations on Resettlement (ATCR) began. These consultations became an essential platform for states, NGOs, and international organisations to cooperate on resettlement.¹⁴ They also promoted the tripartite structures underlying resettlement. In such arrangements, UNHCR usually identifies and processes individuals for resettlement; states provide permanent sites of residence, and NGOs assist in identification, pre-departure, and integration post-resettlement.

Today, resettlement needs continue to grow, most recently as a result of the Syrian war (since 2011). Both

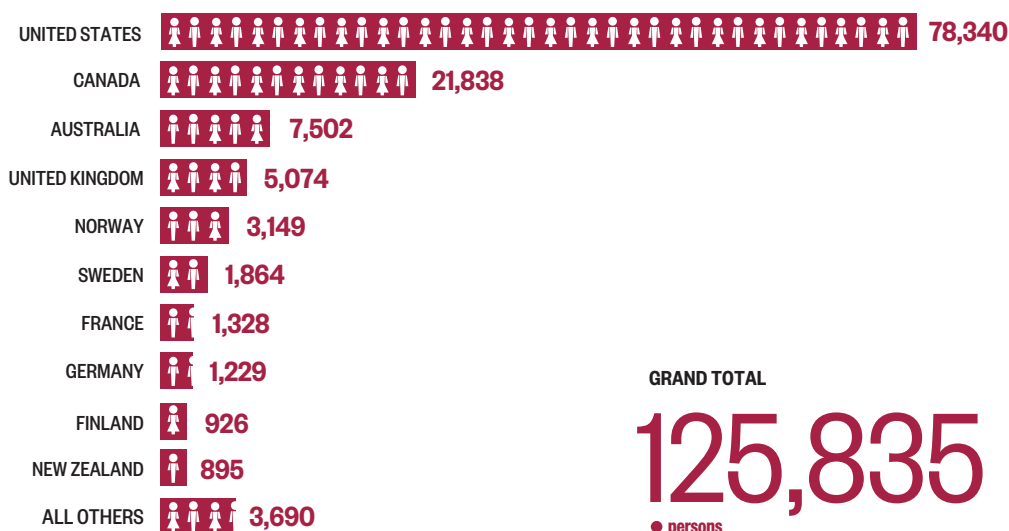
the number of countries participating in resettlement schemes as well as the diversity of resettlement programmes, including also humanitarian admission and private sponsorships, have increased.¹⁵ The total number of departures reached a high point in 2016, with close to 130,000 individuals resettled out of a projected 1,150,000 global resettlement needs.¹⁶ Of these, however, only a tenth was resettled in European countries under national programmes with the UK, Norway and Sweden resettling the highest number of individuals.¹⁷

The new Resettlement Framework represents a significant departure from previous plans.

In this context, the EU administered two *ad hoc* resettlement schemes in 2015¹⁸ and 2017.¹⁹ Whereas the 2015 scheme led to the resettlement of close to 23,000 individuals, the more recent plan concerns 50,000 individuals until October 2019. It was the first time resettlement was coordinated at EU level with member states contributing to the schemes through pledges on a voluntary basis.

The new Resettlement Framework represents a significant departure from previous plans. Running in parallel to national programmes, the EU Framework is not an *ad hoc* resettlement scheme as previous ones.

UNHCR RESETTLEMENT DEPARTURES 2016



Source: UNHCR Projected Global Resettlement Needs 2018

Instead, it is an attempt to develop a more systematic and structured way of conducting resettlement at EU level.

As such, the Resettlement Framework has the great potential to offer a safe way of accessing asylum in for individuals in need of international protection and establishing a real alternative to dangerous crossings via the Mediterranean. In parallel, the Resettlement Framework proposal is consistent with the EU's aim of both reducing uncontrolled migration and strengthening the capacity of legal pathways, thanks to which governments can monitor both the profile and the total number of individuals in need of international protection.

