

## Portugal as a State of Relocation under the Provisional EU Relocation Scheme

### *Portugal como estado de recolocação sob o Acordo Provisório de Recolocação da UE*

Rositsa Atanasova\*

**Resumo** This article examines Portugal as a state of relocation within the context of the provisional Council decisions on the relocation of applicants for international protection. It suggests that the EU cannot effectively manage unfolding migration realities without an adequate relocation mechanism. What is more, the Treaties provide a legal basis for such measures through the principles of solidarity and burden-sharing in the field of asylum. Portugal has committed to partaking in the relocation effort by welcoming a number of asylum-seekers that will alter its traditional balance of applications. Portuguese asylum law has been molded most recently by the Union asylum *acquis*, but the relatively low numbers of asylum-seekers have not tested extensively the substantive and procedural safeguards of the legal framework in the field. The current relocation scheme offers scope for development as Portugal will be ultimately responsible for assessing the asylum claims of incoming applicants.

**Palavras-chave** relocation, asylum-seekers, Portugal, EU

**Abstract** Neste artigo propõe-se examinar Portugal como um estado para a recolocação no contexto das decisões provisórias do Conselho Europeu, relativas à recolocação de requerentes de proteção internacional. Sugere-se que a UE não pode gerir eficazmente as atuais realidades de migração sem um mecanismo de recolocação adequado. Mais: os acordos oferecem uma base legal para tais medidas, por meio de princípios de solidariedade e de partilha de encargos relativos ao asilo. Portugal comprometeu-se a tomar parte nos esforços de recolocação, recebendo um número de requerentes de asilo que alterará o equilíbrio tradicional de pedidos. A Lei de Asilo portuguesa foi moldada, mais recentemente, pelo acervo da União Europeia relativo ao asilo, mas os números relativamente baixos de requerentes de asilo não testaram extensamente salvaguardas substanciais e processuais do enquadramento legal nesta área. O atual esquema de recolocação apresenta margem para desenvolvimento, uma vez que Portugal será responsável por avaliar os pedidos de asilo dos requerentes.

**Keywords** recolocação, requerentes de asilo, Portugal, UE

\* Católica Global School of Law (ratanaso@gmail.com).

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### Introduction

Relocation has become the cornerstone of the current Union effort to implement the principles of burden-sharing and solidarity within the Common European Asylum System. Despite the divisive nature of the issue, these notions stem from the Treaties and could ground tangible legal obligations. Contemporary Portuguese asylum law has been shaped to a great extent by the effort to transpose the EU asylum *acquis* within the domestic legal order. Weaknesses in the substantive and procedural frameworks persist, in particular with regard to vulnerable applicants. The relatively low number of applications for international protection that the country receives has allowed it to approach their treatment from its vantage point as a leader in the integration of migrants. Such practices, however, overlook at times the specific needs of asylum-seekers. I argue ultimately that while relocation makes applicants vulnerable to the shortcomings of the asylum system in the state of relocation, it pressures the socio-legal framework to become more sensitive to the issues entailed in asylum claims.

### Theoretical Approach

The present inquiry proceeds from an in-depth legal analysis of the measures that establish a mechanism for the internal relocation of asylum-seekers within the European Union. The scheme is provisional and as such it functions alongside the Dublin rules without abrogating them or modifying them substantively. I rely on the analysis advanced by Peers (2015) who argues that the relocation mechanism has a legal basis in the EU Treaties. On that view, Article 80 TFEU reflects the burden-sharing principle of international law, set out in the preamble to the Geneva Convention, and postulates that Union policies in the field of asylum “shall be governed by the principle of solidarity and fair sharing of responsibility.” Given the inadequacy of purely financial contributions to alleviate the migratory pressures on the most exposed Member States, then, the mandate to share responsibility could ground an obligation to participate in some kind of relocation mechanism.

