Diritto, Immigrazione e Cittadinanza
Fascicolo n. 3/2019

DUBLIN SYSTEM, "SCROOGE-LIKE" SOLIDARITY AND THE EU LAW: ARE THERE VIABLE OPTIONS TO THE NEVER-ENDING REFORM OF THE DUBLIN III REGULATION?

di Giuseppe Morgese

***Abstract**: According to Article 80 of the TFEU, EU asylum policy shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Nevertheless, EU Institutions and Member States have so far done very little to give substance to this principle to the benefit of those MS more exposed to migratory flows. Starting from the legal structure of Article 80 and the persistent European "scrooge-like" solidarity proofs, this paper aims at demonstrating that past and present initiatives (i.e. relocation quotas and the recent Draft Malta Joint Declaration of Intent of September 2019) are intended not to be successful and the amendment process of the so-called "Dublin System" hardly could lead to more structural solidarity. Thus, maybe it is time to rethink the implementation of Article 80, either by setting-up of a EU humanitarian visa system and/or shifting into a "Common But Differentiated Responsibilities" system, placing the burden of the first reception on the frontline MS (as it is today) but amending the 2003 Long Term Resident Directive in order to substantially reduce (or completely remove) the period of time during which refugees and beneficiaries of subsidiarity protection are not allowed to move to other MS for more than three months.*

***Abstract**: Secondo l'art. 80 TFUE, la politica di asilo dell'UE è governata dal principio di solidarietà e di equa ripartizione della responsabilità tra gli Stati membri, anche sul piano finanziario. Tuttavia, le Istituzioni europee e gli Stati membri non hanno sinora fatto granché per dare attuazione a quel principio in modo da andare incontro alle richieste degli Stati più esposti ai flussi migratori. Partendo dalla struttura dell'art. 80 TFUE e della persistente "tirchia" solidarietà europea, in questo lavoro ci si ripropone di dimostrare che le iniziative passate e presenti (come le quote di ricollocazione o la recente bozza di dichiarazione comune di intenti, fatta a Malta nel settembre 2019) sono destinate al fallimento, e che il processo di modifica del sistema Dublino difficilmente può condurre a maggiore solidarietà. Allora, forse sarebbe opportuno "ripensare" l'applicazione dell'art. 80 TFUE nel senso di creare un sistema di visti umanitari e/o di introdurre un sistema di "responsabilità comuni ma differenziate" che ponga l'onere della prima accoglienza sui Paesi di frontiera esterna (come oggi) ma che, al contempo, porti a una modifica della direttiva del 2003 sullo status dei cittadini di Paesi terzi che siano soggiornanti di lungo periodo nel senso di una riduzione sostanziale (o una completa rimozione) del periodo di tempo nel quale rifugiati e beneficiari di protezione sussidiaria non possono spostarsi verso altri Stati membri per più di tre mesi.*

ISSN 1972-4799

DUBLIN SYSTEM, "SCROOGE-LIKE" SOLIDARITY AND THE EU LAW: ARE THERE VIABLE OPTIONS TO THE NEVER-ENDING REFORM OF THE DUBLIN III REGULATION?*

di Giuseppe Morgese**

1. Introduction

The present article deals with the antinomy (or the contradiction) between the so-called Dublin System and the principle of solidarity referred to in Article 80 of the TFEU, that seems unlikely to be resolved in the short-term as in the past. Starting from an overview of the issue at stake, it will be briefly submitted some viable options to address the imbalances of the implementation of the Dublin System, pending its never-ending reform.

The topic is a well-known and much debated one. On the one hand, the Dublin System (provided for in Regulation 604/2013, known as "Dublin III")[1] provides for mandatory criteria to define which EU Member State[2] has responsibility – i.e., obligation – to evaluate international protection claims filed by asylum seekers arriving in those States. Except for some family and sovereignty clauses, the responsible State is by far the one of

* The main argument of this article, i.e. the amendment of the 2003 Long Term Resident Directive, has been presented at the 4th International Conference on *Migrants and Refugees in the Law*, held by the Cátedra Inocencio III, Universidad Católica de Murcia, 12th-14th December 2018. The article was completed in September 9, 2019.

** Research fellow, EU Law, University of Bari Aldo Moro.

1. Regulation (EU) No 604/2013 of the European Parliament and of the Council, of 26 June 2013, OJ L 180, 29 June 2013, p. 31. See G. Morgese, *La riforma del sistema europeo comune di asilo e i suoi principali riflessi nell'ordinamento italiano*, in *Diritto, immigrazione e cittadinanza*, n. 4.2013, p. 15; O. Feraci, *Il nuovo regolamento "Dublino III" e la tutela dei diritti fondamentali dei richiedenti asilo*, in *Osservatorio sulle fonti*, www.osservatoriosullefonti.it, n. 2.2013; S. Peers, *The Dublin III Regulation*, in *EU Immigration and Asylum Law. Volume 3: EU Asylum Law*, edited S. Peers, V. Moreno-Lax, M. Garlick, E. Guild, Leiden, Brill Nijhoff, 2015, p. 345 ss.; F. Maiani, *The Dublin III Regulation: A New Legal Framework for a More Humane System?*, in *Reforming the Common European Asylum System: The New European Refugee Law*, edited V. Chetail, P. De Bruycker, F. Maiani, Leiden-Boston, Brill Nijhoff, 2016, p. 473.

2. Plus Switzerland, Norway, Iceland and Liechtenstein.

the first entry, either legal or illegal[3]. Due to actual migration flows in Europe, it means that States of the first entry are usually those ones located at the southern EU external borders (Greece, Italy, Spain, Malta and, more recently, Cyprus). So, it is not surprising that the "First Entry Rule", into force since 1990, has put a considerable burden on frontlines States over the years.

On the other hand, Article 80 of the TFEU – laid down by the 2007 Lisbon Treaty, entered into force in 2009 – states that the policies of the EU related to asylum "and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States" (first sentence)[4]. It must be stressed out that the principle of solidarity is not mandatory for European Institutions[5] insofar as, following the second sentence of the provision, "[w]henever necessary, the acts of the Union adopted [in asylum matters] shall contain

3. Apart from subsequent transfers of competence due to the expiry of specific time limits related to "taking charge" and "tacking back" procedures, those criteria may be derogated only in three cases: where a non-responsible Member State independently decides to examine an asylum application (*sovereignty clause*); where the responsible Member State requests a non-responsible one to take responsibility of an applicant in order to bring together any family relations, on humanitarian grounds (*humanitarian clause*); and where the transfer of an applicant to the responsible Member State proves impossible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment (*N.S. rule*, where the non-responsible Member State must continue to examine the criteria in order to find another Member State that can be designated as responsible and, in the absence, the former Member State shall take responsibility: see ECJ, Joined Cases C-411/10 and C-493/10, *N.S. and others*, 21 December 2011, ECLI:EU:C:2011:865).

