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# The Common European Asylum System

Jan Spousta



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# 1 Introduction

*Convention Relating to the Status of Refugees* (also known as *Refugee Convention*) from 1951 installed asylum into the international law as a fundamental right. Providing asylum became an international obligation. This Convention defines who can be considered as a refugee and installs so-called „non-refoulement principle“ forbidding country receiving asylum seekers from returning them to country in which they would be in likely danger of persecution based on “*race, religion, nationality, membership of a particular social group or political opinion*”.<sup>1</sup> Charter of Fundamental Rights of the European Union also grants both right for asylum and principle of non-refoulement in articles 18 and 19 respectively.<sup>2</sup> The European Union also created subsidiary protection for people in danger who do not comply with the refugee criteria, meaning that they would be likely facing serious harm.<sup>3</sup>

With proceeding integration and Schengen Convention it was necessary to create legal framework for the European Union regarding the asylum (and immigration) policy. In 1990, Dublin Convention was signed, defining states which are responsible for processing asylum applications. It was replaced and amended by Dublin Regulations in years 2003 and 2013 (often called Dublin II and Dublin III).<sup>4</sup> Following the Dublin system, another acts of secondary law were introduced, focusing on criteria and requirements for asylum seekers and reception conditions for Member States.<sup>5</sup>

Since 1999, the European Union has been working to create the Common European Asylum System (CEAS) and improve the current legislative framework. People who seek, or have been granted, protection do not have the right to choose in which Member State they want to settle. To this end, the CEAS should provide common minimum standards for the treatment of all asylum seekers and applications. The CEAS consists of a legal framework covering all aspects of the asylum process and a support agency – the European Asylum Support Office. In 2001 the European Refugee Fund was created.

The large-scale, uncontrolled arrival of migrants and asylum seekers since early 2015 has put a strain on many Member States' asylum systems and on the CEAS as a whole. In practice, the current system is still characterised by differing treatment of asylum seekers and varying recognition rates amongst the European Union Member States. This divergence is what encourages secondary movements and is partly due to the fact that the current rules grant Member States a lot of discretion in how they apply the common European Union rules. Ongoing conflicts in the European Union's neighbourhood have proven that the European Union needs to put in place the tools to better manage migration flows in the medium and long term. The main objective is to move from a system which, by design or poor implementation, encourages uncontrolled or irregular migratory flows to one which provides orderly and safe pathways to the European Union for third-country citizens. Taking this into account, the European Commission has presented several proposals in May and July 2016 to establish a sustainable system for the future, based on common rules, a fairer

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<sup>1</sup> Convention and Protocol Relating to the Status of Refugees, 1951. In: Geneva. Dostupné také z: <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf> (Articles 1 & 33)

<sup>2</sup> Charter of Fundamental Rights of the European Union, 2000. In: Nice. Dostupné také z: [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)

<sup>3</sup> Directive 2011/95/EU of the European Parliament and of the Council, 2011. Dostupné také z: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0095&from=EN> Serious harm is defined in article 15.

<sup>4</sup> Dublinský systém, 2016. Ministerstvo vnitra České republiky [online]. Praha: MVČR [cit. 2017-06-13]. Available from: <http://www.mvcr.cz/clanek/dublinsky-system.aspx>

<sup>5</sup> Directives of Council of European Union 2011/95/EU, 2005/85/ES and directive of Council of European Union and European Parliament 2011/95/EU



sharing of responsibility, and safe legal channels for those who need protection to get it in the European Union.

## 2 Current system and mechanisms

### 2.1 Dublin system

Dublin system is the pillar of the CEAS, serving as the basic legal instrument. The core principle of the Dublin Regulation is that the responsibility for examining claimants rests primarily upon the Member State which played the greatest part in the applicant's entry or residence in the European Union. The criteria for establishing responsibility run, in hierarchical order, from family considerations, to recent possession of visa or residence permit in a Member State, to whether the applicant has entered the EU irregularly or regularly and where he or she first lodged his or her application for asylum.<sup>6</sup> This leads to disproportionately tougher pressure on states which have part of their borders marked also as the Schengen external borderlines, such as Greece, Italy or Spain. Experience of the previous system has, however, shown the need to more efficiently address situations of particular pressure on Member States' reception capacities and asylum systems. The new Dublin Regulation 2013/604/EU from 2013 introduced new series of provisions on the protection of applicants, obligation to ensure legal assistance free of charge upon request, obligation to guarantee the right to appeal against a transfer decision, limitation of the duration of detention or limitation of duration of the whole process.