By examining Portugal as a case-study, the article seeks to elucidate the tensions inherent in the current conceptualization and implementation of the relocation framework. While attempting to alleviate the adverse effects of the Dublin system, most notably, the provisional measures rely on and reinforce its logic. Applicants remain, in other words, vulnerable to the deficiencies in the asylum-granting process of the Member State of relocation, rather than the Member State of first entry. On this point, I engage with the recent study of Carrera and Guild (2015) who have shown that many Member States continue to show significant and systematic deficiencies in terms of reception conditions as well as judicial and administrative capacities. The nationality hurdle in the new scheme, ultimately, creates a presumption of eligibility for subsidiary protection and I argue that it is not clear on those

terms whether Member States are free to find that the applicant's claim is unwarranted or whether he or she could be granted refugee status instead.

## **Legal Framework of the Relocation of Asylum-Seekers Within the EU**

In September 2015 the EU adopted two decisions on the relocation of asylum-seekers within the Union. Both measures are provisional and in force for a total of two years. They aim to alleviate the exceptional migratory pressures experienced by frontline Member States in accordance with the principle of solidarity that Article 80 TFEU renders applicable in the area of border checks, asylum and immigration. The two decisions are based on Article 78(3) TFEU, which confers an "emergency power" on the Council to adopt provisional measures on a proposal from the Commission for the benefit of the concerned Member States. The European Parliament is only consulted regarding measures adopted under Article 78(3), whereas it acts in its ordinary capacity of joint decision-maker for the purpose of other asylum legislation. Ultimately, Article 78(3) should be considered within the terms of Article 78(1), which stipulates that the Union shall develop common policy on asylum, which guarantees third-country nationals adequate international protection in compliance with the principle of *non-refoulement* and other provisions of the Geneva Convention.

The first Council Decision provides for the relocation of persons who have arrived on the territory of Italy or Greece from September 16, 2015 until September 17, 2017, or from August 15, 2015 onwards (Article 13)<sup>13</sup>. The measure applies to asylum-seekers who have applied for international protection in either of those states and for whom that state would normally be responsible for considering the application under the Dublin rules<sup>14</sup>. Relocation, therefore, is a process substantively distinct from resettlement, which refers, in both EU and international law, to admitting people directly from their country of origin or neighboring states. For the purposes of the decision, applicants are asylum-seekers who have already been finger-printed by Italy or Greece pursuant to the Eurodac Regulation<sup>15</sup>. The Dublin rules continue to apply alongside the Decision and might exceptionally trump relocation in the name of family reunification, special protection of unaccompanied minors, or the discretionary clause on humanitarian grounds.

The measure envisions that over the course of two years 24 000 asylum-seekers would be relocated from Italy and 16 000 from Greece. According to the preamble of the Decision, these numbers correspond to 60% and 40% respectively of the total number of third-country nationals "in clear need of international protection" (para. 22). Relocation would, thus, apply solely to nationalities whose applications for international protection reach a threshold of 75 % success rate based on the latest available Eurostat quarterly data for first instance decisions. The most recent statistics indicate that when both refugee status and subsidiary protection are taken into account, only Syrians, Iraqis and Eritreans would be eligible for relocation<sup>16</sup>. While such a mechanism creates a strong presumption that the application will be successful, the Member State of relocation becomes responsible for examining the case under the Dublin rules following the applicant's move to the territory of that state.

Member States would receive relocated asylum-seekers from Italy and Greece on the basis of optional commitments. The Council ultimately agreed on the relocation of 32 256 peo-

ple, thus falling short of the 40 000-person goal, with the remaining 7 744 asylum-seekers to be distributed by the end of 2015 (Justice and Home Affairs, 2015). The Decision postulates that Italy and Greece will select the asylum-seekers for relocation giving priority to “vulnerable applicants” within the terms of the EU Directive on reception conditions<sup>1</sup>. Member States of relocation may express preference for applicants on the basis of specific qualifications and characteristics, such as language skills or any demonstrated family, cultural or social ties, which could facilitate their integration into the host country. Article 5(4), however, makes clear that the preference option is non-binding. The Member States of relocation must ultimately accept the applicants nominated by Italy and Greece and may refuse relocation only on grounds of national security, public order or where a third-country national is excluded from being eligible for international protection under the terms of the EU Qualification Directive<sup>2</sup>.

