

Working Paper

Solidarity – an integral and basic concept of the Common European Asylum System?

Martin Wagner, Albert Kraler and Paul Baumgartner
International Centre for Migration Policy Development (ICMPD), Vienna

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Martin.Wagner@icmpd.org;

Albert.Kraler@icmpd.org,

Paul.Baumgartner@icmpd.org

Abstract

Increasing arrivals of persons in need of international protection always sparked debates on solidarity, be it at global, European or national level. Despite its broad referral and frequent use in international, EU and national legal and policy documents, the meaning of solidarity is rather undefined. This working paper sets out to assess existing understandings of the meaning of solidarity in the light of the developments at global, EU and national level following the “refugee crisis” in 20015/ 2016, labeled by some as a “crisis of solidarity”. It does so by examining solidarity and its operationalisation at different levels of governance from an EU perspective, centering around the latest discussion on the third generation of the Common European Asylum System, specifically addressing the discussions around the distribution of asylum seekers and refugees.

Keywords: solidarity; conditional solidarity; flexible solidarity; fair distribution; Common European Asylum System;

1. Introduction

In his World Refugee Day message posted on UNHCR Facebook page on 20 June 2018, the UN High Commissioner for Refugees, Filippo Grandi stressed that “now, more than ever, taking care of refugees must be a global – and shared – responsibility”, emphasizing the importance of solidarity on local level too with both the refugees and the communities that integrate them.¹ Similarly, Commissioner Avramopoulos concluded his remarks on managing migration on 21.06.2018 with the words: “Solidarity is at stake, the future of Europe is at stake. Leaders should find a compromise, guided by the European spirit.”² The Italian Prime Minister Conte pointed out on the Refugee Day 2018 that he is not willing to discuss 'secondary movements' without first addressing the 'primary movements' emergency, which Italy has been facing on its own.³ On the same occasion, the Hungarian Parliament voted to introduce a law that targets organisations and individuals who support asylum-seekers, refugees and migrants.⁴ Earlier this year, a day before the Informal meeting of the 27 heads of state or government on 23.02.2018, Angela Merkel told lawmakers in the lower house in Berlin referring to those countries that oppose receiving asylum applicants that: “Solidarity isn’t a one-way street. It’s the obligation of all member states never to lose sight of the whole -- and that includes respecting the values on which the European Union was built.”⁵

Burden-sharing, responsibility-sharing and the notion of solidarity have been an important focus of recent policy debates and especially since the so-called “refugee crisis” of 2015/ 2016. These debates have also triggered a large number of studies examining different aspects of responsibility sharing and solidarity in the context of the CEAS. The extraordinary influx, the magnitude of the flows and their uncontrolled manner shocked policy makers and lead countries to search unilateral pathways in an attempt to gain control over the situation. Soon after, the influx was labelled as a “refugee-crisis” by ones, and “crisis in solidarity”⁶ by others. Meanwhile, there is a vast literature on solidarity and responsibility-sharing, discussed from the legal genesis (Brouwer et al 2016; Moreno-Lax 2016; Goldner Lang 2013). Solidarity has been reviewed as regards to “fairness” and with respect to possible fairness quotas (European Parliament 2010; Angenendt et al 2013; Wagner and Kraler 2015; Parusel and Schneider 2018). Game theory has been invoked to show the cooperation dilemmas and the uneven distribution of gains and costs (Noll 2000; Betts et al 2018; Håkansson 2005). Even some attempts to bring possible solutions on how solidarity could be practically applied have been put

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<https://www.facebook.com/UNHCR/videos/10157780618573438/UzpfSTY5Njc3ODM4NDoxMDE1NjUyNjUyMjQ4ODM4NQ/>

² European Commission, 21.06.2018: Remarks by Commissioner Avramopoulos on managing migration at: http://europa.eu/rapid/press-release_SPEECH-18-4241_en.htm

³ http://www.xinhuanet.com/english/2018-06/21/c_137268899.htm

⁴ <http://hungarianspectrum.org/2018/06/20/fidesz-and-jobbik-pass-stop-soros-bill-on-world-refugee-day/>

⁵ <https://www.bloomberg.com/news/articles/2018-02-22/germany-urges-eu-unity-to-counter-china-refugee-challenges>

⁶ “This is a human tragedy that requires a determined collective political response. It is a crisis of solidarity, not a crisis of numbers”: Ban, Ki-Moon (2013). “Statement Attributable to the Secretary-General on Recent Refugee/Migrant Tragedies,” August 28, 2015. <https://www.un.org/sg/en/content/sg/statement/2015-08-28/statement-attributable-secretary-general-recent-refugeemigrant> .

forward by a number of commentators (Hathaway and Neve 1997, Schuck 1997; Noll 2003; Betts 2006; Rapoport 2016, etc).

Despite the rich body of literature there has been only relative little progress in substantiating solidarity in practical terms. This working paper sets out to address this gap in the existing literature. It does so by examining solidarity and its operationalisation at different levels of governance summarises briefly the state of play at each of their layers from an EU perspective, centering around the latest discussion on the third generation of the Common European Asylum System, specifically addressing the discussions around the much debated Dublin Regulation.

2. Solidarity: many facets and different interpretations

Solidarity shaped the public debate following the 2015 “refugee” i.e. “solidarity crisis”. In fact, increasing arrivals of applicants for international protection always sparked debates on solidarity, be it at global, European or national level. Commentators tried to deduce the specific meaning of solidarity from primary EU law. While observing that the solidarity principle in EU law, they highlight that there is no singular notion but rather different expressions of solidarity or “islands of solidarity” (Tsourdi 2017; Thym and Tsourdi 2017; Moreno-Lax 2016).

Goldner Lang discusses four facets of solidarity: loyalty (in fulfilling the obligations arising from their EU membership), trust (between Member States which have abolished internal borders among themselves), fairness (the willingness of those Member States exposed to a lower number of migrants, refugees and asylum seekers to assist the ones in need of help and support, primarily those forming the external Union border) and necessity (to act as a joint insurance policy mechanism which increases the stability of the EU as a whole) (Goldner Lang 2013). Goldner Lang concludes that while some facets are present, some are still missing. She also suggests a potential definition of solidarity, that is “to provide a common and fundamental rights compliant mechanism which is able to respond to all the migratory and asylum-related pressures in all EU Member States, also at times of global crises and increased migratory flows” (Goldner Lang 2013, p3).