4. See D. Vanheule, J. van Selm, C. Boswell, *The Implementation of Article 80 TFEU on the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States in the field of border checks, asylum and immigration*, 2011, www.europarl.europa.eu; H. Gray, *Surveying the Foundations: Article 80 TFEU and the Common European Asylum System*, in *Liverpool Law Review*, 2013, p. 175; G. Morgese, *Solidarietà e ripartizione degli oneri in materia di asilo nell'Unione europea*, in *I percorsi giuridici per l'integrazione. Migranti e titolari di protezione internazionale tra diritto dell'Unione e ordinamento italiano*, edited G. Caggiano, Torino, Giappichelli, 2014, p. 365; M. Garlick, *Solidarity under Strain. Solidarity and Fair Sharing of the Responsibility for the International Protection of Refugees in the European Union*, Doctoral Thesis, Radboud University, 19 September 2016; K. Hailbronner, D. Thym, *Legal Framework for EU Asylum Policy*, in *EU Immigration and Asylum Law. A Commentary*, edited K. Hailbronner, D. Thym, München-Oxford-Baden-Baden, C.H. Beck-Hart-Nomos, 2016, p. 1023 ff., p. 1043; M.I. Papa, *Crisi dei rifugiati e principio di solidarietà ed equa ripartizione delle responsabilità tra gli Stati membri dell'Unione europea*, in *Costituzionalismo.it*, www.costituzionalismo.it, n. 3.2016, p. 287; M. Messina, *Il principio di solidarietà e di equa ripartizione della responsabilità tra gli Stati membri nella politica d'immigrazione UE: la continua ricerca di una sua declinazione concreta*, in *I valori fondanti dell'Unione europea a 60 anni dai trattati di Roma*, edited M. Messina, Napoli, Editoriale Scientifica, 2017, p. 127; S. Morano-Foadi, *Solidarity and Responsibility: Advancing Humanitarian Responses to EU Migratory Pressures*, in *European Journal of Migration and Law*, 2017, p. 223; V. Moreno-Lax, *Solidarity's reach: Meaning, dimensions and implications for EU (external) asylum policy*, in *Maastricht Journal of European and Comparative Law*, 2017, p. 740; G. Morgese, *La solidarietà tra gli Stati membri dell'Unione europea in materia di immigrazione e asilo*, Bari, Cacucci Editore, 2018.

5. Nor it is at the international level, in the absence of a proper mechanism to systematically, equitably and predictably allocate responsibilities between States: see R. Dowd, J. McAdam, *International Cooperation and Responsibility-Sharing to Protect Refugees: What, Why and How?*, in *International and Comparative Law Quarterly*, 2017, p. 863.

appropriate measures to give effect to this principle". It means that Article 80 TFEU allows EU Institutions a wide margin of discretion to evaluate both the necessity and the appropriateness of measures intended to give effect to the solidarity principle, that in turn makes Article 80 TFEU in itself not reliable on to sue EU Institutions (and Member States) for their possible "lack of solidarity"[6].

To sum up, we face a mandatory act dealing with responsibility allocation (the Dublin III Regulation) that – at least from 2009 – runs counter a non-mandatory Treaty provision on responsibility-sharing (Article 80 of the TFEU). This is not an unfortunate consequence of a hindered mechanism but a conscious political decision of (the majority of) the Member States, that have chosen not to change the *status quo* in order to move towards an overall fair system of evaluation of asylum claims. In fact, EU Institutions and Member States have so far done very little to give substance to the solidarity principle to the benefit of those ones more exposed to migratory flows[7].

2. Current EU solidarity in asylum matters

It is true that, over the last years, EU Institutions have provided some technical and financial solidarity in order to address the situation of frontline Member States. One can remember the creation of Frontex/European Border and Coast Guard and EASO Agencies, whose founding acts[8] contain provisions aimed at supporting in an operational way Member States affected by migrant pressures at their external borders[9]. It must be also borne in mind some financial solidarity by mobilising long-term and emergency

6. See G. Morgese, *La solidarietà tra gli Stati membri*, *cit. supra* note 4, p. 87 ff., and more recently Id., *The Dublin System vis-à-vis EU Solidarity before the European Court of Justice: The Law, The Whole Law, and Nothing But The Law!*, in *Migration Issues before International Courts and Tribunals*, edited G.C. Bruno, F.M. Palombino, A. Di Stefano, Roma, CNR Edizioni, 2019.

7. See F. Munari, *The Perfect Storm on EU Asylum Law: The Need to Rethink the Dublin Regime*, in *Diritti umani e diritto internazionale*, 2016, p. 517; B. Nascimbene, *Refugees, the European Union and the 'Dublin System'. The Reasons for a Crisis*, in *European Papers*, 2016, p. 101; C. Favilli, *La crisi del sistema Dublino: quali prospettive?*, in *La crisi migratoria tra Italia e Unione europea: diagnosi e prospettive*, edited M. Savino, Napoli, Edizioni Fondazione Basso, 2017, p. 279.

8. As regards Frontex, see Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 349, 25 November 2004, p. 1, then replaced by Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard, OJ L 251, 16 September 2016, p. 1. On EASO, see Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, OJ L 132, 29 May 2010, p. 11.

9. See H. Rosenfeldt, *The European Border and Coast Guard in Need of Solidarity: Reflections on the Scope and Limits of Article 80 TFEU*, in *Securitizing Asylum: Extraterritoriality, Deterrence, and Human Rights*, edited V. Mitsilegas, V. Moreno-Lax, N. Vavoula, Leiden-Boston, Brill (forthcoming); E.(L.) Tsourdi, *Bottom-up Salvation? From Practical Cooperation Towards Joint Implementation Through the European Asylum Support Office*, in *European Papers*, 2016, p. 997.

funding through the Asylum, Migration and Integration Fund (AMIF), the Internal Security Fund (ISF), the Emergency Assistance Instrument and *ad hoc* resources[10].

