



Reform of the Common European Asylum System

A difficult undertaking

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The EU institutions are about to decide on major new rules regarding the reception and the treatment of asylum applicants as well as their allocation among member states. The trigger for the intended reforms relate to the current regulatory framework's shortcomings that emerged during the refugee crisis: an uneven sharing of responsibilities for asylum procedures and massive irregular migration within the EU.

While in 2017 the number of asylum applications in the EU has nearly halved (0.65m) compared to the peaks in 2015 and 2016, the reform remains politically charged. Important elements could fuel political differences between the Western, in particular the Mediterranean littoral states, and Central European member states. Among citizens in the EU the immigration of people from outside predominantly evokes a negative feeling. Thus, the refugee crisis is seen as one driver of the ascent of populist parties. Therefore, the EU asylum policy's external arm, i.e. the border management, assistance for countries of origin and the opening of legal pathways, will become more important.

In 2016, among the 1.02 m asylum applicants registered 30% had already filed an application in another member state. Given the intensive secondary movements several member states have introduced border controls which – though formally approved – risk to undermine the Schengen arrangements and hamper the free movement of goods and persons in the Single Market.

Therefore, the Commission's reform plans focus on the two major pillars of the asylum policy's internal arm: (i) the introduction of a fair mechanism regulating the responsibilities for asylum procedures and (ii) the harmonisation of the standards for the procedures and the treatment of applicants aiming at lower incentives for secondary migration.

However, the Dublin procedure recast has stalled, as several member states strictly refuse the planned corrective mechanism for a fair sharing of responsibility. This mechanism which provides for a mandatory allocation of asylum seekers based on a reference key shall apply if a member state is confronted with a disproportionately high number of asylum applicants. Member states which do not want to participate in the mechanism will have to make a solidarity contribution or their financial transfers from the EU budget will be reduced. Especially the latter option has triggered disputes in the current talks on the next EU budget.

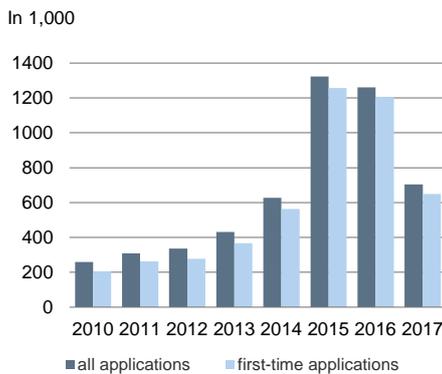
The prospects seem to be more favourable with regard to the harmonisation of the asylum procedures and conditions. It would not be surprising, if the actors involved would focus on the recast of the relevant rules and the enhancement of the Eurodac's and of the European Asylum Support Office's competences. However, the issue of the allocation of asylum seekers within the EU has the potential to capture the European agenda any time soon.



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Asylum applications: marked decline compared to the recent peak

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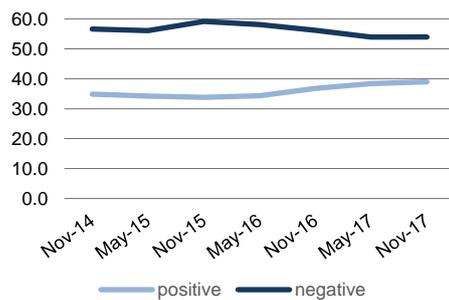


Source: Eurostat

Immigration of people from outside the EU is not popular

2

EU citizens' feeling with regard to immigration of people from outside the EU, % of those asked



Sources: European Commission: Eurobarometer

Article 78 point 1 TFEU

3

The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.