Similarly, the Council sees the potential of resettlement as “a strategic instrument to manage migration flows”²⁰, an approach that has been strongly supported by a number of countries during the negotiations.²¹ In general, member states have various motivations for conducting resettlement: from value-based to strategic protection considerations in first countries of asylum to foreign policy interests and border management goals.²² This, as well as the political fall-out following mandatory relocation quotas, has led the Council to take up as a priority the preservation of the voluntary nature of resettlement during the negotiations. Moreover, it pushed for widening the scope of the Resettlement Framework to include humanitarian admissions²³ on an equal footing to resettlement, albeit with a more limited set of guarantees and rights than those coming with resettlement.

The Parliament accepted this inclusion but set explicit quotas for resettlement and humanitarian admission. During the negotiations, it consistently argued for resettlement as a durable solution for refugees and underlined that the “strategic use of resettlement should not be interpreted as migration control or used as a means to achieve the Union’s foreign policy objectives”.²⁴ This stands in direct contrast to the Council’s position which explicitly highlights the strategic and geopolitical objectives of migration management to which resettlement could contribute.

Civil society organisations voiced similar concerns about the Resettlement Framework proposal. In their view, the EU was undertaking more efforts to create a system that controlled and reduced migration to the bloc, rather than building sustainable and accessible pathways to asylum in the Union.²⁵ Taking a critical stance towards the Framework, they stated that “resettlement must be regarded as complementary to, and not a replacement of, spontaneous arrivals and the right to seek asylum in Europe”.²⁶ This also corresponds to NGOs’ perception of resettlement as a pathway that should not preclude other channels of migration, be they regular or irregular.²⁷ This position sees resettlement as a safe option that should neither discourage nor prevent the movement of refugees and migrants when initiated by themselves. Within this debate, NGOs and UNHCR aim to preserve resettlement’s traditional use as a humanitarian pathway and protection tool for the most vulnerable, complementary to other ways of migration.

2. A lack of ambition and realism

This second section looks at how the Resettlement Framework proposal reflects the broader debate on migration in the European Union. By reviewing these most contentious points in the negotiations, it becomes clear how the tension between the two approaches pans out. This section lays out the fundamental issues that stand in the way of the Resettlement Framework in becoming a genuine alternative to unsafe migration channels.

2.1 NO MANDATORY TARGET

The underlying concept of the Resettlement Framework shows a utilitarian approach under a migration management umbrella, namely through the initial inclusion of maximum numbers of resettlement spaces. Although the Resettlement Framework can provide a safe channel to asylum in the EU, the numerical ambitions of member states fall short. An inclusion of maximum numbers in the initial proposal seems to show a more defensive stance, and a reassurance towards member states that they will not be facing unpredictable

commitments. Initially, the European Parliament fought for including a minimum instead of a maximum number. It aimed to raise the total number of resettlements to 20% of UNHCR’s projected global resettlement needs (equalling 240,000 out of 1.2 million individuals as identified for 2018).²⁸ Following protracted negotiations with the Council, the Parliament gave in on its objective of setting a compulsory quantitative target.²⁹ It then pursued the inclusion of non-binding ‘targets’ with the aim that more member states would be ready to commit to resettlement as a genuine alternative to more dangerous routes to the EU.

The Resettlement Framework should be expanded boldly in numbers to offer a valid alternative to unsafe migration pathways.

Taking into account the size of global resettlement needs, however, the Resettlement Framework should be expanded boldly in numbers to offer a valid alternative to unsafe migration pathways. Resettling 20% of global needs to EU member states as proposed by the Parliament may not be politically feasible. The number of individuals currently resettled to EU member states needs, however, to come considerably closer to the flows of refugees reaching the EU through dangerous migration channels if the EU wants to establish resettlement as a realistic alternative to such perilous routes.

2.2 A VOLUNTARY COMMITMENT

The question of whether member states would be bound to contribute to resettlement schemes or whether this would happen on a voluntary basis was also discussed intensely during negotiations. The latter being the Council's top priority, it shows that member states feel more comfortable with agreeing to resettlement as a controllable, and numerically confined, migration management tool, rather than a somewhat incalculable humanitarian commitment. The issue of mandatory quotas as a way of building solidarity in the context of relocation was a significant point of disagreement between member states.³⁰ Some national governments refused altogether to take in relocated asylum seekers as

Although the quotas are not mandatory, member states should still raise them and thus demonstrate their bold commitment to resettlement.

they cited a substantial burden for their administrations and economies as well as staunch opposition from their populations. Against this background, it was highly unlikely that the Council would have agreed to binding quotas for resettling refugees from outside Europe. Following intense negotiations, the Parliament sought a consensus with the Council by agreeing to voluntary, non-binding quotas.³¹

Only then is it possible to evaluate whether the compromise between the institutions will translate into effective practice. To make resettlement a real alternative to unsafe migration pathways, member states should take into account UNHCR's numerical proposals on resettlement and follow up on these, irrespective of the voluntary nature of resettlement quotas.