Following the "migration crisis" in 2015, a physical solidarity mechanism – the relocation mechanism – has been put in force by two different Council Decision (n. 2015/1523 and n. 2015/1601)[11]. Those Decisions has been adopted on the legal basis of Article 78, para. 3, TFEU, according to which "[i]n the event of one or more Member States being confronted with an emergency situation characterised by a sudden inflow of nationals of Third Countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned". They have put in place a temporary derogation from the Dublin III Regulation through an emergency relocation of a total of 160.000 asylum seekers from Italy and Greece to other Member States (and Third Associated States). It must be stressed that Decision 2015/1601, unlike the 2015/1523, was compulsory to the extent that it provided national mandatory quota of asylum applications to be examined by all the concerned States other than Italy and Greece[12].

Despite its limited potential and some weaknesses[13], the relocation scheme has been strongly opposed by the so-called "Visegrad Group" of Member States (the Czech Republic, Hungary, Poland and Slovakia). The latter by far support a voluntary and flexible approach to solidarity[14], while frontline Member States ask for a fairer and compulsory redistribution of asylum seekers disembarked on their territories. So, it is not a coincidence that, while the first Decision has been taken unanimously within the

10. See G. Morgese, *La solidarietà tra gli Stati membri*, *cit. supra* note 4, p. 155 ff.

11. Council Decision (EU) 2015/1523, of 14 September 2015, OJ L 239, 15 September 2015, p. 146; and Council Decision (EU) 2015/1601, of 22 September 2015, OJ L 248, 24 September 2015, p. 80.

12. See M. Borraccetti, *"To quota" or "not to quota"? The EU facing effective solidarity in its Asylum Policy*, in *Eurojus*, rivista.eurojus.it, 31 luglio 2015; M. Di Filippo, *Le misure sulla ricollocazione dei richiedenti asilo adottate dall'Unione europea nel 2015: considerazioni critiche e prospettive*», in questa *Rivista*, n. 2.2015, p. 1; C. Favilli, *Reciproca fiducia, mutuo riconoscimento e libertà di circolazione di rifugiati e richiedenti protezione internazionale nell'Unione europea*, in *Riv. dir. intern.*, 2015, p. 701, p. 744 ff.; P. Mori, *La decisione sulla ricollocazione delle persone bisognose di protezione internazionale: un irrituale ricorso al metodo intergovernativo?*, in *DUE online - Osservatorio europeo*, www.dirittounioneeuropea.eu, September 2015; S. Peers, *Relocation of Asylum-Seekers in the EU: Law and Policy*, in *EU Law Analysis*, eulawanalysis.blogspot.com, 24 September 2015; F. Munari, *cit. supra* note 7, p. 534 ff.; B. Nascimbene, *cit. supra* note 7, p. 106 ff.; S. Nicolosi, *Emerging challenges of the temporary relocation measures under European Union asylum law*, in *European Law Review*, 2016, p. 338; C. Favilli, *La crisi*, *cit. supra* note 7, p. 290 ff.

13. See G. Morgese, *La ricollocazione dei richiedenti protezione: il problema delle quote nazionali*», in *Per una credibile politica*, edited M. Savino, *cit. supra* note 7, p. 38.

14. Joint Statement of the Heads of Governments of the V4 Countries, Bratislava, 16 September 2016: see P. De Bruycker, E.(L.) Tsourdi, *The Bratislava Declaration on migration: European irresponsibility instead of solidarity*, in *EU Immigration and Asylum Law and Policy*, eumigrationlawblog.eu, 27 September 2016. See also M. den Heijer, *Corrective Allocation or Effective Solidarity? The Slovak Presidency Non-Paper on the Revision of the Dublin System*, *ivi*, 10 March 2017.

Council, the second one has been adopted by only a majority of Member States, with Czech Republic, Romania, Slovakia and Hungary voting against. It is not a coincidence too that not only the four Visegrad Member States have substantially failed to fulfil their obligations under the two Relocation Decisions[15], but Slovakia and Hungary has also brought actions before the European Court of Justice (ECJ) for annulment of the second Relocation Decision (the mandatory one).

Having the ECJ dismissed in their entirety their actions in September 2017[16], the following December the European Commission has referred the Czech Republic, Hungary and Poland to the ECJ for non-compliance with their legal obligations on relocation: after almost two years, the three infringement cases are still pending before the Court.

3. "Scrooge-like" solidarity, the reform of the Dublin III Regulation, and some recent initiatives

It should be pointed out that the lack of political will to resolve the "solidarity dilemma" – and, eventually, to put such a principle into place in a proper manner – is affecting the Dublin System's amendment process and, in turn, blocking the entire reform process of the Common European Asylum System (CEAS).

For the time being, Member States are still struggling to find a proper compromise between responsibility and solidarity. This is so despite a Commission proposal of May

15. See E. Guild, C. Costello, V. Moreno-Lax, *Implementation of the 2015 Council Decisions Establishing Provisional Measures in the Area of International Protection for the Benefit of Italy and of Greece*, www.europarl.europa.eu, March 2017; L. Marin, *Governing Asylum with (or without) Solidarity? The Difficult Path of Relocation Schemes, Between Enforcement and Contestation*, in *Freedom, Security & Justice: European Legal Studies*, www.fsjeurostudies.eu, n. 1.2019, p. 55, p. 66 ff. One can also remember the failed Orban's referendum of October 2016 against the relocation scheme.

16. Joined Cases C-643/15 and C-647/15, *Slovak Republic and Hungary v. Council of the European Union*, 6 September 2017, ECLI:EU:C:2017:631. See H. Labayle, *Solidarity is not a value: Provisional relocation of asylum-seekers confirmed by the Court of Justice*, in *EU Immigration and Asylum Law and Policy*, eumigrationlawblog.eu, 11 September 2017; M. Messina, *La Corte di giustizia afferma la validità giuridica del meccanismo provvisorio di ricollocazione obbligatoria dei richiedenti protezione internazionale. A quando la volontà politica di alcuni Stati membri UE di ottemperarvi?*, in *Ordine internazionale e diritti umani*, www.rivistaoidu.net, 2017, p. 603; D. Obradovic, *Cases C-643 and 647/15: Enforcing solidarity in EU migration policy*, in *European Law Blog*, europeanlawblog.eu, 2 October 2017; S. Peers, *A Pyrrhic victory? The ECJ upholds the EU law on relocation of asylum-seekers*», in *EU Law Analysis*, eulawanalysis.blogspot.com, 8 September 2017; S. Penasa, *La* relocation *delle persone richiedenti asilo: un sistema legittimo, giustificato e ... inattuato? Brevi riflessioni sulla sentenza Slovacchia e Ungheria c. Consiglio*, in *DPCE on line*, www.dpceonline.it, 2017, p. 735; A. Rizzo, *Ricollocazione infracomunitaria e principio di solidarietà: un nuovo paradigma per le politiche d'asilo dell'Unione*, in *La Comunità internazionale*, 2017, p. 397; B. De Witte, E.(L.) Tsourdi, *Confrontation on relocation - The Court of Justice endorses the emergency scheme for compulsory relocation of asylum seekers within the European Union:* Slovak Republic and Hungary v. Council, in *Common Market Law Review*, 2018, p. 1457.