About two and a half years after the peak of the refugee crisis, the relevant EU institutions are about to decide on new major rules concerning the reception and treatment of asylum seekers, as well as the allocation of asylum applications among member states. Although the number of applications in 2017 (0.65 m) nearly halved compared to the peaks in 2015 (1.26 m) and 2016 (1.21 m), the issues are amongst the most politically charged topics on the agenda in Brussels.¹ Important elements of the planned reforms are the subject of much debate among the member countries. The ongoing debates could become a severe burden for the EU and, in particular, widen the differences between the Western and the Central European member states. Among EU citizens, too, immigration of people from outside the EU predominantly evokes a negative feeling. Furthermore, the refugee crisis is seen as one of the reasons driving the ascent of populist parties, such as in Italy recently.

The migrants, however, are not a homogeneous group with regard to the asylum regulations. Besides people in need of (international) protection, many people have immigrated for economic reasons (labour and/or poverty migration). It can be difficult to differentiate between these motives, as high numbers of lawsuits concerning the formal first-time rejection of asylum applications demonstrate. Even with regard to accepted applicants, it is often unclear whether the respective immigrants will stay in the host country temporarily or for the long term. What is more, the integration of refugees has proved to be a more challenging task than previously expected.

In 1999 and 2007, the Treaties of Amsterdam and of Lisbon, respectively, granted the EU institutions the relevant powers to draw up legislation on asylum. Articles 67(2) and 78 of the Treaty on the Functioning of the European Union (TFEU) and Article 18 of the EU Charter of Fundamental Rights form the significant legal basis in this regard. Since 2005, the relevant institutions have to apply the normal co-decision procedure, i.e. the Parliament and the Council have to adopt their decisions by qualified majority.

The background to the present debates and the trigger for the intended asylum policy reforms relate to the current regulatory framework's shortcomings that emerged during the refugee crisis. At the heart of the framework, primarily established in the first half of this decade, and in the focus of the present debate is the Dublin III Regulation.²

According to this regulation, unless other criteria such as family considerations apply, the member state where an asylum applicant first enters the EU is responsible for examining an asylum application. This regulation hardly fits for a period of intensified migration pressure. It entails the risk that member states on the EU's external borders, which essentially are those countries responsible for examining the applications, will be overburdened repeatedly or even permanently. This situation can create severe problems.

¹ According to data from Frontex (the European Border and Coast Guard Agency), the number of irregular border crossings has developed even more dramatically. In 2015, about 1.8 m irregular migrants arrived in the EU. In the past year, the figure was 205,000, following 511,000 in 2016. The divergences compared to the asylum statistic result from the fact that many refugees have filed (or only been able to file) their asylum application at a delay.

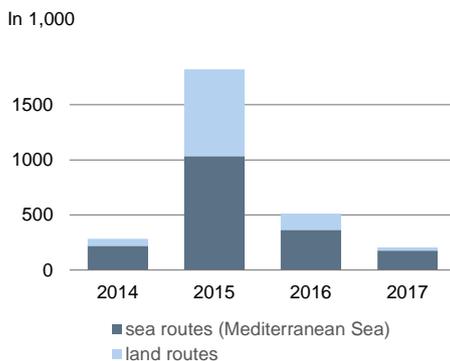
² Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Dublin III Regulation) of 26 June 2013.



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Irregular crossing at the EU's external borders

4



Source: Frontex

Host countries overburdened

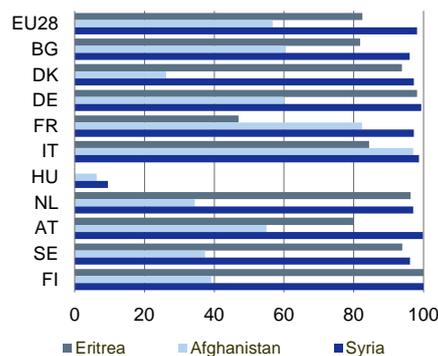
The respective countries are confronted with high costs for the refugee's registration, the provision of lodging and material support, including healthcare. Under such circumstances, the responsible national authorities might not be able to fulfil their tasks properly if they face a lack of funds or insufficient capacities.

As a result, countries run the risk of failing to uphold the EU's standards for the treatment of asylum seekers stipulated in the respective directives.³ In addition, differences in treatment and support – including social benefits – are among the triggers for irregular movements of asylum seekers within the EU.