3. Discretionary selection of asylum seekers

This third section examines the elements of the proposed legislation that grant member states a higher degree of control in selecting candidates for resettlement. On that basis, member states would be in a position to deprioritise and potentially exclude other candidates from accessing protection via resettlement.

3.1 ELIGIBILITY CRITERIA AND FAMILY REUNIFICATION (ART. 5)

In the proposal, the eligibility criteria for resettlement candidates is not limited to those individuals that fall under the definition of a refugee according to the 1951 Convention.³² Nor it is limited to the UNHCR resettlement submission criteria, which concerns particularly vulnerable persons and takes into account factors such as legal and physical protection and medical needs. They consider in particular survivors of violence and torture, women at risk, children and elderly refugees, and also those that do not have local integration prospects or resettlement with the aim of family reunification.³³ It also includes the "family members of third-country nationals or stateless persons or Union citizens legally residing in a Member State".

While the Parliament stated during the negotiations that family reunification should be independent of

resettlement targets, the institutions finally agreed that close family members should form a category of individuals "to be resettled with the aim of ensuring family unity". While promising to keep families together, it is also problematic in that there is no clarity concerning a potential overlap between the legal schemes of resettlement and family reunification. For example, both pieces of legislation target the spouse or partner of the applicant and their minor unmarried children. The family reunification directive already covers these cases. Their mention in the Resettlement Framework proposal would enable member states to select candidates for resettlement that would have had a right to come to the EU under the family reunification directive anyway.³⁴ The resettlement spaces allocated to family reunification would be taken away from individuals that do not have family links in the EU, which would limit the overall number of people eligible for resettlement.³⁵

By placing different migration pathways under the umbrella of refugee resettlement, the Resettlement Framework proposal reveals its migration management approach. It gives a higher degree of control to member states during the resettlement process and could potentially lead to giving priority to the 'safer' candidates with family ties. As such, the Resettlement

Framework would give member states more discretionary power. In the end, it may discriminate against the vulnerable people that do not fall under any of the ‘family’ categories. Given the likelihood of a limited numerical commitment by member states, this would lead to a smaller number of ‘exclusive’ resettlement places that would hardly be accessible to vulnerable individuals.

3.2 ORDINARY AND EXPEDITED PROCEDURES (ART. 10 AND 11)

An essential scheme in the Resettlement Framework is the humanitarian admission programme, which was not included in the Commission’s initial proposal, as it provides for a different protection status and distinct procedures. The Council introduced this scheme on an equal footing with resettlement, which is problematic for similar reasons as for the family reunification cases (see above). It could lead to lower standards of protection and fewer places for resettlement candidates. The scheme would apply especially for those individuals that would be brought to member states via this programme and granted only temporary protection. The European Parliament initially strongly rejected the Council’s introduction of humanitarian admissions on an equal footing with resettlement on the basis that this could water down protection standards. But the inclusion of such a clause constituted a hard red line for several member states and the Council even pushed for renaming the piece of legislation “Resettlement and Humanitarian Admission Framework”.

During the trilogues, the Parliament imposed quotas on the number of beneficiaries for each pathway to preserve the primary focus on resettlement in the Framework. It initially aimed to have 70% of spaces earmarked for resettlement, 20% for humanitarian admissions and 10% for emergency cases. However, negotiations with the Council resulted in a compromise on an approximate goal of 60% for resettlement admissions without setting a clear objective for the number of refugees to be resettled or a quota for emergency admissions.³⁷

By placing different migration pathways under the umbrella of refugee resettlement, the Resettlement Framework proposal reveals its migration management approach.