2016[17], that submitted to EU co-legislators a "corrective allocation mechanism" which would automatically be established when a Member State has to handle a disproportionate number of asylum applications, exceeding 150% of its reference quota[18]. The discussions on such proposal lead to the "revolutionary" European Parliament (EP) Resolution of November 2017[19], according to which the first entry criterion should be completely abandoned in favour of the criterion of the "genuine link" of asylum seekers with a particular Member State and, in the absence of that, in favour of a permanent and automatic relocation mechanism under which asylum seekers that do not have such a genuine link would automatically be assigned to an European State which would take responsibility for them upon arrival in the EU, chosen by asylum seekers themselves among the four Member States which at that given moment have received the fewest asylum seekers[20].

Due to the current deadlock in the Council and the long-lasting lack of political will on different proposed relocation mechanisms[21], that by the way proves significant "scrooge-

17. Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), 4 May 2016, COM (2016) 270 final.

18. See G. Caggiano, *Ascesa e caduta della rotta balcanica. Esternalizzazione contro solidarietà per i richiedenti asilo*, in *Studi sull'integrazione europea*, 2016, p. 221, p. 235 ff.; M. Di Filippo, *The Reform of the Dublin System and the First (Half) Move of the Commission*, in *SIDIBlog*, www.sidiblog.org, 12 May 2016; Id., *Dublin 'reloaded' or time for ambitious pragmatism?*, in *EU Immigration and Asylum Law and Policy*, eumigrationlawblog.eu, 12 October 2016; F. Maiani, *The Reform of the Dublin III Regulation*», www.europarl.europa.eu, 2016; P. Mori, *La proposta di riforma del sistema europeo comune d'asilo: verso Dublino IV?*», in *Eurojus*, rivista.eurojus.it, 7 September 2016; D. Vitiello, *Du vin vieux dans de nouvelles outres? Réflexions sur la proposition de règlement "Dublin IV"*, in *European Papers - European Forum*, europeanpapers.eu, 27 December 2016; C. Favilli, *La crisi*, *cit. supra* note 7, p. 293 ff.; F. Maiani, *The reform of the Dublin system and the dystopia of 'sharing people'*, in *Maastricht Journal of European and Comparative Law*, 2017, p. 622; G. Morgese, *Principio di solidarietà e proposta di rifusione del regolamento Dublino*, in *Dialoghi con Ugo Villani*, edited E. Triggiani, F. Cherubini, E. Nalin, I. Ingravallo, R. Virzo, Bari, Cacucci Editore, 2017, p. 471; S. Progin-Theuerkauf, *The 'Dublin IV' Proposal: Towards more solidarity and protection of individual rights?*», in *Sui-Generis*, 2017, p. 61; P. De Pasquale, *Verso la refusione del regolamento "Dublino III"*, in *Studi sull'integrazione europea*, 2018, p. 267; T.M. Moschetta, *I criteri di attribuzione delle competenze a esaminare le domande d'asilo nei recenti sviluppi dell'iter di riforma del regime di Dublino*, in *Federalismi.it*, www.federalismi.it, n. 5.2018.

19. European Parliament Legislative Resolution on the proposal for a regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), 16 November 2017, 2016/0133(COD).

20. See F. Maiani, C. Hruschka, *The Report of the European Parliament on the reform of the Dublin system: certainly bold, but pragmatic?*, in *EU Immigration and Asylum Law and Policy*, eumigrationlawblog.eu, 20 December 2017; P. De Pasquale, *cit. supra* note 18, p. 274; L. Rizza, *La riforma del sistema di Dublino: laboratorio per esperimenti di solidarietà*», in *Diritto, immigrazione e cittadinanza*, n. 1.2018; G. Morgese, *La ricollocazione*, *cit. supra* note 13, p. 40 ff.; D. Vitiello, *The Dublin System and Beyond: Which Way Out of the Stalemate?*, in *Diritti umani e diritto internazionale*, 2018, p. 463, p. 473 ff.

21. See recently Council of the European Union, The future of the EU migration and asylum policy, 3 June 2019, doc. 9511/1/19 rev. 1. See G. Caggiano, *Il processo decisionale dell'Unione europea a fronte del crescente sovranismo*

like" solidarity among Member States, the question is how to find viable solutions in the 2019-2024 parliamentary term[22]. While it is not clear at the moment whether and how the EP and the Commission itself will resume their position on the reform of the Dublin System[23], in my opinion a proper solution cannot be found in those "administrative" arrangements between Member States that *de facto* supersede the Dublin System[24], nor are feasible for the time being to put in place "regional disembarkation platforms" as envisaged by the European Council in its Conclusions of 28-29 June 2018[25], given the opposition of potentially involved Third Countries[26].

Most of all, it does not look like sustainable anymore to move forward through *ad hoc* disembarkation-and-relocation solutions after Search-and-Rescue (SAR) events in the Central Mediterranean Route. Not prohibited by the discretionary clauses set forth in Article 17 of the Dublin III Regulation, such solutions has been put in place since the summer of 2018 under the coordination of the European Commission and supported by Frontex and EASO, pending the Italian previous policy on "closed ports"[27].

---

euroscettico. Ritorno al metodo intergovernativo per la "questione europea dell'immigrazione"?, in *Studi sull'integrazione europea*, 2018, p. 553, p. 562 ff.

22. As to the shifting from "heavy" to "light" reform options, see F. Maiani, *The Reform of the Dublin III Regulation*, *cit. supra* note 18, p. 45 ff.

23. On the chance to resume or continue the consideration of so-called "unfinished businesses" (i.e., these proposals that have not been previously voted at the Plenary), according to Rule 229 of the Rules of Procedures of the European Parliament, see S. Nicolosi, *Unfinished Business: The European Parliament in the negotiations for reform of the Common European Asylum System*, in *EU Law Analysis*, eulawanalysis.blogspot.com, 23 June 2019; K. Pollet, *All in vain? The faith of EP positions on asylum reform after the European elections*, in *EU Immigration and Asylum Law and Policy*, eumigrationlawblog.eu, 23 May 2019.