Based on a report by the Dutch Advisory Committee on Migration Affairs (Advisory Committee on Migration Affairs 2015), Brouwer et al. define that solidarity 1) at the very least requires countries to cooperate; 2) aims at achieving shared goals going beyond individual MS interests; 3) requires a considerable investment by all cooperating states; and that 4) failing to adhere to the norms resulting from the shared decision-making process undermines the legal order of the EU. (Brouwer et al. 2016).

In an earlier paper, a Paris-based think-tank Notre Europe proposed to differentiate between European solidarity based on “reciprocity” and another based on “enlightened self-interests” (Quoted in Raspotnik et al. 2012, p2). European solidarity in this sense is thus either the concept of shared “homework” with equal partners/countries pooling common risks or the diversified (financial) support from stronger/richer member states for weaker member states in order to create or sustain (European) stability (Raspotnik et al. 2012). Defining solidarity as a concept where first and foremost all partners need to commit and do “their homework” is one that has also been shared or mentioned by a number of interview partners of the research under the CEASEVAL project (Interview 1 and 2). During the so-called refugee crisis in 2015, according to some commentators many Member States, did not fulfil all of their international agreements and legal obligations (Walbeck 2018). In this

context solidarity is considered to be closely linked to the lack of harmonisation as this – supposedly – leads to imbalances and consequently triggers secondary movements (Interview 3). As identified also by Goldner Lang (see above) the element of trust seems to be one of the prerogatives or pivotal elements (Dublin III Regulation, recital 22) that go hand in hand with solidarity. Similarly, Boldizsár links (as Gldman Lang above) the duty of loyal or sincere cooperation as enshrined in Article 4 (3) of the Treaty of the European Union (TEU), with the expectation that each Member State will perform according to the requirements of the relevant *acquis* (Boldizsár 2017, p 3). However, in their introductory essay to a recent special issue on solidarity in migration and asylum law Daniel Thym and Lilian Tsourdi (2017) challenge the interchangeable use of solidarity, loyalty and trust, arguing that the duty of sincere cooperation need to be conceptually distinguished from solidarity. The latter comes into play when Member States fail to implement– despite their good faith and will: “[T]he principle of co-operation creates a duty for a Member State to report its impossibility to implement, and for the Commission and the other institutions and Member States to consider solutions to that issue. However, it will be the principle of solidarity that underpins the solutions themselves, whether they be modifying the Member State’s obligations, or assisting it in order for it to be able to comply with them (Thym and Tsourdi 2017, p614).

In the absence of an accepted definition of solidarity, Betts et al. pragmatically use the term as a value referring to the acknowledgment of shared interest (Betts et al. 2018, p19). This more conceptual understanding of solidarity also is reflected in recital 22 of the Dublin III regulation which refers to both the “principle of solidarity” and the notion of “practical solidarity”. The latter is described as a practical tool box of possible measures to show solidarity (recital 22 Dublin Regulation).

Crucially, however, the “principle of solidarity” is understood by many as a matter of will, as otherwise it would have been an ‘obligation’ rather than ‘solidarity’ (Interview 4). In that regard Vignon emphasizes the intrinsic link between solidarity and responsibility and noted that solidarity only grows stronger with consequent responsibility (Vignon 2011). For Raspotnik solidarity as a principle factor of European integration is connected to the notion of (European) legitimacy but is hampered by national considerations and (mental) borders (Raspotnik et al. 2012, p1).

Solidarity thus certainly means different things to different people and specifically to different governments. Even “liked-minded governments” showed significantly different understandings in the current debate over the reforms of the Dublin Regulation: While Italy joined the pledge of the Southern rim countries for more support by other EU MS (Position Paper 2018) – through, among others, more binding relocation of asylum seekers – the Hungarian government as part of the Visegrad group opposes any obligatory character of responsibility sharing (Visegrad Group 2016). Political, legal and even moral definition of solidarity therefore are re-defined and contested by the (political) opponent (Raspotnik et al. 2012, p1) with mostly unilaterally calculated purposes.

3. Solidarity and fairness?

Following the understanding that solidarity is closely linked with fairness or, as can be argued that the latter is one facet of the earlier, the question arises on how to determine “fairness”. In the ongoing discussions on the next generation of the Common European Asylum System “fairness” has been a major issue of contention, especially in relation to the distribution of asylum seekers and

beneficiaries of international protection It is also disputed whether the current common asylum system is fair in general and – in case it is not – how “fairness” can be measured and invoked. Tellingly, current debates on the CEAS mainly focus on fairness in respect to states, while the fairness of the asylum system for applicants of international protection, for example in relation to their chances to obtain protection and the status obtained is hardly discussed at the political level, even though these two meanings of readings are interrelated.

Criteria to measure fairness in asylum distribution

The English Oxford Dictionary defines “fairness” as “impartial and just treatment or behaviour without favouritism or discrimination”. In the debate on the distribution of asylum seekers a number of different criteria is used to identify fairness. The size of population links the fair share of asylum seekers’ intake with the population of the host (EU) country. The GDP (or taxable income) suggests that richer countries could afford to take a higher share of responsibilities than economically troubled countries. In the same curve the unemployment rate or the labour market in general may be used to determine a fair distribution. Certainly the past responsibilities in taking asylum seekers and/or other third country nationals may be regarded as an important factor in measuring the fair share (often measured by counting past asylum applications or the stock of beneficiaries of international protection (IP)). Geographic considerations such as the size of a country, the population density or the geographic location are also brought forward, all taking the particular realities of the host country into account. Finally, available accommodation places or the availability of health, education and other support services may be counted as well as the risk of social tensions.