The measure requires Italy and Greece to inform applicants of the decision to relocate them, but asylum-seekers may only appeal a transfer decision if it threatens to breach their fundamental rights. Notably, there is no requirement that applicants consent to the relocation or the choice of a destination, nor can they request it. To ensure the efficiency of the relocation mechanism asylum-seekers will not be allowed to move freely between Member States following relocation in accordance with the Dublin rules. To discourage such irregular “secondary movements” the Member States of relocation should not issue applicants with national travel documents and could impose on them reporting obligations. The Decision envisions that the harmonization of reception conditions would further deter asylum-seekers from moving to another Member State. Once applicants become beneficiaries of international protection, they could be subject to forced return to the Member State of relocation if they overstay on the territory of other states of the Union and refuse to return voluntarily.

The second Council decision on relocation follows the structure of the first one, but with some notable substantive differences<sup>3</sup>. The second Decision applies to the relocation of 120 000 asylum-seekers in addition to the initial 40 000. Under this measure, however, the intake commitments are not voluntary, but rather based on specific numerical values set out in the Annex to the Decision. Most Member States consented to the values, but Hungary, Romania, the Czech Republic and Slovakia voted against the measure. The Decision ultimately creates a binding obligation even for those Member States as it required a qualified majority of ministerial votes in Council to pass. The opposing states lament the use of mandatory quotas to distribute asylum-seekers within the Union, but so far only Slovakia has taken steps to challenge the legality of the decision before the CJEU (Rettman, 2015).

Following the evolution of the situation on the ground, the second Decision presents an altered distribution of relocation. Due to the increased migratory pressures on Greece over the summer, the measure envisions that 50 400 applicants would be relocated from Greece, but only 15 600 from Italy. The remaining 54 000 asylum-seekers were originally intended to come from Hungary, but the country has declined participation in the scheme so as not to appear a frontline state for migration. The additional 54 000 applicants under the Decision will, therefore, be relocated either from Italy and Greece in accordance with the proportions outlined above, or from other Member States subject to the changing realities on the ground (Article 4(2)). In either case the Council will have to approve a proposal from the Commission with regard to an alternative distribution scheme.

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The preamble to the second Decision stipulates that within three months of its entry into force a Member State may request a delay of the relocation of up to 30% of its assigned applicants. Such temporary suspension of the relocation is permissible in "exceptional circumstances", such as extreme migratory pressures, provided that the Member State "gives duly justified reasons" compatible with the fundamental values of the Union (para. 27). The preamble, nevertheless, reveals a much greater concern regarding the "secondary movements" of applicants and authorizes the use of detention should alternative measures prove inadequate. The terms of the decision ultimately extend to applicants who have arrived on the territory of Italy and Greece after 24 March 2015.

### **The Legal Basis for a Relocation Mechanism in EU Law**

The intensifying migratory pressures on frontline Member States necessitate and justify a sustainable relocation mechanism. As Peers contends, the objectives of the relocation policy are within the terms of the EU Treaties (2015). He points out that Article 80 TFEU reflects the burden-sharing principle of international law, set out in the preamble to the Geneva Convention, and postulates that Union policies in the field of asylum "*shall be governed by the principle of solidarity and fair sharing of responsibility.*" Infrastructural challenges in the frontline Member States have shown that financial contributions alone are insufficient to alleviate the disproportionate burden on their asylum and social systems. In that regard the Commission has put forth a proposal for a Regulation that would establish a permanent crisis relocation mechanism by amending the Dublin rules<sup>4</sup>. The ultimate objective of the legislative proposal is to set up a relocation mechanism that would allow the Union to structurally address crisis situations in the field of asylum.

The current relocation targets, however, remain largely insufficient to relieve the pressures on Italy and Greece. The Council decisions will certainly address the situation on the ground to some extent, but their contribution would gradually shrink in percentage terms as more asylum-seekers from priority countries arrive in Italy and Greece over the next two years. Peers (2015) explains that while the number of asylum-seekers under the second Decision will be relocated over the course of two years, those applicants arrived in Italy and Greece over the course of two months. He further highlights that the more stringent obligation to finger-print applicants under the decisions might ultimately make Italy and Greece responsible for more asylum-seekers than before under the concurrent application of the Dublin rules. Applicants with non-priority nationalities remain outside the scope of the provisional measures and are still subject to the ordinary Dublin procedures.