24. See S. Poularakis, *The Case of the Administrative Arrangement on Asylum-Seekers between Greece and Germany: A tale of "paraDublin activity"?*, in *EU Law Analysis*, eulawanalysis.blogspot.com, 8 November 2018; L. Marin, *cit. supra* note 15, p. 70 ff.

25. Doc. EUCO 9/18. See M. Di Filippo, *Unione Europea e flussi migratori, o del tramonto dello spirito comunitario: considerazioni a margine del Consiglio europeo del 28-29 giugno 2018*», in *SIDIBlog*, www.sidiblog.org, 9 July 2018.

26. See F. Maiani, *"Regional Disembarkation Platforms" and "Controlled Centres": Lifting The Drawbridge, Reaching out Across The Mediterranean, or Going Nowhere?*, in *EU Immigration and Asylum Law and Policy*, eumigrationlawblog.eu, 18 September 2018; S. Marinai, *Extraterritorial Processing of Asylum Claims: Is It a Viable Option?*, in *Diritti umani e diritto internazionale*, 2018, p. 481; G. Morgese, *Ultimi sviluppi della politica migratoria europea*, in *Sud in Europa*, December 2018, p. 13 ss.; D. Vitiello, *The Dublin System and Beyond*, *cit. supra* note 20, p. 469 ff.

27. See M. Carta, *Il criterio dello Stato di primo ingresso, secondo il regolamento Dublino III, in occasione degli interventi Search and Rescue (SAR)*, in *Federalismi.it*, www.federalismi.it, *Focus Human Rights*, n. 3.2018; E. Papastavridis, *Recent "Non-Entrée" Policies in the Central Mediterranean and Their Legality: A New Form of "Refoulement"?*, in *Diritti umani e diritto internazionale*, 2018, p. 493 ff.; ECRE, *Relying on Relocation: ECRE's Proposal for a Predictable and Fair Relocation Arrangement Following Disembarkation*, Policy Paper 6, www.ecre.org, January 2019; S. Carrera, R. Cortinovis, *Search and rescue, disembarkation and relocation arrangements in the Mediterranean: Sailing Away from Responsibility?*, CEPS Paper in Liberty and Security in Europe, No. 2019-10, www.ceps.eu.

It must be stressed that, despite a December 2018 Communication according to which the Commission called for putting into place temporary arrangements as an immediate solidarity solution pending the reform of the Dublin System[28], discussions on the way forward between the Member States have proven difficult: not surprisingly, given that any arrangement giving up the *ad hoc* solution and moving to a more predictable solidarity mechanism, albeit limited in time, would indeed be nothing more than a "micro-reform" of the Dublin System.

4. The Malta Draft Joint Declaration of Intent of September 2019: a useless and harmful development?

In this regard, the latest episode in the relocation saga starts with a July 2019 draft Temporary Disembarkation Scheme supported by a coalition of 14 willing Member States led by France[29]. Unfortunately, the subsequent "Joint Declaration of Intent on a Controlled Emergency Procedure - Voluntary Commitments by Member States for a Predictable Temporary Solidarity Mechanism", agreed in Malta on September 2019[30], at a meeting of five EU Member States' Ministers in charge of migration (Italy, France, Germany, Malta, Finland) in the presence of the EU Migration Commissioner, looks like all flash and almost no bang.

The Joint Declaration sets out a draft pilot project, temporary in nature (no less than 6 months, renewable), that provides a solidarity mechanism to ensure a "dignified disembarkation" of migrants rescued at sea during SAR operations in the Central Mediterranean. According to the first four Participating States, the solidarity mechanism thereof would establish a "predictable and efficient" disembarkation-and-relocation system with the aim of ending previous *ad hoc* distributions. In the majority of cases, migrants rescued at sea in the Central Mediterranean – either by private or state-owned vessels engaged in rescue operations – would be landed in the nearest Place Of Safety (POS) according to the applicable international rules: most likely, as today, in Italy and Malta, even if Member States are always free to provide a POS other than the closest one[31].

28. Communication from the Commission to the European Parliament, the European Council and the Council, Managing migration in all its aspects: progress under the European Agenda on Migration, 4 December 2018, COM (2018) 798 final.

29. The scheme was, at that moment, strongly contested by Italy and Malta. See www.statewatch.org/news/2019/jul/eu-com-disembarkation-note.pdf.

30. See www.statewatch.org/news/2019/sep/eu-temporary-voluntary-relocation-mechanism-declaration.pdf

31. The fact that, on this point, the Joint Declaration does not refer only to "Participating" Member States means that every EU and Schengen State can make such an offer.

However, in case of a disproportionate migratory pressure[32] or a high number of international protection applications in a Participating State, the draft suggest that alternative POS "shall be proposed on a voluntary basis", while state-owned vessels would be obliged to disembark "in the territory of their flag State".

The key component of the Malta mechanism consists in the fact that those disembarked migrants claiming the international protection would be swiftly relocated in other Participating Member States, in derogation to the Dublin III Regulation's "First Entry Rule" and under a fast-track procedure that would last no more than four weeks[33]. Most of all, unlike previous *ad hoc* distribution cases, such relocations would be carried out as a result of pre-declared national pledges. As a consequence, the Participating Member State of relocation should take responsibility for relocated migrants, i.e. would be responsible for examining their application for international protection and, if not eligible, for returning them in an effective and quick way.

As part of the arrangement, the Draft Declaration incorporates a re-edition of the "Code of Conduct for NGOs Undertaking Activities In Migrants' Rescue Operations at Sea", prepared by Italian Authorities in July 2017[34]. It also puts on the table some safeguard clauses to the extent that the (future) solidarity mechanism not only might be suspended in the case of a substantial increase of relocated persons, but it would also be terminated in the case of misuse by Third Parties.

The Draft Declaration raises so many problems that it could be seen both as useless and harmful. It is true that some requests of Italy and Malta have been accepted, as to the wide personal scope of migrants involved (not only those beneficiaries of international protection but all asylum-seekers) and a reasonable timetable of relocations. But it is also true that, at the moment, it is not entirely clear its legal nature, i.e. whether the solidarity mechanism will be incorporated in a Decision according to Article 78, para. 3, of the TFEU (as well as Decision 2015/1523) or in a Recommendation putting down a *Dublin-minus* voluntary arrangement, or it will be the subject of an enhanced cooperation according to Article 20 of the TEU.