In September 2015, the Council adopted two legally binding decisions which established a temporary and exceptional relocation mechanism for 160,000 applicants in clear need of international protection from Greece and Italy after high migratory pressure in 2015.<sup>7</sup> Resettlement mechanism was adopted as well. Despite being approved, the Emergency Relocation Mechanism did not prove to be very efficient. As of 15 June 2017, only 21 313 out of 98 225 persons were relocated.<sup>8</sup>

### 2.2 EURODAC

The EURODAC Regulation from 2000 established EURODAC as an EU asylum fingerprint database.<sup>9</sup> EURODAC was installed as another supportive element for the Dublin system. It should increase the amount of information about the asylum seekers that the Member State's institutions and Europol know and it should also prevent crime and terrorism. When someone applies for asylum, no matter where they are in the EU, their fingerprints are transmitted to the EURODAC central system. EURODAC has been operating since 2003 and has proved a useful security tool. The latest EURODAC Regulation 2013/603/EU from 2013 declared time limits for transmission of collected data and allowed police forces and Europol to compare

<sup>6</sup> Dublin system, MVČR [online]. [cit. 2017-06-16]. Dostupné z: <http://www.mvcr.cz/mvcren/article/asylum-and-migration-documents-dublin-system.aspx?q=Y2hudW09NA%3D%3D>

<sup>7</sup> Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece and Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece.

<sup>8</sup> Member States' Support to Emergency Relocation Mechanism, European Commission [online]. [cit. 2017-06-19]. Dostupné z: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state\\_of\\_play\\_-\\_relocation\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf)

<sup>9</sup> Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention, 2000. Dostupné také z: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000R2725:EN:HTML>



fingerprints linked to the criminal investigations to those contained in the EURODAC system.<sup>10</sup>

## 3 Commission's proposals

### 3.1 Reform of the Dublin System

Commission strives for creation of a fairer, more efficient and more sustainable system for allocating asylum applicants among Member States. This should ensure the Proposal for a new Dublin Regulation. Dublin System is still considered as a cornerstone of the CEAS. It is, however, clear that considerable changes are necessary. System had some significant shortcomings connected to the time periods provided for each application and different implementation of the European law among various Member States.

With the aims of ensuring that the Dublin procedure operates smoothly and in a sustainable way, the regulation proposes several new modifications. Applicant would now has an obligation to apply in the Member state of first irregular entry. The proposal is compound of two major parts: streamlining the Dublin Regulation and improving its efficiency and corrective allocation mechanism. In the first part, proposal shortens the time limits for different periods of Dublin procedures, smoothens the process and clarifies different categories and data about applicants. It also guarantees more information for them.

The key feature of the second part (and the whole proposal) is the so-called reference key. In the second part, proposal recommends establishing a new registration and monitoring system for all Member States, triggering the corrective allocation mechanism which should ensure improved burden-sharing based on a reference key, composed of population and GDP of the country. If the number of new applications exceed 150 % of the figure identified in the key, corrective allocation mechanism will be activated, spreading the applications over all Member States.<sup>11</sup>

### 3.2 Reinforcing the EURODAC system

This step should adapt and reinforce the EURODAC system and expand its purpose in order to facilitate returns, help tackling irregular migration, and overall to support the practical implementation of the reformed Dublin System. By the new proposal, EURODAC should transform into European asylum system for wider purposes, no longer serving to the Dublin System only. The proposal also specifies a clear obligation for Member States to take fingerprints and facial images of all persons coming to them.

Collected data may now be shared with third countries, will be stored for a longer duration of time, will be easily accessible for law enforcement forces and Europol. Also the minimum age for biometrics collection lowered from 14 to 6 years. European Border and Coast Guards and EASO Member States experts would also be eligible to take fingerprints. Several procurements were implemented against false hits. Overall the new proposal aims for more centralised system with easily accessible and well-organised database while giving more power to the Member States.<sup>12</sup>

<sup>10</sup> Regulation (EU) No 603/2013 of the European Parliament and of the Council, 2013. In: . Dostupné také z: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0001:0030:EN:PDF>

<sup>11</sup> Proposal 2016/0133 for a Regulation of the European Parliament and of the Council, 2016. Dostupné také z: <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-270-EN-F1-1.PDF>

<sup>12</sup> Proposal 2016/0132 for a Regulation of the European Parliament and of the Council, 2016. Dostupné také z: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/eurodac\\_proposal\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/eurodac_proposal_en.pdf)