Gibney (Gibney 2015) and Betts et al. (Betts et al 2018, p 54) argue that there is no need to exaggerate the significance of which elements shall form a fairness quota and that there is “considerable consensus” that a state capacity is to be measured by taking the number of applicants, the states GDP and the population size into account (Betts et al. 2018, p 54). Indeed, a comparison of theoretical and actually applied distribution models shows that basically all models put a significant weigh on population and GDP, as the two most significant denominators (Wagner and Kraler2015). Consequently the different distribution models do not differ too much from each other in terms of outcomes (Wagner and Kraler 2015).

4. Solidarity and fairness at different levels of governance

Solidarity and fairness are not solely concepts relevant at an EU or global level EU , but also at lower levels of government. As a corollary, considerations on how to distribute asylum seekers and refugees are found vertically at all possible levels of governance. As shown below at each level, from global, regional (EU level), national and down to municipality level the respective governance seeks a way of fair or equivalent distribution. At each level, very similar features and elements are used. The lower the level the more concrete are penalties for both, asylum seekers/ refugees not complying with an assignment to a particular locality and host communities not showing solidarity with other “over-burdened” communities.

Table 1: Overview of concepts for fair distribution mechanisms												
		Size of Population	GDP (or taxable income)	Unemployment/ labour market	Asylum applications in past years	Size of country	Stock of IP beneficiaries/ 3 rd country nationals	Population density	Geographic area	Available accommodation	risk of social tension	availability of support services
EU	Relocation***	40%	40%	10%	10%							
	AMIF											
	ERF				70%		30%					
National Practices	Belgium	35%	20%				15%			30%		
	Germany	33,3%	66,6%									
	Austria	100%										
	Netherlands*	100%										
	Sweden*	x		x	x							
	United Kingdom*									x	x	x
Sub-National Practices**	Baden-Württemberg	100%										
	Bavaria	100%										
	Hesse	100%					x					
	Lower Saxony	100%										
	North Rhine-Westphalia	80%		10%		10%						
	Saarland	100%										
	Saxony-Anhalt	70%		20%								10%
Proposals & Concepts	Dublin IV proposal****	50%	50%									
	EAM Proposal*****	40%	40%	10%	10%							
	German proposal 1994	33,3%	33,3%			33,3%						
	Danish proposal 1986	x	x					x				
* based on EMN Ad-Hoc Query at: http://www.emn.fi/files/1673/2017.1221_-_distribution_of_flux_of_asylum_seekers_throughout_the_national_territory.pdf												
** on the example of Germany; based on Renner, N. (2018)												
*** Council Decision (EU) 2015/1601												
**** at: https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-270-EN-F1-1.PDF												
***** at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0240&from=EN												

In the following section it is shown how the different levels of governance seek fairness driven concepts of measuring solidarity contributions.

4.1. Solidarity and Fairness at global level

In September 2016 the global community adopted the New York Declaration (New York Declaration 2016) responding to ever increasing numbers of death casualties of people embarking in long, hazardous and often deadly journeys to find a safe haven in often far away countries. The Declaration specifically committed “to a more equitable sharing of the burden and responsibility for hosting and supporting the world’s refugees, while taking account of existing contributions and the differing capacities and resources among States.” (New York Declaration 2016, recital 68).

In the negotiations on the Global Compact on Refugees that followed already the first thematic discussion on 10 July 2017 aimed at finding plausible ways to share the “burden” and responsibilities for refugees more equally among the international community. The respective concept paper disseminated for preparation on 19 June 2017 stated that “refugee challenges are inherently transnational and cannot be addressed by any one State alone” (UNHCR 2017). The paper reiterated that responsibility sharing is already mentioned in the Preamble of the Geneva Refugee Convention and other regional documents and has been addressed since in a number of ExCom resolutions. In describing past experiences where responsibility sharing has been applied, the briefing paper addressed historic practical examples (such as the Comprehensive Plan of Action for Indochinese Refugees of the late 1970s), as well as newer examples of lived solidarity (such as the Syria refugee response from 2012).

However, while solidarity with countries hosting large numbers of refugees indeed is inherent to the preamble of the 1951 Refugee Convention, it neither specifies what constitutes a “large number” nor how solidarity should be shown. The discretionary use of “large numbers” or “mass influx” or “large scale movements” leaves much room for discussion. Some indications of how “burdens” could be shared evolve from the Global Compact on Refugees. To mobilise international cooperation, UNHCR shall convene together with another state a ministerial Global Refugee Forum. At the beginning this forum is to meet bi-yearly, in 2019 and 2021 and thereof every 4 years with the aim to offer – voluntary – concrete pledges on the scale and way of sharing the “burdens”. (UNHCR 2018; Ineli-Ciger 2018). The crucial question on what constitutes mass influx and when solidarity needs to be shown has not been addressed.

4.2. Solidarity and Fairness at EU level

Measuring inequality within the EU

In the ongoing discussion on the next (third) generation of the CEAS, the most contested questions refer to the way asylum seekers shall be distributed across EU MS. The current formula deriving from the more than 20 years old Dublin concept basically makes the first territory of a Dublin state primarily responsible for an arriving asylum seeker. This “territorial concept”, which, in fact, reflects the global dilemma deriving from the Geneva Refugee Convention (see Wagner and Kraler 2016, p13), hardly suits or presents a European spirit as it is purely based on geographical location of countries.

Dublin was established – among others – to counteract a (perceived or factual) imbalance of the distribution of asylum seekers across the (then) EU: in 1992 Germany received 438.000 applications which constituted 62% of overall applications in Europe (see statistical yearbook UNHCR, 1998). And, as pointed out by Somer, the initial Dublin figures between 1998-1999 seemed to suggest that the