The inclusion of humanitarian admission programmes could enable the EU to be more flexible in responding to fast-changing situations where resettlement processing might not be quick or robust enough. Similarly, adding the possibility of

humanitarian admission as a complementary option in the Resettlement Framework would have been welcome. Member states should not, however, systematically resort to humanitarian admission programmes to grant only temporary protection to individuals that should receive refugee status. The use of quotas to preserve a certain percentage of cases for resettlement is, therefore, a welcome concession by the Council. Nonetheless, it needs to be followed up by concrete and substantial numerical commitments to resettlement on the part of member states.

3.3 INTEGRATION POTENTIAL (ART. 6 AND 10)

Concerning the admission procedures, the Resettlement Framework proposal includes a paragraph (Art. 10, 1(a) on the Ordinary Procedure for resettlement) that allows member states to give preference to third-country nationals with “social or cultural links, or other characteristics that can facilitate integration”. As such, the integration potential can simultaneously serve as a rewarding criterion enabling resettlement or as a punitive ground for exclusion from resettlement. In the end, member states would thus have the possibility to select candidates on the basis of their perceived potential for integration, a development that once again attests to a migration management approach in this part of the legislation.

The ‘integration potential’ criterion to admit or refuse candidates for resettlement has been a very contentious issue during the negotiations. The Council was in favour of including a lack of integration prospects, such as a refusal to participate in pre-departure orientation, as a reason for ineligibility for resettlement in Article 6. The Parliament has vigorously opposed this, stressing the universality of the right to asylum and arguing that protection should not be made conditional on one’s integration potential.

Concerns about taking into account integration potential have been flagged before in proposals for business-led resettlement schemes³⁸, while it has been a more or less formal selection criterion in some member states. In these cases, however, certain groups are frequently exempted from the integration potential criterion based on their protection needs and vulnerability and the rule is not necessarily used as a reason for exclusion from resettlement.³⁹ With this clause in the Resettlement Framework, it would be the first time that the EU would be in a position to condition the access to protection (in this case through resettlement) on integration potential. Including this as a criterion could give preference to certain individuals over some of the most vulnerable in resettlement processing, especially since it is not clearly defined in the Commission proposal how this would relate to vulnerability and other eligibility criteria. In the end, the integration potential criterion could lead to discriminatory practices in selecting candidates for resettlement and potentially undermine member states’ need to resettle those that are the most vulnerable.

4. Deterrence against resettlement

The Resettlement Framework proposal includes provisions that bear the possibility to go further than excluding individuals from accessing protection via resettlement. Some clauses seem fit to discourage spontaneous arrivals in the first place, on the one hand, and deter individuals from altogether seeking protection through resettlement, on the other.

4.1 GROUNDS FOR INELIGIBILITY (ART. 6)

Article 6 of the proposed legislation, grounds for ineligibility (formerly known as exclusion), specifies that “persons who have irregularly stayed, irregularly entered, or attempted to irregularly enter the territory of the Member States during the five years prior to resettlement” shall be excluded from targeted Union resettlement schemes. As such, the text does not allow for resettlement to be used in a complimentary way, as it excludes migrants and refugees from resettlement that self-initiated their migrations in an irregular fashion.

This provision shows how the proposal portrays resettlement as an alternative, exclusive form of migration. It is designed as an instrument to discourage spontaneous migrant arrivals. During the trilogues, the Parliament was particularly critical towards such punitive ineligibility grounds. As a result, the term “exclusion” has been replaced by “ineligibility” to avoid any misinterpretation whereby it could have implied exclusion from asylum, rather than resettlement.

These punitive criteria for resettling refugees continue, however, to reflect member states’ aim of being more selective in their resettlement programmes. At the same time, this would provide for a tool that discourages spontaneous, and in their view, uncontrolled arrivals through such strong deterrence elements. In short, these ineligibility grounds create an instrument of greater migration management control to member states rather than preserve the humanitarian character of resettlement.