Differences in recognition rates with regard to different countries of origin

5

Positive decisions on asylum applications as percentage of all first-instance rulings, 2016



Sources: Eurostat, Deutsche Bank Research

Different acceptance rates

Besides the strain on countries on the EU's southern and south-eastern borders, further European asylum policy shortcomings have emerged in the past few years. Member states have not consistently and uniformly interpreted the common standards stipulated in the relevant directives. In 2016, Hungary and Poland accepted only relatively small fractions of 8.4% and about 12%, respectively, of all applications for protection (refugee status or subsidiary protection) lodged in the country. In contrast, the acceptance rate in Germany was nearly 69%. In the Netherlands, it even stood at 72% (EU-28 average: 68%). This might partially result from the refugees' different countries of origin. But the application rates by country of origin show broad variance, too. With regard to migrants from Eritrea, the spectrum goes from 47% in France to nearly 100% in Germany and Finland. For immigrants from Afghanistan, the range is even wider, namely from less than 10% in Hungary and 35% in the Netherlands to nearly 100% in Italy. The different acceptance rates create additional incentives for intra-EU movements, known as "asylum shopping". Asylum seekers are likely to move to those countries where the probability of acceptance is the highest.

Outgoing Dublin requests submitted by Germany

6



Sources: BAMF, Bundesregierung, Deutsche Bank

Of course, according to the Dublin III Regulation, member states have the right to request that other states take the responsibility and thus to send back applicants. De facto, however, the number of such transfers is very limited. This not only reflects the fact that the countries on the southern and south-eastern EU borders are substantially burdened as it is; in addition, transfers are often impossible because member states cannot comply with the narrow deadlines for such requests. A member state "... may, as quickly as possible and in any event within three months of the date on which the application was lodged ..., request that other Member State take charge of the applicant" (Article 21 (1) Dublin III Regulation). (In the case of a Eurodac (European dactyloscopy database) hit, the request shall be sent even within two months of receiving that hit.)

In 2017 Germany submitted 64,267 (outgoing) Dublin requests; but only 7,102 persons were sent back to other member states; this means a share of about 11% (2016: 7%). Among all the requests the respective member states accepted 46,873 requests. Measured against this figure the quota was 15.2% (2016: 13.6%).

³ Besides the Dublin III Regulation, three directives are of major importance: Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection (Reception Conditions Directive), Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (Asylum Procedures Directive) and Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (Qualification Directive).



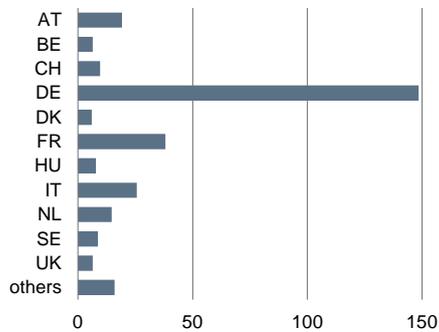
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Secondary migration in the EEA*, 2016

7

Secondary movements and asylum shopping

Applicants in the Eurodac system who already filed an application in another EEA state, 1000



* EEA = EU28 + CH+ IS + LI + NO

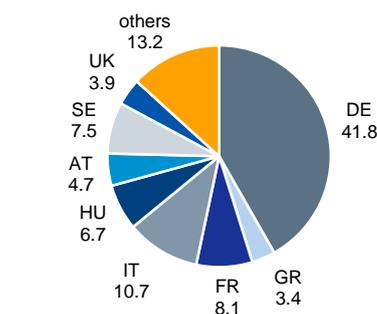
Source: Eurodac

Migration within the EU resulting from misleading incentives and varying compliance with EU standards has markedly increased in the past few years. According to Eurodac data, in 2016, among the 1.02 m asylum applicants registered in the system, 30% had already filed an application in another member state. In 2015, the respective share was 22% (2014: 27%). In France, the Ministry of Interior estimates that, in 2017, about half of the approximately 100,000 asylum seekers had already previously been registered in a partner country (FAZ, 20 February 2018). The pattern is similar for persons registered as illegally staying in the EU. In 2016, about 50% of these 253,000 persons had also filed an application elsewhere in the EU. In 2014 and 2015, the figures stood at 36% and 31%, respectively.