Moreover, as far as its uselessness, the proposed mechanism is a third best solution, that provides a very partial response due to its voluntary and temporary nature and, at the present time, because of the great unknown of the amount of national pledges. Furthermore, the only voluntary "port rotation" does not look like a great example of

32. In terms of limitation of national (or local?) reception capacities.

33. Based on to-be-agreed Standard Operating Procedures (SOP).

34. See www.humanrightsatsea.org/wp-content/uploads/2017/07/2017070516-EU-Code-of-Conduct.pdf. See I. Papanicolopulu, *Immigrazione irregolare via mare, tutela della vita umana e organizzazioni non governative*, in questa *Rivista*, n. 3.2017, p. 24 ff.

solidarity between the Participating States (although this is not a so-negative element with respect to compliance to international SAR rules)[35]. Also the suspension clause seems very counterintuitive, insofar as the mechanism is intended to spread its very wings mainly in times of raising numbers of persons to relocate. It must also say that the solidarity mechanism completely disregards the fact that, nowadays, the higher disembarkations numbers are being tested during the Eastern Mediterranean Route. Finally, in my opinion, the mechanism is harmful insofar as it could risk undermining the need of a wide reform of the allocation criteria of the Dublin III Regulation without proposing a valid alternative solution.

Despite its non-binding and temporary nature, it is a matter of fact that EU Member States have not precisely been thrilled with the Draft Malta Declaration. During the Justice and Home Affairs Council of 7 and 8 October 2019, only three States (Ireland, Luxembourg and Portugal) have informally decided to support the first four Participating States; other four States (Romania, Croatia, Lithuania and Sweden) said neither yes or no, while Greece, Spain, Cyprus and Bulgaria – currently affected by larger arrivals of migrants than the Central Mediterranean Route – would not participate to the Malta mechanism but are understandable not contrary as a matter of principle. As always, there have been opposition from the Visegrad States, still unwilling to relocate in their territories as in the past. Moreover, Germany itself has expressed its favourable opinion on the proposed solidarity mechanism as long as arrivals continue to be low in number. So, it is not a case that EU Interior Ministers have decided to further deepen the issue in the next months.

5. Two different viable solutions: a) the setting-up of a EU humanitarian visa system

Rather than persist in relocation options – whether binding or voluntary and temporary or permanent – one may find at least two different, maybe combined, ways to overcome the "solidarity conundrum" and making a permanent solution available, therefore putting the Dublin mechanism (albeit not formally) into question.

The first solution deals with the setting-up of an extraterritorial pre-entry screening of asylum requests in the form of an *EU humanitarian visa system*. It would allow persons in need of international protection to enter EU in a safe, orderly and regularly manner and to file asylum applications in the Member State of destination. Such humanitarian visas should be granted upon request by Member States' consular

35. It is clear that an alternative POS that is far away from the rescue event could expose rescued migrants to some personal risks.

authorities, just like the current optional "visa with limited territorial validity" set out in Article 25, para. 1, of the Regulation 810/2009 (Visa Code)[36], but on the mandatory legal basis of a new EU legislative instrument[37].

The latter would overcome those shortcomings of the Article 25(1) of the Visa Code left untouched by the 2019 legislative revision[38] and highlighted in the well-known *X and X* case of the 7th March 2017, where the ECJ stated that Member States are not required, under EU law in force, to grant a humanitarian visa to persons who wish to enter their territory with a view to applying for asylum, but they remain free to do so on the basis of their national law[39]. Maybe a light could be shed by a decision in the case of *M.N. and Others v. Belgium*, still pending before the European Court of Human Right (ECtHR), where a factual situation similar to *X and X* is at stake[40].

The option of setting-up an EU humanitarian visa system has been shared in December 2018 by the EP, that requested the Commission to table, by the end of March 2019, a legislative proposal establishing a European Humanitarian Visa in order to give access to the issuing Member State for the sole purpose of submitting an application for international protection[41]. The EP legislative initiative report was backed by 429 MEPs, 194 voted against and 41 abstained. Following such solution, genuine asylum seekers, on the one hand, would not be forced to reach the EU through irregular and dangerous

36. Regulation (EC) No 810/2009 of the European Parliament and of the Council, of 13 July 2009, establishing a Community Code on Visas (Visa Code), OJ L 243, 15 September 2009, p. 1.

37. See further D. Vitiello, *The Dublin System and Beyond*, *cit. supra* note 20, p. 475 ff.

38. Regulation (EU) 2019/1155 of the European Parliament and of the Council, of 20 June 2019, amending Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code), OJ L 188, 12 July 2019, p. 25. See further E. Guild, *Amending the Visa Code: Collective Punishment of Visa Nationals?*, in *EU Immigration and Asylum Law and Policy*, eumigrationlawblog.eu, 10 May 2019; S. Peers, *The revised EU visa code: controlling EU borders from a distance*, in *EU Law Analysis*, eulawanalysis.blogspot.com, 17 April 2019.

39. Case C-638/16 PPU, *X and X*, 7 March 2017, ECLI:EU:C:2017:173. See G. Caggiano, *Are You Syrious? Il diritto europeo delle migrazioni dopo la fine dell'emergenza alla frontiera orientale dell'Unione*, in *Freedom, Security & Justice: European Legal Studies*, www.fsjeurostudies.eu, n. 2.2017, p. 7, p. 14 ff.; G. Cellamare, *Sul rilascio di visti di breve durata (VTL) per ragioni umanitarie*, in *Studi sull'integrazione europea*, 2017, p. 527; A. Del Guercio, *La sentenza X. e X. della Corte di giustizia sul rilascio del visto umanitario: analisi critica di un'occasione persa*, in *European Papers - European Forum*, www.europeanpapers.eu, 12 maggio 2017; C. Favilli, *Visti umanitari e protezione internazionale: così vicini così lontani*, in *Diritti umani e diritto internazionale*, 2017, p. 553; G. Raimondo, *Visti umanitari: il caso X e X contro Belgio, C-638/16 PPU*, in *SIDIBlog*, www.sidiblog.org, 1 May 2017; M. Zoeteweij-Turhan, S. Progin-Theuerkauf, *CJEU Case C-638/16 PPU, X and X - Dashed hopes for a legal pathway to Europe*, in *European Law Blog*, europeanlawblog.eu, 10 marzo 2017.

40. Application no. 3599/18, also referred to as *Nahhas and Hadri v. Belgium*. See D. Schmalz, *Will the ECtHR Shake up the European Asylum System?*, in *Verfassungsblog*, verfassungsblog.de, 30 November 2018.