4.2 THE LINK TO EURODAC (ART. 10)

The Council also proposed the inclusion of a reference to the Eurodac Regulation, the recast of which is currently in trilogues as well. Since its introduction in 2003, Eurodac established an EU asylum fingerprint database to record where the asylum seeker first entered the EU territory and hence identify the member state responsible for the asylum application. During the trilogues on the Resettlement Framework, the Parliament and the Council disagreed on the duration during which a candidate’s data could be stored (both for negative and positive decisions on admission for resettlement). They also held divergent views on where and when during the resettlement process the

registration of fingerprints would take place. Linking Eurodac to resettlement would further strengthen the EU’s control of who gets asylum through resettlement. It also adds a security angle to the Resettlement Framework, since member states would be able to share such private data among each other more easily and potentially commit grave breaches of data and privacy. Moreover, it would allow member states to have the possibility to reject resettlement candidates on the grounds of attempting to enter the EU irregularly, as recorded in Eurodac.

The proposal portrays resettlement as an alternative, exclusive form of migration. It is designed as an instrument to discourage spontaneous migrant arrivals.

4.3 COUNTRIES FROM WHICH RESETTLEMENT IS TO OCCUR (ART. 4)

The Resettlement Framework proposal also mirrors the EU’s increasing reliance on partnerships with third countries to manage migration. In the 2016 Partnership Framework communication, resettlement was mentioned as a way for the EU “to discourage irregular and dangerous journeys”. Resettlement was also an important part of the EU-Turkey Statement, stipulating that for every asylum seeker returned to Turkey from the Greek islands, a European member state would resettle a Syrian refugee. However, rather than fulfilling their pledges, member states created a deterrence mechanism against migrants and asylum seekers in transit in Turkey.⁴² More recently, in the joint communication on Libya entitled ‘Migration on the Central Mediterranean Route: Managing flows, saving lives’ (January 2017), the Commission raised the possibility of including resettlement in the EU’s overall approach to managing migration on this route.⁴³ Now, the Resettlement Framework proposal signals the next step in the EU’s efforts to more closely involve third countries in migration management, albeit in a very controversial way.

Conditionality clause

In doing so, the Commission has introduced a conditionality clause, which has hampered the negotiations on the legislative proposal. It has spelt out a way for the EU to use resettlement as leverage in

political dialogues with third countries. NGOs in the field have widely criticised making the EU's commitment to resettlement hinge on the cooperation of third countries.⁴⁴ Their criticism echoes the central issue of preserving resettlement as a humanitarian tool and durable solution for refugees, rather than employing it for migration deterrence. During negotiations, the European Parliament strongly opposed this conditionality clause and argued that the proposal had to reflect the humanitarian character of resettlement. Disagreement with the Council on this issue became one if not the main stumbling block of the trilogues. For the Council, this article is of great importance in using the Resettlement Framework as "part of a well-managed migration policy".⁴⁵

More specifically, Article 4 on "Regions or third countries from which resettlement is to occur", specifies that third countries' *overall relations* with the Union in the area of migration and asylum will be an important factor on which the Commission will base its choices of regions or third countries from which resettlement should take place. The institutions agreed during the trilogues that the selection would also take into account UNHCR projected global resettlement needs⁴⁶, as was traditionally the case in national resettlement programmes. They also agreed that member states would still rely on UNHCR for referral of candidates. Nevertheless, the inclusion of a conditionality clause concerning functioning partnerships with countries in the region is new for resettlement.

Effective cooperation

The legislative proposal specifies that resettlement should also hinge on a *third country's effective cooperation* with the Union in the area of migration and asylum. The latter would be measured against a country's efforts to reduce the number of third-country nationals crossing the EU's border from its territory. Moreover, each government would have to create the conditions under which asylum applicants can be returned. This approach would build on the expansive use of the first country of asylum and safe third country concepts. The proposal also calls on third countries to develop an effective asylum system to increase their capacity to receive and protect individuals staying in their territories. Another sign of effective cooperation would be an increase in the rate of return (including through readmission agreements).

Resettlement has a logical use in alleviating pressure on countries that experience difficulty in hosting refugees. Making resettlement conditional on a third country's cooperation on migration and asylum would, however, be both paradoxical and unhelpful for countries unable to cope.⁴⁷ Article 4, in particular, can be interpreted as an instrument for member states to exert influence on third countries, even more so when linking cooperation in resettlement to EU assistance in other areas. That is why conditioning development aid on the reduction of migration to the EU, in particular by means of readmission agreements

or migration compacts, as done in the context of the European Neighbourhood Policy,⁴⁹ has been widely criticised by civil society organisations.⁵⁰

Dependence on third countries?