Most applications filed in Germany

8

Share in all first-time applications in the EU in the period 2014-2017, in %



Sources: Eurostat, Deutsche Bank Research

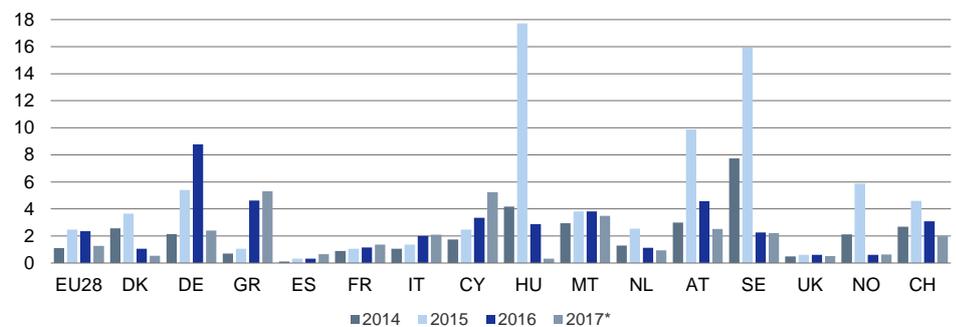
Germany: The major host country

Measured against the number of first-time asylum applications, the refugees are unevenly distributed in the EU. Among the nearly 3.7 m applications filed in the EU in total in the past four years, the shares of Germany, Italy, France and Sweden stand at 42%, 11%, 8% and 7.5%, respectively, but at only less than 1% for Poland. In relation to the resident population, the distribution is lopsided, too. While Germany registered 5.4 and 8.8 applicants per 1,000 inhabitants in 2015 and 2016, the respective figures for France and the UK were about 1.1 and 0.6.

Uneven distribution of responsibilities for asylum applications in the EU

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First-time applications per 1,000 inhabitants



* 2017 population on 1 January, other years: yearly averages

Sources: Eurostat, Deutsche Bank Research

With regard to Germany, it is necessary to keep in mind, however, that the large numbers of asylum seekers who immigrated in autumn 2015 should not be subsumed under secondary migration. Given the critical situation in Hungary and other Central Eastern European member states at the time, Germany opened its borders for asylum seekers voluntarily.⁴ As can be derived from a European Court of Justice (ECJ) ruling of July 2017, the German government could cite the sovereignty (or discretionary or humanitarian) clause of the Dublin III Regulation (Article 17 point 1) and act accordingly.

⁴ Grote, Janne (2018). The Changing Influx of Asylum Seekers in 2014-2016: Responses in Germany. Federal Office for Migration and Refugees.



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Problematic border controls in the Schengen area

Migrants' movements within the EU have not only resulted in an irregular, uneven distribution of refugees, but also triggered the introduction of border controls. The departure of the principle of open borders started in autumn 2015. Following Hungary and other countries in Central and South-East Europe which tightened their controls at the borders to other member states, in October 2015, Germany and Austria established controls within the Schengen area. A few weeks later and in early 2016, Sweden, Norway and Denmark followed suit.

The controls and the related barriers to the free movement of goods and persons still exist today. In November 2017, after having essentially used the six-month prolongation period three times, the aforementioned countries had exhausted the legal options for maintaining the controls. But the Commission consented to a further prolongation until May 2018, provided that the controls are necessary to fight the threat of terrorism. Since November 2015, France has enacted controls for this reason.

Whether it will be possible to maintain the controls thereafter – as demanded by Austria and Germany, for example – is still not certain. In September 2017, the Commission proposed that, if faced by the threat of terrorism, member states should be allowed to carry out controls for up to three years. However, this should be subject to restrictive requirements and thus constitute an option for exceptional circumstances only.