41. European Parliament resolution of 11 December 2018 with recommendations to the Commission on Humanitarian Visas, 11 December 2018, 2018/2271(INL).

means and, on the other hand, would in some sense be redistributed in advance in their favourite Member State[42].

The legislative path to the creation of such visa scheme looks quite troublesome insofar as "more attractive" Member States (usually, not the frontline ones) would hardly accept obligations in this respect: this is so because such a mandatory humanitarian visa scheme would *de facto* overcome the Dublin System's "protection belt" around them. It is thereby not a case that the Commission has substantially rejected the EP initiative, claiming that its 2016 Union Resettlement Framework proposal, currently under examination by the Council and the EP itself[43], if approved, would be broad enough to reach the objective pursued by the EP and that "it is politically not feasible to create a subjective right to request admission and to be admitted or an obligation on the Member States to admit a person in need of international protection"[44].

6. b) The amendment of the 2003 Long Term Resident Directive

In light of the above, a second option looks like more viable, albeit in principle. I refer to the possibility to put into place an amendment of the 2003 Long Term Resident (LTR) Directive[45], in order to substantially reduce the period of time during which beneficiaries of international protection are not allowed to freely move across the EU.

42. See C. Parisi, *La nécessaire harmonisation du visa humanitaire dans le droit de l'Union Européenne au prisme de l'asile*, in *Freedom, Security & Justice: European Legal Studies*, www.fsjeurostudies.eu, n. 2.2019, p. 140, p. 151 ff.

43. Proposal for a regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council, 13 July 2016, COM (2016) 468 final.

44. Follow up to the European Parliament non-legislative resolution with recommendations to the Commission on Humanitarian Visas, 1 April 2019, SP (2019) 149. For another "alternative" solution, i.e. an Emergency Evacuation Visa System, see V. Moreno-Lax, *A Model Instrument for an Emergency Evacuation Visa*, Paper for the International Bar Association, July 2019, www.academia.edu/40441161/Model_Instrument_for_an_Emergency_Evacuation_Visa_International_Bar_Association_2019.

45. Council Directive 2003/109/EC, of 25 November 2003, concerning the *status* of third-country nationals who are long-term residents, OJ L 16, 23 January 2004, p. 44. See S. Peers, *Implementing Equality? The Directive on Long-Term Resident Third-Country Nationals*, in *European Law Review*, 2004, p. 437; S. Boelaert-Suominen, *Non-EU Nationals and Council Directive 2003/109/EC on the Status of Third-Country Nationals Who Are Long-Term Residents: Five Paces Forward and Possibly Three Paces Back*, in *Common Market Law Review*, 2005, p. 1011; A. Di Stasi, *Verso uno "statuto" euro-nazionale del c.d. immigrato di lungo periodo*, in *Le migrazioni. Una sfida per il diritto internazionale, comunitario e interno*, edited U. Leanza, Napoli, 2005, p. 451; L. Halleskov, *The Long-Term Residents Directive: A Fulfilment of the Tampere Objective of Near-Equality?*, in *European Journal of Migration and Law*, 2005, p. 181; L. Manca, *Lo status dei cittadini di Paesi terzi residenti di lungo periodo nell'Europa allargata: problemi e prospettive*, in *L'integrazione dei cittadini di Paesi terzi nell'Europa allargata*, edited M.R. Saulle, L. Manca, Napoli, 2006, p. 27; K. Groenendijk, *The Long-Term Resident Directive, Denizenship and Integration*, in *Whose Freedom, Security and Justice? EU Immigration and Asylum Law and Policy*, edited A. Baldaccini, E. Guild, H. Toner, Oxford-Portland, Bloomsbury, 2007, p. 429; D. Acosta Arcazaro, *The Long Term Residence Status as a Subsidiary Form of*

It must be reminded that, even after obtaining a protection status in the Member State responsible for examining their applications, those beneficiaries have limited right of movement in the EU territory. In fact, the residence permit issued after the international protection has been granted[46], together with the travel document issued at their request to refugees and, if unable to obtain a national passport, also to subsidiary protection beneficiaries[47], only allows to move and stay in other Schengen Member States[48] (and in States Parties to the European Agreement on the Abolition of Visas for Refugees)[49] for no more than 90 days in any 180-day period, provided that other requirements are met[50]. It is only after at least five years of legal and continuous residence within the territory of the granting Member State that those beneficiaries – just like other Third-Country nationals – may acquire long-term resident status according to the LTR Directive[51], under which they may also acquire the right to reside in the territory of other Member States for the exercise of an economic activity, for the pursuit of studies or vocational training, or for other purposes, following the conditions set out in Articles 14-23 of the LTR Directive[52].

Indeed, in my opinion, by reducing the period of time of legal and continuous residence *from five to three or two years*, or even less, is suitable to put into place a different kind of solidarity among Member States: i.e., a Common-But-Differentiated-Responsibilities' system not so far from the well-known principle of environmental law included in the 1992 United Nations Framework Convention on Climate Change (UNFCCC)[53]. While the latter acknowledges that all the States are required to combat climate change and the adverse effects thereof but takes into account the national different capabilities, in the EU

EU Citizenship. An Analysis of Directive 2003/109, Leiden, Martinus Nijhoff Publishers, 2011; A. Di Stasi, R. Palladino, *La perdurante frammentarietà dello "statuto" europeo del soggiornante di lungo periodo tra integrazione dei mercati ed integrazione politico-sociale*, in *Studi sull'integrazione europea*, 2012, p. 375.

46. According to Article 24 of the Directive 2011/95/EU of the European Parliament and of the Council, of 13 December 2011, on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ L 337, 20 December 2011, p. 9.

47. Article 25 of the Directive 2011/95, according to which Member States issue a Convention Travel Document (CTD) in the form prescribed in the Schedule to the 1951 Geneva Convention on Refugee *Status*.

48. Except, for the time being, Ireland, United Kingdom, Romania, Bulgaria, Croatia and Cyprus.

49. Strasbourg, 20 April 1959.

50. Article 6 of the Regulation (EU) 2016/399 of the European Parliament and of the Council, of 9 March 2016, on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 77, 23 March 2016, p. 1.

51. It follows from the entry into force of the Directive 2011/51/EU of the European Parliament and of the Council, of 11 May 2011, amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection, OJ L 132, 19 May 2011, p. 1.