The Resettlement Framework seems to include similar objectives, in particular when looking at how the geographical priorities for the resettlement schemes are dependent on compliance with the criteria listed in the legislative text. On the one hand, this takes the proposal further away from the humanitarian objectives of resettlement; on the other, this also puts the EU and the Resettlement Framework in a position of being dependent on the cooperation of third countries in managing irregular migration movements.

In this regard, it is also unclear to what extent third countries would be incentivised to reform their asylum systems and border management solely on the grounds of EU commitments to resettlement. As of now, there is no clarity concerning the form that other incentives might take. It is however likely that the EU will link the Resettlement Framework with other initiatives under the EU's Partnership Framework on Migration with third countries. In that case, these initiatives and the Union's incentives would have to be tailored to the third country's specific situation, something the Resettlement Framework does not foresee for the moment.

How safe for how long?

In this context, the Resettlement Framework proposal also draws on controversial considerations, such as the 'first' country of asylum or a 'safe' third country, when defining the conditions for the return of asylum seekers to third countries. For example, civil society organisations have heavily criticised how the 'safety' condition⁵¹ is rendering resettlement dependent on cooperation with countries that have allegedly established safe conditions. This approach is problematic⁵², in particular with respect to how the EU would deal with a deterioration of conditions for asylum seekers in such 'safe' countries. Countries that are hosting a large number of refugees may experience a shift in public opinion against the refugee population, as has happened for instance in Lebanon.⁵³

Linking resettlement with a third country's management of the EU's external border furthers the externalisation of the EU's migration management.

The strategic use of the safe third country concept has the potential to both worsen the conditions for refugees and decrease the host society's support for cooperation with the EU on migration management. Establishing the Resettlement Framework with the aim of moving away from ad hoc measures and uncontrolled migration movements does not square with being dependent on changing conditions in third countries for the operationalisation of resettlement schemes.

Outsourcing migration management

Two intermediate conclusions can be drawn from this particular article. First, member states are pursuing a migration management approach through conditional cooperation with third countries on resettlement. Second, this *quid pro quo* approach of linking resettlement with a third country's management of the EU's external border furthers the externalisation of the EU's migration management.⁵⁴ This shift is problematic because it can have an impact on where refugees will be able to access asylum.⁵⁵ Where border controls bar

refugees from accessing asylum in a regular way, they usually create more perilous channels through which vulnerable individuals will seek protection. Making resettlement conditional on cooperation from third countries could eventually reinforce the harmful and dangerous contexts in which individuals are trying to access protection today. One can wonder to what extent the Resettlement Framework will contribute to the Council's goal of a "well-managed" migration policy. In fact, the dilemma remains. Will the Resettlement Framework offer a safe alternative for persons in need of international protection or push more individuals to resort to perilous ways to access asylum?

Resettlement conditional on cooperation from third countries could eventually reinforce the harmful and dangerous contexts in which individuals are trying to access protection today.

5. Recommendations

The Resettlement Framework is the EU's attempt to approach resettlement in a systemic, structural and sustainable way. It holds the potential to shape the future of resettlement at EU level. If administered boldly, it is an opportunity for the EU to offer a safe way for individuals in need of international protection to access asylum in the member states.

The intense discussion on the Resettlement Framework proposal in the trilogues has made tensions between two different approaches to resettlement apparent. On the one hand, there is the aim to conserve the humanitarian nature of resettlement as a pathway for the most vulnerable to access protection. On the other, resettlement as a new migration management tool in a more control-oriented CEAS also appeals to member states.

The attention that resettlement now receives for its potential as a migration management tool could lead to a significant shift from its traditional use as a humanitarian pathway. This evolution is problematic for several reasons:

- ▶ First, it **does not correspond to the nature of forced displacement**, which is often hard to anticipate. The aim of precluding the possibility of spontaneous movements and arrivals, therefore, does not match with the often-volatile contexts in which persons in need of international protection are forced to move.