The rolling out of the relocation scheme has so far faced significant challenges. On one hand, the Greek Migration Minister has stated that the country is experiencing difficulties identifying refugees to send to certain Member States who, in his words, have expressed "racist criteria" of selection (Tagaris, 2015). While Mouzalas refused to name the states concerned, Slovakia and Cyprus have openly voiced their preference for Christian asylum-seekers. On the other hand, the smooth functioning of the quota system might come under threat should applicants refuse to go to their assigned Member States of relocation. The application of the Dublin rules along with current relocation efforts have shown how deeply problematic it is to force asylum-seekers to move to a country where they do not wish to be.

In the alternative, both Council decisions opt for sanctions in an attempt to keep applicants put. The scope of Member State action in that regard, however, is restricted. As Peers points out, contrary to the preamble of the second Decision, the CJEU has ruled that the Return Directive does not apply to asylum-seekers (2015)<sup>5</sup>. Limiting secondary movements is vital for the success of any relocation effort, but it is exceedingly difficult to enforce as it goes against the free-movement logic that underlies Union law.

### **Portugal as a Member State of Relocation within the Current EU Mechanism**

Under the current relocation commitments Portugal has pledged to receive a total of 4 775 asylum-seekers. In accordance with the terms of the first Council Decision 1701 applicants were meant to be transferred to the country from Italy and Greece (Nardelli, 2015). Portugal, however, consented to the initial in-take of 1 309 applicants with the rest to be relocated later on. The Annex to the second Decision, in turn, provides that Portugal will receive in addition 3 074 asylum-seekers. The mandatory distribution arrangement envisions that 388 applicants will come from Italy and 1 254 will come from Greece. The remaining 1432 applicants were initially meant to come from Hungary, but at the time of writing it remains uncertain whether they will come again from Italy and Greece or from other affected Member States. Under Article 5(10) of the second Council Decision the relocation process should be under way no later than 2 months after the Member States of relocation have indicated the number of applicants that could be transferred to their territory.

The most recent Communication from the Commission on managing the refugee crisis highlights the progress made on the implementation of the Council decisions as an integral part of the current European Agenda on Migration<sup>6</sup>. The first relocation of people in clear need of international protection took place on October 9, 2015 as a flight took 19 Eritreans from Rome to Sweden. The Commission has asked the Member States to identify national contact points and to send liaison officers to Italy and Greece in order to streamline the process. Portugal has complied with both requirements, but has not yet notified the Commission that it possesses the adequate reception capacity to host relocated people<sup>7</sup>. All Member States should complete such notification by the end of October when the first relocations to Portugal are expected to proceed.

Portugal boasts an extensive experience with migration and has developed a comprehensive legal and administrative framework that governs the treatment of immigrants. The country underwent a wave of emigration until the 1960s and then of immigration between the 1970s and 2000 (Peixoto, 2004: 2). It is currently experiencing a new phase of emigration primarily as a consequence of the economic crisis. The Migration Integration Policy Index (MIPEX), a tool that measures policies to integrate migrants in all EU Member States, however, observes in its 2015 report that despite its struggling economy, Portugal has shown a firm commitment to migrant integration with strong access to citizenship and anti-discrimination laws (MIPEX, 2015). The introduction of new policies, in turn, have provided migrants with enhanced support to find jobs and receive training, while making it easier for migrant families to reunite. The high ranking that Portugal has received reflects the concern that both governmental agencies and society harbor regarding the effective integrations of migrants.

Despite its geographical position and socio-economic markers, Portugal has received a relatively low rate of asylum claims. According to Eurostat data the number of asylum applicants registered in the European Union has increased by 44% to reach a peak of 626 000 in 2014<sup>8</sup>. While Germany and Sweden have seen the highest number of applicants for the period under consideration, the lowest rates were observed in Portugal, Slovakia and Romania. Portugal has even experienced a 12% annual decrease in the number of asylum applications as there were 500 applicants for international protection in 2013 and only 440 in 2014. The latter value represents 0.1% of all the asylum applications registered in the Union in the course of 2014. Portugal thus has less than 0.1 applicants per thousand inhabitants.