### 3.3 A new mandate for the European Union Agency for Asylum (currently EASO)

A plan of the new proposal is to transfer the existing European Asylum Support Office into a fully-fledged European Union Agency for Asylum with an enhanced mandate and considerably expanded tasks to address any structural weaknesses that arise in the application of the EU's asylum system. Commission claims that the EASO's role and function need to be further strengthened in order not only to support Member States in their practical cooperation but to reinforce and complement the asylum and reception systems of Member States as well. The agency would work with the reference key, participating in the EURODAC system. It would also monitor and access all aspects of the CEAS including the Dublin system and asylum procedures. The new agency should also be able to intervene if the Member State in danger fails to manage the flow. This would lead to enhanced cooperation between agency and member states.<sup>13 14</sup>

### 3.4 Convergence in the EU asylum system

A second package of regulation proposals is connected to the general European asylum legal framework. This package consists of three proposals: Proposal for a new Asylum Procedures Regulation, Proposal for a new Receptions Conditions and Directive Proposal for a new Qualification Regulation. The main goal of this reform is to establish a common EU procedure for asylum applications as well as harmonised protection standards and rights for asylum seekers and harmonised reception conditions throughout the European Union to reduce differences in recognition rates from one Member State to the next, discourage secondary movements and ensure common effective procedural guarantees for asylum seekers and provide a financial support for Member States for every allocated person.<sup>15 16 17 18</sup>

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<sup>13</sup> European Union Agency for Asylum, European Parliament [online]. [cit. 2017-06-13]. Available from: [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/595849/EPRS\\_BRI\(2016\)595849\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/595849/EPRS_BRI(2016)595849_EN.pdf)

<sup>14</sup> Proposal 2016/0131 for a Regulation of the European Parliament and of the Council, 2016. Dostupné také z: Proposal 2016/0133 for a Regulation of the European Parliament and of the Council, 2016. Dostupné také z: <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-270-EN-F1-1.PDF>

<sup>15</sup> Proposal 2016/0224 for a Regulation of the European Parliament and of the Council, 2016. Dostupné také z: <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-467-EN-F1-1.PDF>

<sup>16</sup> Proposal 2016/0222 for a Regulation of the European Parliament and of the Council, 2016. Dostupné také z: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agendamigration/proposalimplementationpackage/docs/20160713/proposal\\_on\\_standards\\_for\\_the\\_reception\\_of\\_applicants\\_for\\_international\\_protection\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agendamigration/proposalimplementationpackage/docs/20160713/proposal_on_standards_for_the_reception_of_applicants_for_international_protection_en.pdf)

<sup>17</sup> Proposal 2016/0223 for a Regulation of the European Parliament and of the Council, 2016. Dostupné také z: [https://ec.europa.eu/homeaffairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160713/proposal\\_on\\_beneficiaries\\_of\\_international\\_protection\\_-\\_subsidiary\\_protection\\_eligibility\\_-\\_protection\\_granted\\_en.pdf](https://ec.europa.eu/homeaffairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160713/proposal_on_beneficiaries_of_international_protection_-_subsidiary_protection_eligibility_-_protection_granted_en.pdf)

<sup>18</sup> PŘEHLED: Komise zveřejnila plány na dokončení azylového systému, EurActiv.cz [online]. [cit. 2017-06-13]. Available from: <http://euractiv.cz/clanky/vnitro-a-spravedlnost/prehled-komise-zverejnila-plany-na-dokonceni-azyloveho-systemu-013410/>



## 4 Approach of Member States

In their joint statement from 15 December 2016, heads of governments of the V<sub>4</sub> countries illustrated their shared opinion on the proposed reform of the CEAS. The member countries keep working to broaden consensus concerning the application of the principles of solidarity and responsibility in the context of migration policy. The V<sub>4</sub> countries refuse mandatory quota system and strive for support for the “flexible”, later “effective solidarity”, also advocating cooperation with third countries via a Migration Compact, copying the EU-Turkey deal and the protection of EU external borders, where they are ready to increase commitments.<sup>19</sup> Concept of „effective solidarity“ should enable Member State to decide his specific form of contribution, taking into account their experience and potential. Any kind of distribution mechanism should be voluntary.<sup>20</sup>

This was, however, in 2015. Two years later, differences among the V<sub>4</sub> countries are emerging. On one hand, there is a more moderate Czech and Slovak duo, and on the other, a more conservative, ideologically driven Hungarian and Polish tandem. While Slovakia is keeping its pragmatic approach, Czech position is unsure with approaching general elections. Hungary and Poland seem to be stable and fixed in their positions with anti-immigrant governments ruling over both countries supported by xenophobic environment among general population.<sup>21</sup> Germany and the rest of the Western countries insist on a common solution and burden-sharing mechanisms and emphasize engagement of all European countries. In June 2017, EU opened sanction procedure against Hungary, Czech Republic and Poland over migration.<sup>22</sup>