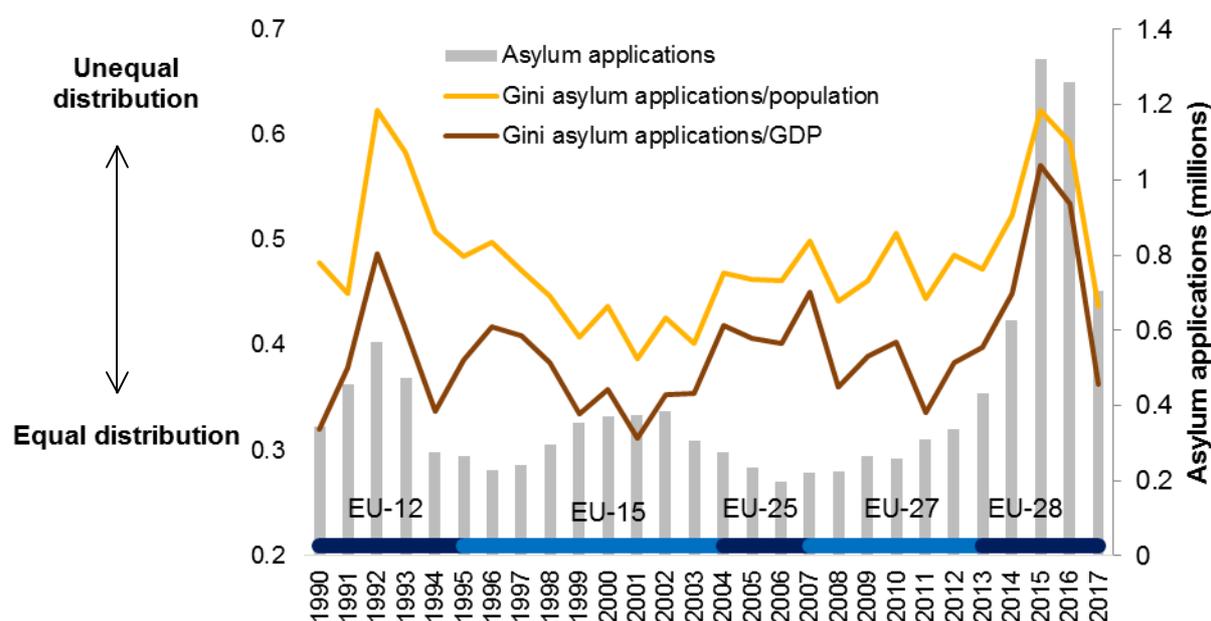
Dublin system worked: a very low proportion of only 6% of the overall asylum applications became subject to a request for Dublin transfer between the then Dublin Member States. However, the main reason was rather the geographic location of Germany as an external border country at that time. As already back then Germany was one of the major destination countries, secondary movements were hardly pursued as Germany represented an EU entry point and the major destination for asylum seekers (Somer 2018).

Deriving from the above assessment the impact of EU enlargement on the distribution of asylum seekers seems worth to look in further detail. Indeed, with each enlargement adding new Member States, the face of the EU changed geographically but also economically, given the disparities in the economic strength of EU Member States. These changes certainly have a strong impact on cooperation and solidarity in asylum matters, because (supposedly) ‘asylum cooperation is desirable, but less attainable, the more heterogeneous the affected countries are’ (Czaika 2009, p 109).

The impact of EU enlargement on the distribution of asylum seekers under the presumption that fairness – as defined above – is closely linked with an equivalent distribution of asylum seekers between the changing number of EU MS from 1990 until 2017. As Indicators of fair distribution: we used population size and the GDP. As a measure of fairness, we used the Gini coefficient, an indicator which measures distribution inequality. Usually used to provide a measure of income inequality within or between different countries, it can also be applied to other areas. We assessed how asylum applications have been distributed among the Member States of the EU and how this distribution evolved historically.

The Gini coefficient varies between 0 and 1. The larger the Gini coefficient, the greater is the observed inequality. A Gini coefficient of 0 corresponds to a totally equal and uniform distribution, while a Gini near to 1 to the unlikely situation of one country receiving all asylum applications in the EU. The “Population Gini” compares EU MS with regard to the number of yearly asylum applications as a share of the total population asylum applications. That is, a Gini of 0 would relate to a scenario in which all EU MS have exactly the same number of asylum applications per capita. The “GDP Gini” relates the economic strength of an EU MS to the distribution of asylum applicants. A perfectly equal distribution (corresponding to a GDP Gini of 0) would therefore be a scenario in which the asylum applications are distributed according to the economic strength of the EU MS (i.e. a country’s share of asylum applicants would equal its share in the total GDP of all EU MS).

Figure 1: Distribution inequality of asylum applicants among EU MS between 1990 and 2017.



Source: own elaboration, data on asylum applications, GDP and population from Eurostat

Looking at figure 1 above, EU enlargement did not lead to a more unequal or a more equal distribution. Particularly the big accession wave of ten new EU MS in 2004 is not reflected by a significant inequality increase or decrease; similarly in 1995, when three countries, Austria, Finland and Sweden entered the EU, all of them economically rather wealthy countries. However, the figure above strongly suggests that distribution inequality rises in times of increasing numbers of asylum applications. In fact, the two dominant peaks of asylum applications, in 1991/ 1992 and in 2015/2016 coincide with increasing imbalance of the distribution of asylum applicants.

Two possible lines of development derive from this assessment: the system may move closer to a scheme that promises more equality regardless of the numbers of arriving asylum seekers, or, a system could develop to counter-steer the higher peaks of inequality in cases of increasing influxes. Latest developments with the CEAS suggest the latter (see in the following section).