The EU relocation mechanisms are bound to alter significantly the traditional paradigm of asylum seeking in Portugal in terms of both numbers and constitution. Studies have suggested that the established practice of regularizing the status of workers without documents has offered migrants an alternative venue to asylum procedures (Peixoto *et al.*, 2009). It is feasible that such an approach has contributed to the relatively low number of applications for international protection in the country. Under a provisional or a permanent EU relocation scheme, however, Portugal would become directly responsible for assessing the asylum claims of the relocated applicants. While immigrants to Portugal have traditionally come from African and Eastern European countries, as well as Brazil, according to the most recent data the new arrivals will come primarily from Syria, Iraq and Eritrea. These new migration realities would require a readjustment of both the asylum-granting and integration processes.

While the MIPEX 2015 report highlights that immigrant residents in Portugal still benefit from the second most favorable integration policies in the developed world, it remains uncertain how these programs and practices relate to asylum-seekers and beneficiaries of international protection. Ferreira points out that the high MIPEX ranking speaks to the commitment of the state and society at large to ensure the effective integration of immigrants, but that it is unclear whether asylum-seekers are equally beneficiaries of government policy (2015: 2). On one hand, a labor-centered conception of migration and integration policies is bound to ultimately apply to beneficiaries of international protection in terms of their employment, education, family, health and local requirements. On the other hand, such an approach might overlook some of the specific needs of asylum-seekers during the application and integration phases. These concerns are all the more pressing as the current relocation scheme prioritizes the transfer of vulnerable applicants.

## **The Portuguese Legal Framework in the Field of Asylum**

The Portuguese Constitution contains the basic provisions on asylum in the domestic legal order to be supplemented by ordinary legislation. Ferreira sees the Portuguese legal framework in the field as a generous one since the Constitution enshrines the right to protection of political refugees (2015: 3). The Portuguese revolution of 1974 against dictatorship and the ensuing process of decolonization have shaped the content of the constitutional provisions. Article 33(8) stipulates that "*[t]he right of asylum shall be guaranteed to foreigners and stateless persons who are the object, or are under a grave threat, of prosecution as a*

*result of their activities in favor of democracy, social and national liberation, peace among peoples, freedom or rights of the human person*<sup>9</sup>. Ferreira argues that the provision establishes a "public subjective right" with both procedural and substantive aspects that could serve as the basis of claims against public authorities (2015:4). Article 33(9) envisions that the ordinary law would define the status of political refugee as well as draw a distinction between asylum and refugee status.

The legal framework on asylum in Portugal thus constitutes an amalgam of international, European and domestic contributions. The current legislation in the field is the Asylum Act 27/2008 that came into force in 2008 and was subsequently amended in 2014. The primary concern of the measure is the transposition of the Union asylum *acquis* into domestic law. Article 3 of the Asylum Act confers a "right of asylum" on the basis of both the constitutional provision for the protection of political refugees as well as the terms of the Geneva Convention. Article 7, in turn, transposes into the Portuguese legal order the "subsidiary protection" under EU law<sup>10</sup>. The 2014 amendment to the article, however, provides that a residential permit on the basis of "subsidiary protection" may be granted when "systematic violation of human rights" in the country of origin impedes the applicant's return<sup>11</sup>. As Ferreira notes, such language goes beyond the definition of subsidiary protection under Union law and slips into the scope of humanitarian protection (2015: 4). The latter is a distinct legal basis for the provision of international protection and unlike subsidiary protection it is not an autonomous regime within EU law. Any domestic provision to that effect should, therefore, proceed from the awareness that entitlement to humanitarian protection relates to a disparate set of rights.

Portuguese NGOs have criticized the amendment of the Asylum Act for threatening the rights of asylum-seekers. The main objection to the measure has been the removal of the obligation on the Aliens and Borders Service (SEF) to consult the Portuguese Refugee Council (CPR) during the asylum procedure. The amendment deletes Article 29(3) of the previous version of the Asylum Act to that effect. The CPR, which represents UNHCR in Portugal, insisted that their intervention in asylum cases should not depend on the will of asylum-seekers. The organization warned that applicants are vulnerable upon arrival and might be distrustful of unknown bodies but that they depend on concerned local actors for the meaningful exercise of their rights (2014: 4). The legislative intervention has thus decreased the capacity of non-state actors to intervene on behalf of asylum-seekers during the application process.