52. See S. Peers, *Transfer of International Protection and European Union Law*, in *International Journal of Refugee Law*, 2012, p. 527.

53. Rio de Janeiro, 4 June 1992.

asylum law the suggested amendment of the LTR Directive would be suitable to distribute national burdens on a differentiated basis.

Indeed, such a system would place on frontline Member States the burden of reception measures and examination process, but over a shorter period of time than today; in contrast, other Member States – typically more attractive in terms of national economic situation or social integration – would bear before now the burden of medium-long term integration/inclusion measures for those LTR beneficiaries that have decided to move from frontlines Member States to their territories. Such a system could be easily supplemented by a financial solidarity mechanism according to which the EU general budget could cover or contribute to the cost of the material reception conditions in frontlines Member States and the cost of (early) integration/inclusion measures in those States where LTR beneficiaries have decided to move in.

The proposed solution would be likely to obtain some benefits[54]. First of all, it would keep unchanged the Dublin System criteria and the responsibility of the Member State of the first entry for early reception and the evaluation of international protection claims filed by asylum seekers arrived in those States, thus softening those sharp contrasts between Member States set out above. Secondly, it would significantly mitigate the impact of arrivals on frontline Member States, whose economic and social costs would be more limited than today, particularly if totally or partially covered by the EU general budget. Lastly, but no less important, such a solution would allow international protection beneficiaries to express in a not-too-distant future a fundamental choice of life, i.e. whether to continue to stay in first reception Member State or moving to other Member States, by the way reducing their incentive to circumvent the Dublin criteria.

In this respect, the suggested amendment of the LTR Directive in practice would likely to give a fresh twist to the topic of the "mutual recognition of positive asylum decisions", although not immediately and completely. It must be said that current EU asylum law provides for mutual recognition of *negative* asylum decisions, insofar as, under the Dublin System, decisions of Member States' Responsible Authorities on exclusion from, revocation of, ending of or refusal to renew protection status are mandatory for any other Member State[55]. On the contrary, notwithstanding Article 78, para. 2, of the TFEU[56], mutual recognition of Member States' *positive* international protection decisions

54. See also G. Morgese, *La ricollocazione*, *cit. supra* note 13, p. 44.

55. See C. Favilli, *Reciproca fiducia*, *cit. supra* note 12, p. 703.

56. According to which "the European Parliament and the Council (...) shall adopt measures for a common European asylum system comprising: (a) a uniform *status* of asylum for nationals of third countries, valid throughout the Union".

are only partially governed by the 1980 European Agreement on Transfer of Responsibility for Refugees[57] and by national practice that is not always univocal[58].

Of course, it is not to say that the suggested amendment would result in a full chance of transfer of international protection status across the EU[59], also because such an option not only is quite difficult to achieve[60], but is also currently outside the scope of the 2011 amendment to the 2003 LTR Directive[61]. It must rather be stressed that a reduction of the period of time needed to international protection beneficiaries to acquire the LTR status, despite all other protection gaps of the 2003 LTR Directive[62], would be a not-so-bad compromise between "hard Dubliners" and those advocating a fairer and more solidarity EU asylum system.

7. Conclusions

In this paper, I tried and explain that we should move away from the "myth" of relocation and other distribution systems of asylum-seekers. This is so not only because there are considerable political differences between EU States, but also due to its unsustainability in terms of social integration of asylum-seekers themselves: nobody would like to be transferred in an unknown national territory without at least have the opportunity to make a choice.

Of course, we all waiting with trepidation the expected "New Pact on Migration and Asylum", called for by the new President of the Commission Von der Leyen. She

57. Strasbourg, 16 October 1980. See S. Peers, *Transfer of International Protection*, *cit. supra* note 52, p. 531 ff. The Agreement is applicable to the sole beneficiaries of the refugee status and has been ratified by only 11 EU Member States.

58. See N. Lassen, J. van Selm, J. Doomernik, *Study on the transfer of protection status in the EU, against the background of the common European asylum system and the goal of a uniform status, valid throughout the Union, for those granted asylum*, 2004, publications.europa.eu, p. 46 ff. See also ECRE, *Mutual recognition of positive asylum decisions and the transfer of international protection status within the EU*, Discussion Paper, www.ecre.org, November 2014, p. 14; V. Mitsilegas, *Humanizing solidarity in European refugee law: The promise of mutual recognition*, in *Maastricht Journal of European and Comparative Law*, 2017, p. 721, p. 735; S.F. Nicolosi, *La riforma del sistema europeo comune di asilo tra impasse negoziale e miopia normative*, in *Riv. trim. dir. pubbl.*, 2019, p. 521 ff., p. 533 ff.

59. See S. Peers, *Transfer of International Protection*, *cit. supra* note 52, p. 555 ff.; ECRE, *Mutual recognition*, *cit. supra* note 58, p. 15 ff.; J. Verhellen, *Cross-Border Portability of Refugees' Personal Status*, in *Journal of Refugee Studies*, 2017, p. 427; G. Morgese, *La ricollocazione*, *cit. supra* note 13, pp. 42-43.

60. See M. Di Filippo, *Considerazioni critiche in tema di sistema di asilo dell'UE e condivisione degli oneri*, in *I diritti dell'uomo*, n. 1.2015, p. 47, pp. 56-58.

61. Recital 9 of Directive 2011/51: "[t]ransfer of responsibility for protection of beneficiaries of international protection is outside the scope of this Directive".

62. See ECRE, *Mutual recognition*, *cit. supra* note 58, p. 15 ff.; V. Mitsilegas, *Humanizing solidarity*, *cit. supra* note 58, p. 736. See recently the report from the Commission to the European Parliament and the Council on the implementation of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, 29 March 2019, COM (2019) 161 final.

expressed the intention to relaunch the reform of asylum rules, finding new forms of solidarity according to which all Member States would make "meaningful contributions" to support EU States under pressure. In this respect, recent hesitations on the occasion of the Draft Malta Joint Declaration of Intent on a solidarity mechanism only confirm the wide difficulty of finding a common ground in the matter.

While it seems that Member States (contrary to the EP) do prefer to further explore the so-called "external dimension" of EU asylum system[63], I have proposed two different viable "internal" solutions with strong redistributive effect that put aside the reform of the Dublin System, waiting for better times (if any).

63. Aimed at developing strategic partnerships both with Countries of Origin of migrants and Neighboring Countries and Regions (Western Balkans, Turkey, North Africa and Eastern Partnership Countries) in order to stop – or to try and stop – irregular migration at an earlier stage, no matter what.