- ▶ Second, it shifts the geographical focus, sometimes quite literally **to a selected few regions**. Focusing exclusively on areas that seem most "affected" by uncontrolled migration to the EU may leave blind spots on the map. At the same time, this runs the danger of neglecting countries that might not be in a position to benefit from institutionalised resettlement but still have particularly vulnerable refugees.
- ▶ Third, it **creates discriminations among individuals in need of international protection**. During the negotiations between the Parliament and the Council, the UNHCR resettlement criteria have been added to the Resettlement Framework proposal. However, there is still a high risk of impeding access to asylum for those that may not meet these resettlement criteria, nor are in a position to receive protection via other channels. For instance, some individuals may not be eligible for resettlement on the grounds of particular vulnerability nor with the aim of family reunification. At the same time, they may be persecuted in their countries of origin, and have the right to protection as refugees. Through the exclusionary and deterring elements of the Resettlement Framework, it would be complicated for these individuals to gain asylum in any way.

Notwithstanding these three underlying problematics of a migration management approach, a basic puzzle of the proposed Resettlement Framework still needs to be

Member states must significantly scale up resettlement pledges under the Framework.

addressed: if member states intend to elevate the status and importance of resettlement at EU level, they must demonstrate more ambition as regards the quality of protection and the number of individuals that can benefit from it.

- ▶ First, regarding numbers, **member states must significantly scale up resettlement pledges** under the Framework. It is highly unlikely that people would stop taking recourse to dangerous routes to access asylum in the EU if member states are unwilling to agree to bolder commitments than those currently negotiated. Although voluntary resettlement commitments have increased with the 2017 resettlement scheme, much larger commitments are needed given UNHCR's assessments. However, mandatory quotas of higher numbers are politically unfeasible and have already been ruled out during the trilogues. As of now, there does not seem to be a solution to this particular numerical dilemma.
- ▶ Second, and in addition to scaling up resettlement numbers, the **EU should also commit to upholding the quality of protection coming with refugee status**. There is no harm in adding humanitarian admission programmes on top of other pathways such as family reunification to the Resettlement Framework, but only as long as it does not impact the protection status of refugees.

In the Framework, **humanitarian admission programmes should be administered in a complementary fashion to resettlement**. They should not count towards the same quotas to avoid the exclusion of especially vulnerable individuals in need of international protection.

When it comes to **linking third countries' cooperation** on asylum and migration to EU commitments to resettlement, several issues arise.

- ▶ First, the EU should **not build a sustainable relationship with third countries based on their cooperation on control or even prevention of onwards migration** to Europe. Such a prospect is problematic because it creates a context in which processing asylum applications could be outsourced geographically to third countries. The decision of whether an individual is selected for resettlement or denied access to asylum through this regular pathway would be taken outside of the EU. As

such, the deterrence objective features strongly in the Resettlement Framework proposal: if an individual decides to migrate and subsequently enters or stays irregularly in a member state, he or she would be barred from any form of resettlement or humanitarian admission (Art. 6). Similarly, the outsourcing of asylum and reception to third countries, as well as increasing returns and readmission of failed asylum seekers (Art. 4), is also intended to result in a reduction of self-initiated border crossings.

- ▶ Second, the EU should not outsource its responsibility to protect to third countries that very often have lesser economic means or political context to offer a durable solution for refugees in their territories. Resettling a limited number of individuals will not make much of a difference in improving the situation on the ground for third countries. It is therefore doubtful that third countries would see an added value in investing in migration management for the EU with little return for them, apart from comparatively few resettlement transfers out of their territories. Moreover, it would be even more problematic if the EU would, in an attempt to make cooperation more attractive to third countries, link development aid and EU commitments to resettlement to third countries' cooperation in preventing onward movements.⁵⁶

In short, the Resettlement Framework proposal is part of an ongoing shift from a value-based to an interest-based approach to managing migration and providing asylum. This proposed legislation illustrates the conceptual evolution of member states on resettlement: from being primarily a humanitarian pathway to taking on a migration management approach. It remains to be seen to what extent the EU will be able to develop the Resettlement Framework in a manner that upholds its fundamental value as a humanitarian instrument that offers protection to the most vulnerable.

The EU should not outsource its responsibility to protect to third countries.

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