The EU response to gain equality

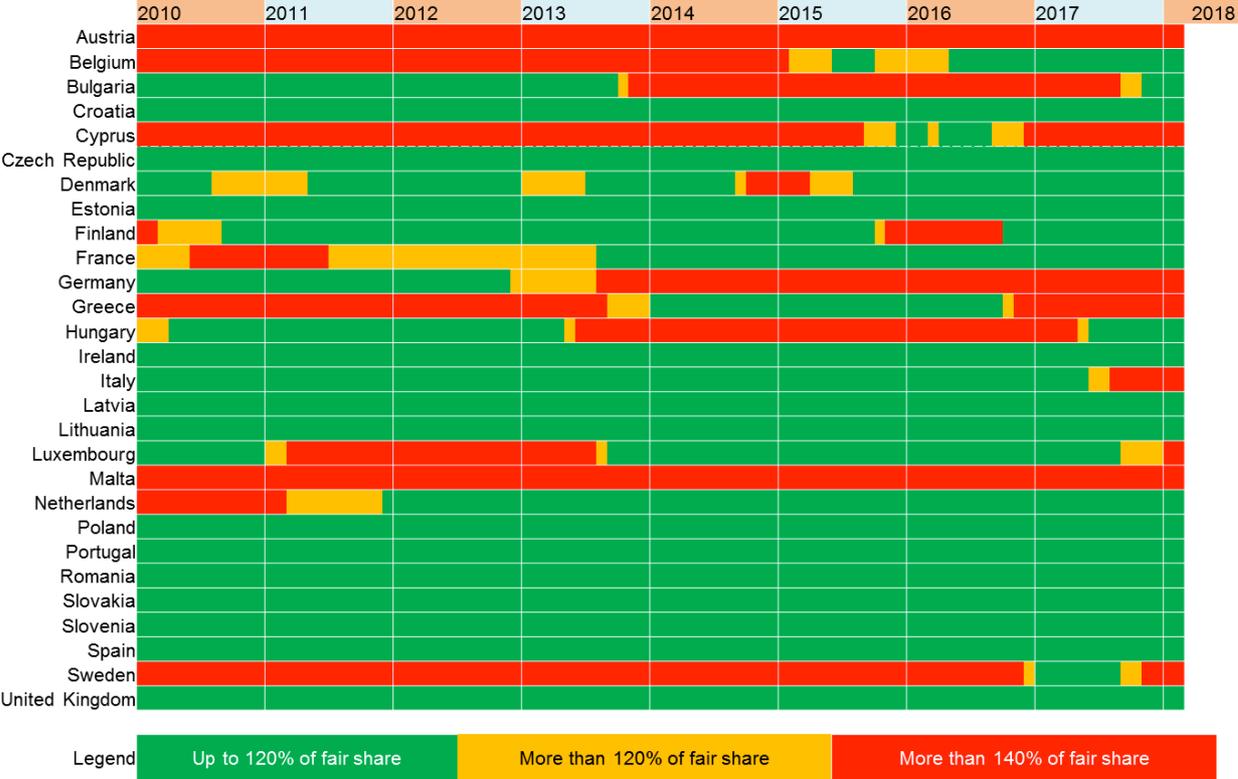
At the moment there are two conflicting proposals on the table: the European Commission proposal for the fourth version of the Dublin system (European Commission 2016), which builds on the Dublin III Regulation by maintaining the so-called “first country responsibility” principle and adds a ‘corrective allocation mechanism, which would be triggered once an EU MS received 150% of asylum seekers according to an EU wide “asylum seekers allocation quota”. The other proposal, tabled by the European Parliament (2017), aims to end the “arbitrary” system of determining the responsibility based on the geographical location in which those MS at the external borders face disproportionate pressure. Instead, the European Parliament proposes to distribute asylum seekers across the EU according to a set distribution key. Thus, in this proposal, the EC’s ‘corrective allocation’ mechanism becomes the permanent feature of the system.

Evidently there are different opinions between countries on the external borders on the one hand and countries without external borders on the other on how to further develop the system.⁷ In seeking a compromise the Bulgarian Presidency proposed a solution that closely built upon the European Commission Dublin proposal (Presidency Proposal 2018a and 2018b). The Presidency compromise deviates from an automatic solidarity triggering system (as proposed by the EC) to a system of postponing the triggering decision to different political levels and different thresholds of inequality, measured by a fair quota comprised of 50% population and 50% GDP: The EC proposal foresees an automatic trigger of the corrective asylum-seekers-relocation-mechanism once a country receives more than 150% of its "fair quota". By contrast the Presidency proposes a process consisting of several levels. The first level is defined as 'normal circumstances' and depicts a scenario in which the number of applicants in a Member State is equal to or below its fair share; the second level describes 'challenging circumstances' where the number of applicants in a Member State is higher than 120% of its fair share; and finally, the third level is a "situation of severe crisis" in which the number of applicants exceeds 140% of its fair share. Thus instead of one fixed threshold a more gradual alarming system has been installed. An additional link to the population (i.e.: 0.15% of overall population for the 140% threshold and 0.1% of overall population for the 120% threshold shall guarantee that the system is only triggered in case of "mass influx", thus linked as a percentage to the national population.

The figure 2 below depicts which MS were overburdened, at which time and to what extent based on the three level Presidency Proposal (2018b) as outlined above. Since 2010, 15 EU Member States received at least at some point in time more than their fair share (always measured at any point in time counted back two years). Some of the MS were only overburdened (either 120% or 140% of their fair share) for short periods of time, but ten MS received more than 140% of their fair share for periods exceeding two years. In the given time span countries like Austria, Belgium, Cyprus, Germany, Greece, Malta and Sweden fulfilled the threshold of 140% for more than 5 years in the past 8 years. On the other hand, 13 countries never faced an influx of more than their fair share. Notably, Italy, since years one of the major entry countries for asylum seekers and refugees via the central Mediterranean entry route, only very recently would have met the 140% influx threshold triggering increased solidarity measures.

⁷ In particular see the detrimental policies followed by the Visegrad group on the one side and the Southern rim countries on the other, as outlined above.

Figure 2: Simulation of the threshold for measuring the “burdens” of EU MS according to the Bulgarian Presidency proposal