A number of problematic areas, in addition, persist in the current version of the Asylum Act, in particular with regard to vulnerable individuals. The amended version of Article 79(6), for instance, introduces expert medical exam for determining the age of unaccompanied minors. As Ferreira contends, the provision raises problematic issues relating to the ability of child asylum-seekers to give free and informed consent to expert examinations (2015: 20). The amended law further postulates that second appeals against negative asylum decisions will no longer have suspensive effect in certain cases (Article 25(3)). Applicants might, therefore, be subject to removal pending their appeal proceedings and the CPR cautions that such practice could lead to a violation of the principle of *non-refoulement* (CPR, 2013: 10). The amended Asylum Act ultimately extends the range of situations that would trigger the detention of asylum-seekers for up to 60 days (Arts. 35-A & 35-B). The concern here is

that the vaguely defined terms of the provision potentially cover all asylum-seekers without due sensitivity to their vulnerability (CPR, 2013: 6). Rights groups lament in general that the transposition of the Union measures has led unnecessarily to the subrogation of the more favorable treatment of asylum-seekers under national law.

Commentators have also taken issue with the procedural guarantees that the domestic legal order affords to applicants for international protection. Ferreira points out that the latest statistics indicate 0% success rate at appeal level in Portugal (2015: 6). On that view, certain insensitivity to the issues entailed in asylum claims trumps the seeming generosity of the legal framework. The use of country of origin information (COI) reports is particularly noteworthy in that regard. Given the insignificant number of asylum-seekers in Portugal, the SEF relies on accounts by other entities that are available online instead of producing its own COI reports (Ferreira, 2015: 11). Ferreira reviews a number of LGBTI cases and observes that on several occasions the SEF refers to reports that have no bearing on LGBTI individuals in order to assess the risk of prosecution for the purpose of granting subsidiary protection (2015: 11). Only two of the decisions under review referred to LGBTI-specific information and only in one case the report strengthened the case for granting subsidiary protection. Such practice is particularly worrying as it is prone to overlook the particular circumstances of applicants, which might qualify them for refugee status instead.

Under the current EU relocation scheme asylum-seekers will be subject to the particular weaknesses of the respective domestic legal order in the field of asylum. The Council decisions envision that vulnerable individuals will be selected for relocation, but that the Member State of relocation will be responsible for assessing their claims and granting the relevant status. The relocation logic, however, suffers from a two-fold weakness. On one hand, it is not clear whether there is a real possibility to currently screen vulnerable applicants in Italy and Greece (Webber, 2015). On the other hand, many Member States have shown significant and systematic deficiencies in terms of reception conditions as well as judicial and administrative capacities. Carrera and Guild argue that the new relocation system remains anchored in the premises of the much-criticized Dublin system while attempting to move away from it (2015: 1). The current mechanism further deems that applicants are "in clear need of international protection" primarily on the basis of their nationality. Such an approach creates a presumption of eligibility for subsidiary protection and it is not clear whether Member States are free to find that the applicant's claim is unwarranted. As discussed in the case of Portugal, the presumption might further lead authorities to conduct a light-touch review of individual circumstances at the expense of asylum-seekers eligible for refugee status.

## **Reception Conditions for Asylum-Seekers in Portugal**

Notwithstanding the substantive and procedural shortcomings of the legal framework on asylum in Portugal, the country offers asylum-seekers reception conditions of a high standard. The CPR endeavors to provide housing for all applicants for international protection in its accommodation center in Bobadela near Lisbon<sup>12</sup>. The material base is generally good, although the CPR has voiced in the past concern over the limited housing capacity of the facility ("Refugiados lamentam falta de condições do centro de acolhimento", 2012). Since

2012 the CPR also manages a specialized center for the accommodation of unaccompanied minors located in the Belavista Park in Lisbon<sup>13</sup>. The 2014 amendment to the Asylum Act has introduced, in addition, the concept of “claimant with special accommodation needs” within Article 2(1)(ag), which covers people who have suffered, *inter alia*, torture, rape, sexual or domestic violence (“Nova Lei de Asilo em Análise”). The reception conditions thus evidence a nuanced approach towards the accommodation needs of applicants with varying degrees of vulnerability.