### 4.1 Slovakia

Slovak point of view is pragmatic. The government does not believe the relocation policy<sup>23</sup> and voted against mandatory quotas (alongside Czech Republic, Hungary and Romania).<sup>24</sup> Despite being pro-European, Slovak Prime Minister Robert Fico did not hesitate to call European relocating policy a dictate.<sup>25</sup> Earlier that year he also infamously stated that he wants to “prevent a creation of a coherent Muslim community in the country”.<sup>26</sup> Following these harsh statements, more constructive approach prevailed after 2015. Slovakia is trying to balance its own interests and the

<sup>19</sup> Joint Statement of the Heads of Governments of the V<sub>4</sub> Countries, Visegrad Group [online]. [cit. 2017-06-13]. Available from: <http://www.visegradgroup.eu/documents/official-statements/joint-statement-of-the-161215-1>

<sup>20</sup> Flexible solidarity becomes new tool in response to refugee crisis, 2016. EURACTIV [online]. [cit. 2017-06-16]. Dostupné z: <https://www.euractiv.com/section/justice-home-affairs/news/flexible-solidarity-becomes-new-tool-in-response-to-refugee-crisis/>

<sup>21</sup> Migration politics and policies in Central Europe, GLOBSEC Policy Institute [online]. [cit. 2017-06-19]. Dostupné z: <http://www.cepolicy.org/publications/migration-politics-and-policies-central-europe>

<sup>22</sup> EU opens sanctions procedure against Hungary, Poland and Czech Republic over refugees, EurActiv [online]. [cit. 2017-06-19]. Dostupné z: <https://www.euractiv.com/section/justice-home-affairs/news/eu-opens-sanctions-procedure-against-hungary-poland-and-czech-republic-over-refugees/>

<sup>23</sup> Robert Fico: Systém povinných kvót nefunguje, pripravujeme alternatívny návrh, Úrad vlády Slovenskej republiky [online]. [cit. 2017-06-13]. Available from: <http://www.vlada.gov.sk/robert-fico-system-povinnych-kvot-nefunguje-pripravujeme-alternativny-navrh/>

<sup>24</sup> Migrant crisis: Why EU deal on refugees is difficult, BBC News [online]. [cit. 2017-06-13]. Available from: <http://www.bbc.com/news/world-europe-34324096>

<sup>25</sup> Fico: Nenecháme si diktovať, zda máme prijímať uprchlíky. Slovensko nepotrebuje ghetta, Aktuálně.cz [online]. [cit. 2017-06-13]. Available from: <https://zpravy.aktualne.cz/zahranici/fico-nenechame-si-diktovat-zda-mame-prijimat-uprchliky-nepot/r-aa705c28d31e11e5a8d7002590604f2e/?redirected=1497296058>

<sup>26</sup> Musíme zabránit vzniku muslimské komunity na Slovensku, řekl Fico, IDnes.cz [online]. [cit. 2017-06-13]. Available from: [http://video.idnes.cz/?idvideo=V160107\\_161827\\_zpravodaj\\_mku](http://video.idnes.cz/?idvideo=V160107_161827_zpravodaj_mku)



EU's demands using its EU Council presidency and engaging in several programmes. This enables Slovakia not to participate on burden-sharing, gain some political points at European level while keeping populist and nationalist domestic parties in check.

## 4.2 Czechia

Czech Republic also supports concept of effective solidarity. While the country itself is not under pressure of asylum seekers, it marked the political debate significantly, ultimately leading to the creation of several radical political movements and parties. Czech representatives also refuse mandatory quotas and often emphasize the importance of the European Asylum Support Office activities and protection of the external borders.<sup>27</sup> So far Czech Republic played on more pragmatic side of the V4 alongside Slovakia. This may change with looming general elections in October. Extremist parties in the country are shattered and it is not likely that they will gather larger political capital. Despite of that, it is worth noting that Andrej Babiš and his populist party ANO 2011 are, according to polls, going to win the election. It remains to be seen if politicians will use migration as a tool to gain more political points. Taking this into account, Babiš, as one of the most unpredictable politicians at the Czech political scene, might easily steer Czechia further apart from the Western countries.