Italy and Greece supported in many ways

The EU has reacted to the refugee crisis in many ways. So far, the focus has been on providing support for the strained member states on the EU's borders, especially Greece and Italy, on the management of the external borders and on cooperation with the countries of origin as well as the transit countries, including offering legal pathways for people in need of international protection (resettlement and other forms of legal migration).

Support for strained partner countries with external borders mainly pertains to three areas: (i) administrative and personnel support with regard to the registration and reception of asylum seekers, (ii) financial support and (iii) the relocation of asylum seekers, which is coming to an end, however.

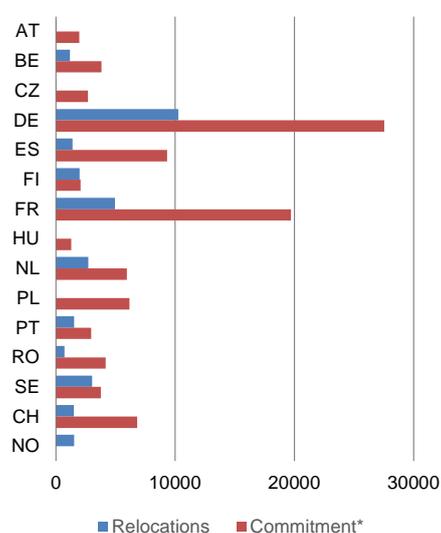
The EU and its agencies provide administrative and material support in terms of manpower and equipment for the establishment and operation of hotspots, for example, and for border management. At the hotspots and at other places on land and at sea, staff from the agencies, such as the European Border and Coast Guard Agency (Frontex) or the European Asylum Support Office (EASO), cooperate with local authorities to identify and to register new arrivals and to take fingerprints and to save lives. At present, nearly 2,000 people work for the EU agencies in the countries at the external borders, of whom about 600 in Italy and about 1,100 in Greece.

Financial support is primarily allocated under the Asylum, Migration and Integration Fund (AMIF), which provides long-term funding, and the Internal Security Fund (ISF), which grants emergency funding. According to the EU multiannual financial framework 2014-2020, Italy is supposed to receive EUR 634 m and Greece EUR 561 m. Given the extra needs arising from the refugee crisis in the meantime, the EU increased these funds by way of emergency funding in the amount of EUR 189 m and EUR 385 m respectively. In addition, the EU provides emergency funding to support national authorities and international organisations (e.g. UNHCR) which provide (humanitarian) assistance in these countries. Overall, the EU has made available over EUR 1.5

EU scheme relocation from Greece and Italy

10

Number of applicants relocated from GR and IT within the EU schemes*



* as of March 2018

Sources: European Commission, Deutsche Bank Research



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bn for Greece to help manage the challenges resulting from the refugee crisis and the external borders. In total, the Commission's proposal for the EU budget for asylum policy measures within the EU (refugee crisis and improving migration management) for the period 2015-2018 amounts to EUR 9.6 bn (including EUR 1.4 bn for the relevant EU agencies and their operations).

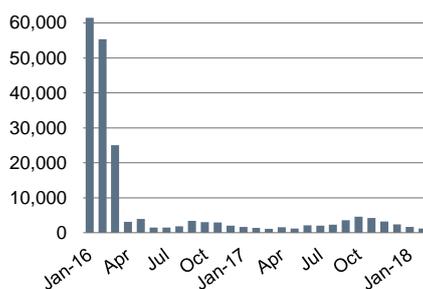
As part of the relocation schemes, nearly 12,000 people from Italy and about 22,000 from Greece have been resettled so far. Since the Commission launched the first proposals in spring 2015, the schemes have been the subject of intensive debate. Nevertheless, the Council agreed on the relocation with the necessary majority, although Hungary, Poland, the Czech Republic and Slovakia have refused to participate. The Commission has therefore initiated infringement proceedings against the first three countries and filed a lawsuit at the ECJ in December. Slovakia evaded the proceedings by accepting a small number (16) of asylum seekers.