Asylum-seekers in Portugal enjoy the same rights as any other foreign nationals legally residing in Portugal. Once the SEF deems a request for international protection admissible, the applicant is issued a provisional residence permit under Article 27 of the Asylum Act and gains access to an impressive set of socio-economic rights including public services, health care, education as well as the right to work. Ferreira explains that such generous treatment is due to the principle of equality between Portuguese citizens and foreigners pursuant to Article 15(1) of the Portuguese Constitution. Under the provision foreigners and stateless persons who are legally resident in Portugal enjoy the same rights and are subject to the same duties as Portuguese citizens (2015: 18). Such practice undoubtedly underpins the Portuguese success regarding the integration of migrants and explains the drive towards regularization as opposed to crafting an autonomous regime for foreigners who lack a full-fledged right to reside on the territory of the Member State.

By virtue of the equal-treatment regime, asylum-seekers in Portugal often enjoy a wider range of rights than applicants in other Member States, but perhaps at the expense of more specialized services. Ferreira observes that equalization is a positive, but nonetheless initial approach to the treatment of asylum-seekers as their needs might necessitate tailored assistance (2015: 18). The urgency to differentiate is particularly acute in the fields of health care, education and social integration. Portugal has taken important steps to diversify health care through the appointment of cultural mediators of migrant origin in health care centers and the hiring of migrant medical doctors (Portugal *et al.*, 2007). Such practices attempt to break away from what De Freitas has termed the “assimilationist model by default”, namely the non-deliberate lack of policy in the field of migrant health within a framework adapted to the needs of a relatively homogenous population (2006). Similar diversity-driven initiatives have also been undertaken in the field of migrant education (Battaglini, 2012). The specific experiences of asylum-seekers, however, are likely to require a close engagement with issues related to conflict, violence and displacement in addition to inter-cultural sensitivity. These new realities would, in turn, pressure the public and non-governmental sectors to once again fine-tune the provision of basic services.

### **Relocation and the 2015 Strategic Plan for Migration**

The Portuguese Strategic Plan for Migrations 2015-2020 was approved by a resolution of the Council of Ministers No. 12-B/2015 and entered into force on March 23, 2015. The Plan consists of 106 measures divided along 5 political priority axes and seeks to advance an integrated approach to migration, while reinforcing the links between the different institutional actors in key areas, such as attraction, admission, residence, integration, and return. Relocation most naturally falls within Axis III, which deals with policies coordinating mi-

gration flows. While the objectives of this axis are directed primarily to the promotion of Portugal as a migratory destination, it further contains provisions on border management and return. Measure 75, in turn, stipulates that until the end of 2015 the country will have a contingency plan, which will make available means and humanitarian responses in the event of "massive influx of immigrants".

The relocation commitments that Portugal has made under the two Council Decisions align closely with the public policy objectives behind Measure 75. Even though Portugal has not yet notified the European Commission of its reception capacity, the Prime Minister has pledged that the country is practically ready to receive 4 500 refugees (Sanches, 2015). To that end civic initiatives and public-private partnerships are further seeking to bridge the gap in the provision of services to applicants for international protection. The Platform for the Support of Refugees (PAR) has emerged as a particularly active and comprehensive network of civil society organizations for the support of asylum-seekers in the current migration crisis. PAR has already secured housing for about 85 families or 420 asylum-seekers and the staff of the receiving institutions are scheduled to undergo training in inter-religious dialogue, mental health and trauma (Sanches, 2015). The present public-private cooperation ultimately draws on and fulfills the objectives of Axis IV through which the policy maker aims to bolster the existing network of partnerships with public and private entities in order to increase the cross-intervention capacity in the implementation of migration services.