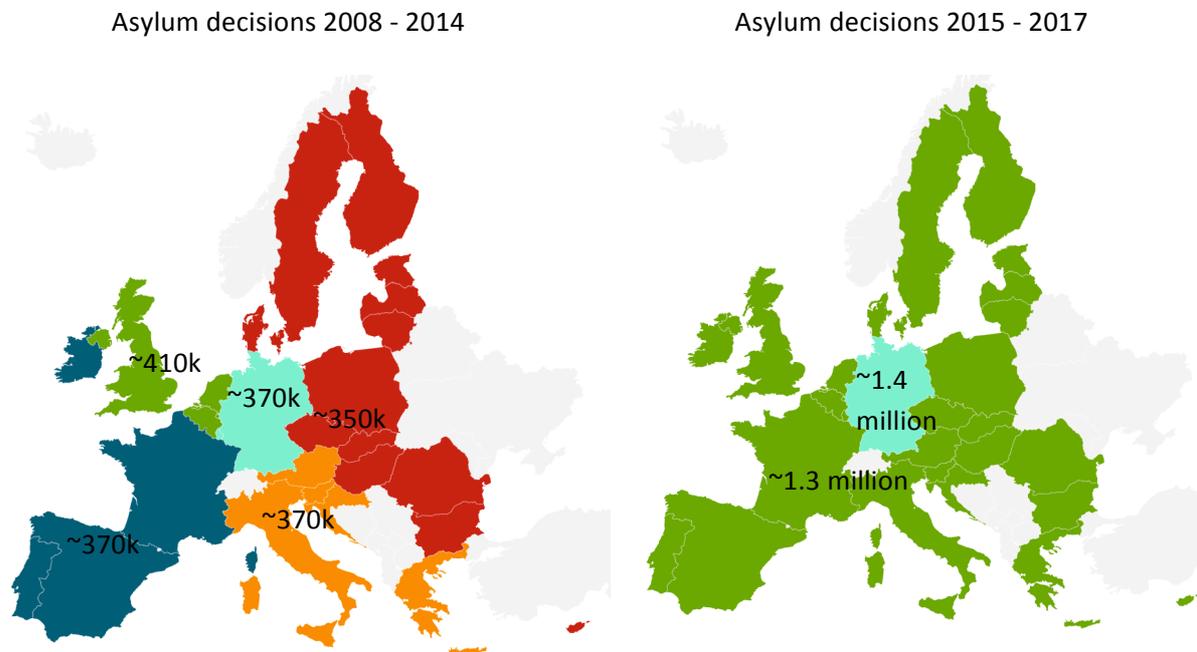
Source: own elaboration, data on asylum applications from Eurostat

Evidently, the number and/or (un)fair distribution of asylum applications across the EU only shows one side of the coin. Hungary for example received 170,000 applications in 2015. However, only a small number of those remained and were processed in Hungary. Consequently the Hungarian asylum procedure was little pressured, as well as the return processes for rejected asylum claims and integration measures for those granted some form of protection. The majority of applicants moved on to other EU countries where their asylum claims were processed at the end.

Thus another way of exploring the state of solidarity and fair distribution of asylum seekers within the EU is to review the distribution of tasks/ responsibilities within the EU: As an example we analysed the decisions made within the EU in two periods: (1) the period of moderate inflows between 2008 and 2014 and, (2) during the period of a high influx of asylum applicants between 2015 and 2017. During the period of 2008 to 2014, EU MS overall issued 1.8 Mio decisions on Applications for international protection. In that period, Germany (and Luxembourg) (marked blue in figure 2 below) issued around 370,000 decisions, the same amount as the group of countries consisting of France, Portugal and Ireland (marked green in figure 2 below); or Sweden, Finland, the Baltic countries, the Visegrad countries, Bulgaria, Romania and Cyprus (marked red in figure 2 below); or (the remaining countries), Austria, Slovenia, Croatia, Italy, Greece and Malta (marked yellow in figure 2 below). However, between 2015 and 2017, under the impression of sharply increasing numbers of asylum applications with a quite imbalanced distribution (see above) all EU MS jointly issued around 2.7 Mio asylum decisions. Germany (marked blue in below) alone issued around

half of those decisions (1.4 Mio), thus the same amount of asylum decisions as the rest of the EU MS together (marked green below).

Figure 3: EU MS grouped by the number of first-instance asylum decisions taken in the respective period (see description of the figure above)



Source: own elaboration, data on first instance asylum decision from Eurostat. Countries marked in a same colour altogether issued around 370,000 decisions from 2008 to 2014, and around 1.4 million decisions from 2015 to 2017.

Again, the asylum decisions alone only provide some indication of the distribution of the “burdens” showing the pressure on the asylum systems of the respective countries (or group of countries as indicated in the above figure 3). However, following the decision most of the cases will further either receive integration support (those granted international protection or a humanitarian status) or will face the return process (in case the asylum claim has been rejected). Between 2015 and 2017 Germany alone issued – according to Eurostat data - 836,435 positive decisions (60% of applications received during this period), while the rest of the EU issued 536,920 positive decisions (46%). Germany therefore will need to provide integration measures for more beneficiaries of international and national protection than the whole rest of the EU. The remaining 568,115 (in Germany) and 684,845 (in the rest of the EU) will be channelled into the return process, leaving Germany to cope with nearly as many returns as the rest of the EU.

4.3. Solidarity and Fairness at national level

Distribution of asylum seekers and refugees is also an issue on the level of states. Despite the fact that there is little evidence on the distribution of asylum seekers and refugees, it is commonly understood that the capitals or larger cities are of particular attractiveness for asylum seekers and refugees because of the perception of potentially better job perspectives compared to rural areas as well as the existence of networks and co-ethnic communities. However, patterns of internal

movement and reasons for these patterns remain little understood. Still, many countries have developed distribution policies for asylum seekers, and in some cases also recognised refugees (if dependent on welfare benefits) that assign asylum seekers to particular localities.

Weidinger and Kordel looked at the Australian examples and reasons for their distribution policies. They found responsibility sharing considerations such as sharing of costs, pressure on job markets and the relief of urban housing markets, as well as the avoidance of social problems and inter-ethnic tensions in migrant-dominated neighbourhoods. Besides, also the argument of regional development has been brought forward (Weidinger and Kordel 2016, p104). Solidarity is thus extensively discussed at national level beyond the EU.

Within the EU, federal states like Belgium, Germany and Austria developed distribution mechanisms to share asylum seekers across the different federal states in a fair manner. In Sweden, asylum seekers are directly distributed to municipalities (EMN 2017). Some countries organise the reception of asylum seekers according to the different procedures in organised centres. The distribution schemes are mostly connected to fairness considerations (relying on the size of regional populations or their GDP), others decide the distribution to available services (such as accommodation places or educational/ health services). The Netherlands and Sweden additionally consider the skills of refugees and the need on the labour market (in order to avoid secondary movements).