The EU-Turkey Statement: A “game changer”

Arrivals on the Greek islands

11

Monthly figures



Source: European Commission

Besides the closing of the Balkan route in particular, the EU-Turkey Statement of March 2016 has contributed to the easing of the situation in the eastern Mediterranean Sea. The number of sea arrivals there decreased from about 140,000 per month in autumn 2015 to less than 2,600 p.m. on average in the past year. The number of lives lost in the Aegean Sea has also declined markedly. As a result, the Commission has even gone so far as to call the statement a “game changer”. One of the treaty's core elements is the 1:1 mechanism. According to this mechanism, from 20 March 2016, all irregular migrants from outside the EU and asylum seekers crossing from Turkey to the Greek islands will be returned to Turkey, as a basic principle. As a quid pro quo, the EU pledged that for every Syrian being returned to Turkey, another Syrian will be resettled to the EU from Turkey.

On the basis of the statement, the EU also provides financial assistance to Turkey to support the country in its efforts to host (Syrian) refugees. The money goes towards material and humanitarian assistance, education, health, municipal infrastructure, as well as measures to enhance border management and to fight smugglers and traffickers in Turkey. In the past two years, the EU has allocated EUR 3 bn for these purposes through its Facility for Refugees in Turkey – EUR 1 bn from the EU budget and EUR 2 bn from the member states. Meanwhile these funds have been earmarked completely. Therefore, in mid-March, the Commission proposed to greenlight the second tranche, i.e. to allocate an additional EUR 3 bn through the Facility. At the recent EU-Turkey leaders' summit in Varna (Bulgaria) the EU confirmed this commitment. However, the funding is still disputed. While the Commission argues for the same (1 to 2) pattern as applied for the first tranche, member states have requested that the total amount shall come from the EU budget.

While the EU can point to many projects for Syrian refugees which it has supported in Turkey and to a total amount of EUR 1.85 bn already paid out by the end-March 2018, the Commission is calling for more progress with regard to the return of refugees to Turkey.⁵ Since the end of March 2016, only about 2,200 people have been returned from Greece under the 1:1 mechanism, in addition to about 12,600 who have returned voluntarily under other schemes. Reciprocally, about 12,500 Syrian refugees have been resettled from Turkey to the EU. As of early March 2018, Germany and the Netherlands had hosted the most refugees so far among the member states (about 4,300 and 2,600, respectively)

⁵ See European Commission (2018). EU-Turkey Statement. The Commission's contribution to the leaders' agenda. European Agenda on Migration, Factsheets 7 December 2017.

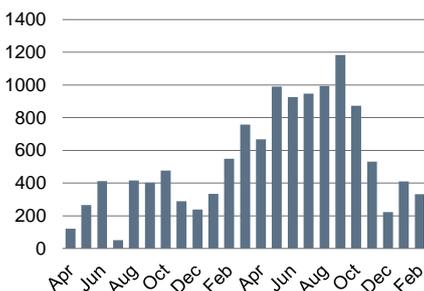


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Resettlements from Turkey

12

Monthly resettlements since the taking effect of the EU-Turkey statement on March 18, 2016



Source: European Commission

In contrast to the relocation within the EU member states, participation in the resettlement is voluntary. The EU supports the participating countries' commitment by furnishing EUR 6,000 per accepted refugee (EUR 10,000 for unaccompanied minors and members of other groups with special needs). Prior to the resettlements under the EU-Turkey Statement, in July 2015, the Commission had already initiated a resettlement scheme. Under this scheme which was modified later and de facto merged with the scheme for Turkey, member states pledged to resettle about 22.500 persons.⁶