## **Conclusion**

The EU, it is suggested, cannot effectively manage current migratory pressures without an adequate relocation mechanism. The principles of solidarity and burden-sharing in the field of asylum ground such measures in the EU Treaties despite the political sensitivity of the issue. As the Dublin system is strained to its limits, the Council decisions on the relocation of applicants for international protection from frontline Member States offer a much needed, yet modest step in the right direction. In a certain sense, however, the Dublin logic is perpetuated as asylum-seekers become vulnerable to the shortcomings within the asylum system in the country of relocation, rather than the country of registration. Any meaningful effort to strengthen the Common European Asylum System should, therefore, focus equally on enhancing the reception capacities of Member States.

Portugal has committed to welcoming a share of the relocated asylum-seekers that exceeds the number of applications, which the country receives spontaneously. These altered realities will undoubtedly put Portugal's socio-legal framework in the field of asylum to the test, but also help it address the remaining shortcomings. The Strategic Plan for Migrations and integration approaches at large must, in particular, designate asylum-seekers as direct and distinct beneficiaries of tailored government policy. In that regard greater sensitivity to different types and degrees of vulnerability should be developed within the legal and administrative frameworks for granting international protection and the provision of public services to applicants and status-holders. Legislating for the increased ability of rights groups and advocates to intervene on behalf of asylum-seekers at the various stages of the process, for example, could ensure that both the reception conditions and the judicial proceedings take into account the particular circumstances of the applicant. Such an

approach could, ultimately, provide a strong incentive for the development of the requisite expertise as well as secure venues for its effective dissemination through the different levels of the system.

## Notes

<sup>1</sup> Council Decision (EU) 2015/1523 of 14 September 2015. Available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL\\_2015\\_239\\_R\\_0011](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2015_239_R_0011).

<sup>2</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013. Available at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013R0604>.

<sup>3</sup> Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013R0603>.

<sup>4</sup> First-instance decisions in the EU-28 by outcome, selected citizenships, 2<sup>nd</sup> quarter 2015. Available at [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:First\\_instance\\_decisions\\_in\\_the\\_EU-28\\_by\\_outcome\\_selected\\_citizenships\\_2nd\\_quarter\\_2015.png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:First_instance_decisions_in_the_EU-28_by_outcome_selected_citizenships_2nd_quarter_2015.png).

<sup>5</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013L0033>.

<sup>6</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011. Available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF>.

<sup>7</sup> Council Decision (EU) 2015/1601 of 22 September 2015. Available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2015.248.01.0080.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.248.01.0080.01.ENG).

<sup>8</sup> Proposal for a Regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending Regulation (EU) No 604/2013. Available at [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementationpackage/docs/proposal\\_for\\_regulation\\_of\\_ep\\_and\\_council\\_establishing\\_a\\_crisis\\_relocation\\_mechanism\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementationpackage/docs/proposal_for_regulation_of_ep_and_council_establishing_a_crisis_relocation_mechanism_en.pdf).

<sup>9</sup> Case C-357/09 PPU – Kadzoev and Case C-534/11 Arslan.

<sup>10</sup> Communication from the Commission to the European Parliament, the European Council and the Council. Managing the refugee crisis: State of Play of the Implementation of the Priority Actions under the European Agenda on Migration. Available at <http://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-510-EN-F1-1.PDF>.

<sup>11</sup> *Ibid.*, p. 5.

<sup>12</sup> Eurostat News Release 53/2015 – 20 March 2015. Available at <http://ec.europa.eu/eurostat/documents/2995521/6751779/3-20032015-BP-EN.pdf/35e04263-2db5-4e75-b3d3-6b086b23ef2b>

<sup>13</sup> Constitution of the Portuguese Republic. Seventh Revision [2005]. Available at [http://app.parlamento.pt/site\\_antigo/ingles/cons\\_leg/Constitution\\_VII\\_revisao\\_definitive.pdf](http://app.parlamento.pt/site_antigo/ingles/cons_leg/Constitution_VII_revisao_definitive.pdf).

<sup>14</sup> Article 15 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 (Qualification Directive). Formerly Directive 2004/83/EC. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF>.

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<sup>16</sup> Centro de Acolhimento para Refugiados. See <http://refugiados.net/1cpr/www/car/car.pdf>.

<sup>17</sup> Centro de Acolhimento para Crianças Refugiadas. See [http://www.refugiados.net/\\_novosite/cacr.html](http://www.refugiados.net/_novosite/cacr.html).

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