Countries that were mostly affected by the migration and refugee influx of 2015/2016 responded to the increased influx by adapting their existing or introducing new dispersal schemes. In some cases a shift in competences across levels of governments took place: in some countries the competences were centralised, in others decentralized. As pointed out by a recent OECD report (OECD 2018) different strategies were used when implementing and planning the distribution keys within different countries:

- Due to large influx, the Belgium government approved a mandatory distribution plan for 5,000 additional places for asylum seekers on 27.11.2015. Municipalities with twice as much reception places as the average number of reception places per 1000 inhabitants are exempted from creating new places in Local Reception Initiatives under the distribution plan (EMN 2017).
- The Swedish dispersal policy was changed and centralized on 1st March 2016 in face of record high numbers of asylum seekers: before the reform distribution of asylum seekers across the country was mainly based on availability of housing and asylum seekers were able to choose; the new scheme bases the distribution on the size of population of the municipalities, the unemployment rate in the regions and the acceptance of applications in the past years (weighing is not clear), (EMN Ad-Hoc Query, (2017)). The competence for the housing was devolved to the municipal level.
- Austria distributes asylum seekers mainly according to the population of the nine different Länder (provinces) based on an agreement between the federal government and provincial governments. Because of rising numbers, some municipalities did not fulfil their quotas. As a consequence the federal government adopted legal consequences of non-fulfilment: If provinces fail in providing their share of accommodation facilities, the federal government has the right to establish accommodation for a number of refugees which amounts up to 1.5% of the inhabitants of any municipality (“Durchgriffsrecht”).

- The UK actually follows another dispersal logic and links its dispersal strategy not on fairness considerations but on the availability of services for asylum seekers and refugees (such as application and appeals location, accommodation places, health, education and other support services). The rising arrivals in the EU did not influence the UK policy in this respect.
- Germany has a distribution scheme based on total tax revenues and population numbers. Asylum seekers are distributed after an initial period in central reception facilities, depending on current capacities. Distribution is implemented according to the Königstein Key (Königsteiner Schlüssel). The system is grounded on the fiscal capacity of the state and is recalculated annually (current tax revenues are weighted 2/3 and number of inhabitants 1/3). As Katz et al. (2016) point out, the distribution system is an “attempt” to distribute individuals during the initial phase. That means, that there are individuals who try to move forward to another, not assigned, places, what can cause a conflict between “the attempt to regulate the movement of people and the motivations and wishes of the individual refugees” (ibid., 11).
- In the French system asylum seekers are offered an accommodation place by OFII, which can be in a region other than that where they sought asylum. Should asylum seekers refuse the dedicated place, they lose the right to reception conditions. (AIDA Report 2017, p. 75) The respective region receives compensation from the central budget.
- Italy adopted the Protection System for Asylum and Refugees (SPRAR) in 2002 aiming explicitly at socio-economic integration (envisioned as ‘second-line reception’ after people passed through first reception centres (former CARA)). The allocated quota (by the Ministry of Interior) provides funding for distributed refugees and participating cities. The rising arrivals seem to have overstrained the program as most of the refugees are now received through extraordinary reception centres (CAS).
- Denmark and Sweden have distribution mechanisms where the asylum seekers cannot choose the region by him/ herself.

4.4. Solidarity and Fairness at sub-national level

In 2016 a new integration law (Integrationsgesetz) was adopted in Germany including a condition of fixed abode (Wohnsitzauflage), which should impede secondary movements of beneficiaries of international protection within Germany. This fixed abode system requires the next sub-national level, the Laender themselves, to set up distribution quotas. The Laender for themselves use different distribution quotas: the majority of Laender distributes according to the inhabitants of the municipalities. Some, like Nordrhein-Westfalen or Sachsen-Anhalt also consider unemployment rates or rental prices of accommodations, or for instance the relation between apprenticeships and aspirants for apprenticeships (see above Table 1; and Renner 2018, p 11).

5. Solidarity: a principle or rather a corrective mechanism?

As described above, the evolution of the solidarity debate can be closely linked with peaks in asylum applications. The discussions on solidarity at EU level started in 1992 when Germany witnessed a disproportionately high influx compared to the other EU countries. Considerations in the course of high numbers of arrivals of Kosovo refugees in EU countries in the late 1990ies ultimately led to the adoption of the first CEAS instrument, the Temporary Protection Directive, regulating solidarity in

times of mass influx (recital 22). Later, the increasing migratory pressure caused by the so-called “Arab Spring” generated again cries for solidarity, notably by those countries bordering the Mediterranean, like Italy, Cyprus and Malta. A respective request to trigger the before mentioned Temporary Protection Directive however was turned down by the EC. Since the emergence of the so-called Refugee Crisis in 2015, the CEAS ran into a severe crisis, and again the debate on solidarity started turning into a political tinderbox, putting national politics in serious troubles as well as the system of Schengen and the EU as a whole.

Similarly also in other areas solidarity is looked at only in times of crisis. As an example the debate on European solidarity was significantly boosted in the context of the global economic crisis since 2008, where a number of European countries were equally confronted with the consequences of this crisis (Raspotnik et al. 2012).

Although the question of solidarity is not only relevant in case of mass influx, the year 2015 radically changed the way EU stakeholders and EU politicians think about solidarity, as this has been pointed out in the course of the CEAS EVAL research (Interview 3). Zaun concludes that the fact that states only advocate responsibility-sharing in times of increasing migratory pressure, “highlights that solidarity is called upon in a rather instrumental way in the EU” (Zaun 2017).

The close linkages between high influx and solidarity determined at international level (see the preamble to the Geneva Refugee Convention) as well as EU level (see the Temporary Protection Directive and the Dublin IV proposal) suggests that solidarity in the EU is preliminary invoked as a corrective mechanism in times of mass influx and high level migratory pressure. Other approaches, such as the one by the European Parliament to formulate the principle of solidarity as a fundamental principle in the distribution of asylum seekers, are - at least at this point in time – to be considered a political minority concept.