## 4.3 Poland

Poland's position is mainly set by its current political leadership. Governing party Law and Justice (PiS) is presenting immigrants as tool of liberal elites, which are trying to destabilize the country. Anti-immigration fears are being used as a political ploy. Immigrants are often presented as „them“ and a security threat. Minister of Interior Mariusz Błaszczak stated: “We cannot accept any immigrants, because we don't want to endanger Polish people and Poland.”<sup>28</sup> Xenophobia is on the rise supported by the government policy and statements made by many significant politicians. The country representatives strongly oppose any form of compulsory relocation scheme. Set of laws allowing easier surveillance and detention of migrants was introduced. Poland wants to support the countries of origin and prevent migrants from leaving the country. Polish representatives want to treat the roots of refugee crisis.

## 4.4 Hungary

In Hungary, current leading political party Fidesz-KDNP survived political decline by exploiting migration crisis. The country was first to build a fence to keep migrants away from national borders. Prime Minister Victor Orbán rejected the quota mechanism immediately, advocating the protection of external borders instead. Securitisation became quickly the main political topic. The government is using refugee crisis to transform political system and justify ongoing procedures. Already high level of xenophobia has increased even further as a result of government anti-immigrant campaigns. Hungary sees the solution for the migration crisis in the establishment of hotspots outside of the Schengen Zone and not in the distribution of asylum-seekers among member states. The politics of Prime Minister Viktor Orbán are built on the logic of perpetuating conflicts rather than creating some kind

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<sup>27</sup> Hlavní je ochrana vnější hranice, shodli se ministr Zaorálek a šéfka diplomacie Evropské unie, Aktuálně.cz [online]. [cit. 2017-06-13]. Available from: <https://zpravy.aktualne.cz/domaci/nejdulezitejsi-je-ochrana-hranic-shodli-se-ministr-zaoralek/r~fcba539eb85c11e5897e002590604f2e/?redirected=1497313871>

<sup>28</sup> Mariusz Błaszczak: nie będziemy przyjmować emigrantów, Onet Wiadomości [online]. [cit. 2017-06-13]. Available from: <http://wiadomosci.onet.pl/kraj/mariusz-blaszczak-nie-bedziemy-przyjmowac-emigrantow/ledgbvv>



of constructive national consensus. This strategy is applied to both the domestic and the EU levels to set the political agenda and consolidate domestic political support.

#### 4.5 Germany

Germany stands on the other side. The country received highest number of applications for asylum during migrant crisis and needs European help. Germany is one of the main supporters of new Commission's proposals. Concerning asylum policy, Germany wants to closely cooperate on European rather than on national level and is for fair burden sharing amongst Member States. As current minister of interior Thomas de Maizière stated, "it is in Germany's interests, so that the burdens in Europe are more equally spread."<sup>29</sup> For Germany is essential that new CEAS will be crisis-resistant and will protect Member States from high-migration influx. Germans are not satisfied with disproportion of applications among Member States and want this situation get solved as quickly as possible. Germany also emphasizes the need for harmonisation of rules and guarantee of same rights to refugees in every Member State.<sup>30</sup>

### 5 Conclusion

Many presume that the Common European Asylum System is about to change. But is it really? Current system is outdated and not suitable for times of crisis. There is a wide discussion about specific shape of the reform. Regulations proposed by the European Commission aim to create faster and more reliable system with unified rules and strengthened burden-sharing. The European Union and its agencies would gain more authority and opportunity to influence all stages of the asylum process. That creates a lot of tension and divides Member States to several groups. Most criticism can be heard from the countries of the V<sub>4</sub>, which are calling for so-called „effective solidarity“, by which they want to avoid mandatory quotas for relocating migrants. Germany, majority of the Western countries and frontline states are advocating the proposals in their effort to improve their current situation. Taking all of this into account, the fate of the reform is uncertain, even though everyone agrees on that it is necessary.

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<sup>29</sup> For a fair and uniform asylum system, Bundesregierung [online]. [cit. 2017-06-13]. Available from: [https://www.bundesregierung.de/Content/EN/Artikel/2016/04\\_en/2016-04-08-geas\\_en.html](https://www.bundesregierung.de/Content/EN/Artikel/2016/04_en/2016-04-08-geas_en.html)

<sup>30</sup> Gemeinsames Europäisches Asylsystem – GEAS, Bundesamt für Migration und Flüchtlinge [online]. [cit. 2017-06-18]. Dostupné z: <http://www.bamf.de/DE/Fluechtlingsschutz/EuropaKontext/GEAS/geas-node.html>





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## Jan Spousta

Jan Spousta is an associate of Association for International Affairs and a member of the Prague Student Summit organizational team.



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of the Czech Republic