6. Solidarity: obligation or flexibility

Flexible solidarity in the context of the Common European Asylum System should enable Member States to decide on their specific form of contribution taking into account their experience and potential. A distribution mechanism in this context should remain voluntary as one of several “solidarity measures”. The term flexible solidarity was already discussed in 1997, when Hathaway and Neve developed an approach to include “common but differentiated state responsibilities” taking inspiration from comparable debates in the area of international environmental law (Hathaway and Neve 1997). This proposal moves away from non-negotiable obligatory quotas towards a more flexible system, in which states can take responsibility at different levels (“flexible solidarity”). Recently, this concept was also tabled by German Interior Minister Horst Seehofer, arguing that “countries will participate in other ways, such as sending more staff to the borders or giving money for joint border security. We should be more flexible and rely on flexible solidarity.”⁸ Poland's governing Law and Justice (PiS) party similarly claimed that the country cannot accept refugees because of security concerns, suggesting instead a model of “flexible solidarity”, whereby

⁸ <https://www.politico.eu/article/eu-patronizes-eastern-members-on-migration-says-seehofer/>

each member state would independently determine what kind of support it could offer overburdened countries.⁹

Some concrete proposals have been made on how such a system of flexible solidarity instead of the mandatory relocation scheme, could actually look like. One proposal is to channel the financial resources from countries with low quota to those with higher quotas and to deploy experts and technical expertise to countries with high inflows (Ardittis 2016).

Along these discussions and suggestions, the Bulgarian presidency proposes more flexibility in the measures of solidarity and lists an array of potential measures that EU Member States could pick to show solidarity with overburdened countries. The list hides well the red-rag relocation of asylum seekers from an overburdened country to a less overburdened one. (for more on the measures, see ICMPD Working Paper on Responsibility Sharing). Interviewees at technical level acknowledged that more flexibility and constructive broad ways to look at solidarity [flexible solidarity] could be a good solution in theory should however never lead to a complete opt-out of an MS" (Interview 3).

The pitfalls of a loose and voluntary concept of solidarity however have been highlighted by the recent instances involving boats with rescued migrants in the Mediterranean. Thus the Aquarius a boat with 629 asylum seekers and migrants on board was not allowed to disembark in either Malta or Italy as both countries denied access to the harbour for disembarkation.¹⁰ Eventually, Spain stepped in and provided safe "harbour" for the Aquarius after a week of impasse. The situation has later been commented by Commissioner Avramopoulos by saying that "to truly prevent situations such as the Aquarius, we cannot be satisfied with ad-hoc solidarity."¹¹

7. Conditional solidarity

The current understanding of solidarity is often linked with conditionality:

EU solidarity is first and foremost conditional from fulfilling EU standards and being let into the club of EU Member States. ECRE further suggested to make EU MS engagement in intra-EU relocation conditional on concrete steps in the Member State "benefiting" from relocation to address protection gaps in its national asylum system as relocation should not result in mere responsibility-shifting (ECRE 2013).

Further, and as described above, any system that builds on Dublin purports a system of "corrective solidarity", a concept that is conditional to high influx of people. If the Bulgarian Presidency proposal is to be followed, solidarity will be conditional of thresholds of surpassing a certain (fair) share plus the conditional political good will to trigger solidarity measures.

Certainly, conditionality may play a crucial role in forcing MS to act in solidarity, e.g. by making financial support dependant on hosting refugees and their economic and social integration (MEDAM

⁹ <http://www.thenews.pl/1/10/Artykul/298985,EU-commissioner-issues-warning-to-countries-which-dont-accept-refugees>

¹⁰ <https://www.bbc.com/news/world-europe-44441386>

¹¹ Remarks by Commissioner Avramopoulos at the EP Plenary Session on the humanitarian emergencies in the Mediterranean and solidarity in the EU (13 June 2018) at: https://ec.europa.eu/commission/commissioners/2014-2019/avramopoulos/announcements/remarks-commissioner-avramopoulos-ep-plenary-session-humanitarian-emergencies-mediterranean-and_en

2018). Conditionality therefore plays an important role and may become the decisive instrument to invoke solidarity. In any case, the true loser in this political game would be the European Union, whose community abandons the common principle of solidarity and henceforth lives on as a community of enforced values. In a somewhat different vein, economists such as Per Lunderberg (2018) and Fernandez-Huertas Moraga and Rapoport (2015) have argued for the use of market mechanisms that would incentivize refugee admission and at the same time provide a mechanism for sharing the (financial) costs of refugee admission.

8. Conclusions

Solidarity is a contested and much discussed concept at all levels, global, regional (EU), national and sub-national level. At the global level the discussions on the Global Compact on Refugees centres around the question on how to improve solidarity in the global context. At the EU level, solidarity is particularly discussed in the context of unfair distribution of asylum seekers across the member states of the Dublin system; i.e.: as a corrective measure. Finally, also at national level, solidarity has reached the political and public debate, again and particularly in the context of distributing asylum applicants more equally across the country and municipalities. At each level solidarity is invoked by regions, countries or municipalities that receive high numbers of applicants, while those entities receiving low numbers oppose solidarity measures. The more global the debate the less concrete its measures and common understanding are. However, irrespective of the level of discussion, there are some common features found at each level of governance:

- Solidarity in the context of asylum is – nearly – exclusively discussed in the context of high numbers (“mass influx”) of arrivals of asylum seekers.
- While less affected countries do (mostly) show sympathy for “overburdened” countries, the concrete solidarity measures are usually of a small scale.
- Among solidarity measures, those that share the financial burdens, staff, resources or infrastructure is commonly preferred to measures sharing the hosting of asylum seekers and refugees.
- Solidarity (mostly) increases with the geographic vicinity to the country where people are forced to flee from.
- At all levels there is a discussion of what a fair share is and when solidarity would become necessary, i.e. at which threshold solidarity measures would be triggered.
- The territorial international refugee regime (meaning that an obligation to provide protection and care to refugees only emerges once the refugee is on the territory) is the main hindrance for a global and European solution in the spirit of solidarity.
- Supra-national migration initiatives such as the Global Compact on Refugees or the EU CEAS tend to postpone concrete commitments instead of setting binding rules for solidarity.
- As long as people fleeing persecution and war have to apply for protection in an EU Member State instead of applying for protection in the EU as a whole, solidarity will remain a contested principle, that is only being invoked if one country witnesses an unproportioned high influx compared to other Member States and thus feels treated in an unfair way.

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