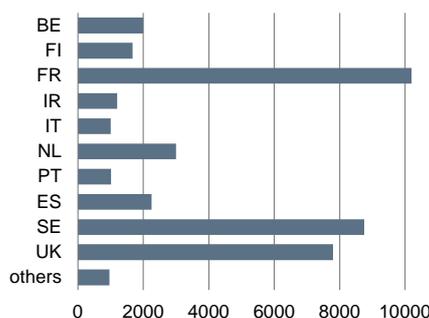
Besides the cooperation with Turkey, efforts to cooperate and partner with transit countries and countries of origin have recently placed focus on Libya, where many migrants start the sea crossing along the Central Mediterranean route. These efforts aim to save and protect the lives of migrants and refugees, fight trafficking and smuggling networks and promote voluntary returns. To enhance migration management, the EU also cooperates with other African states and the African Union. Generally speaking, the migration issue has begun to play an increasingly important role in development policy. For example, the EU Emergency Trust Fund for Africa can count on funds in the amount of EUR 3.3 bn. EUR 2.6 bn are approved, and EUR 1.54 bn have already been contracted (as of mid-March). Recently, the EU announced to put migration and security at the heart of its agenda for a new agreement with the ACP (African, Caribbean and Pacific) nations and it reaffirmed its intention to improve mechanisms for the legal migration of Africans to come to Europe.

(Voluntary) resettlement schemes remain an EU migration policy element

Member states' resettlement pledges for 2018*

13

As of March 2018



* The Commission aims for 50,000 pledges in total, of which 50% shall be resettled by end-October 2018, the other 50% by May 2019

Source: European Commission

The Commission has frequently stated that Europe must not be a fortress, but a continent of solidarity where people in need of protection will receive it. In line with this statement, the Commission proposed a structured EU resettlement framework in July 2016. Better coordinated international protection in the EU for people in need of protection aims to establish regular and secure passageways into the EU and reduce the incentives for illegal immigration.

The proposal does not provide for a mandatory distribution scheme. Instead, member states shall participate voluntarily. States that adhere to the planned rules and resettle third-country nationals according to the (geographical) priorities stipulated in an annual EU resettlement plan are to receive financial support from the EU budget, namely EUR 10,000 for each person they resettle. In principle, the European Parliament backs the proposal, but it has called for modifications, for example with regard to the resettlement plan (which should be adopted by the Commission and not by the Council, as in the proposal). In November 2017, the Council, on the other hand, refused the latter stipulation, among others. In September 2017, in advance of the new framework the Commission recommended a (further) new resettlement scheme for 2018. Under this scheme the member states have made about 40,000 resettlement pledges, so far. The Commission's aim is 50,000.

Reform of the Common European Asylum System aims at fair burden-sharing

Notwithstanding the successes regarding border management and cooperation with neighbouring and other relevant countries, especially Turkey, irregular migration will remain a major challenge. The Commission's initiative for

⁶ In early March about 19,400 refugees were resettled under this scheme. This figure, however, includes (at least 2,600) Syrian refugees resettled under the EU-Turkey Statement.

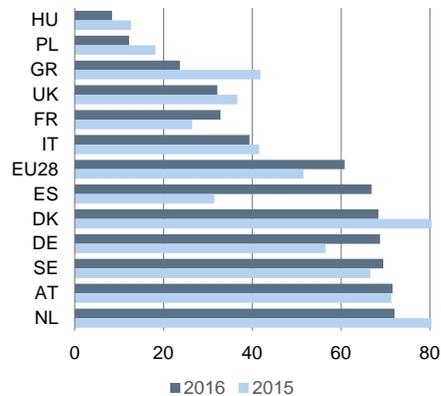


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Differences in recognition rates*

14

Share of positive decisions as percentage of all first-time rulings, in %



* international and subsidiary protection, humanitarian reasons

Sources: Eurostat, Deutsche Bank Research

reforming the Common European Asylum System (CEAS) launched in spring 2016 as influenced by the refugee crisis has therefore not grown any less important.

The reform has two major objectives. Firstly, new rules for determining the responsibility for examining an application for international protection, i.e. a Dublin IV Regulation, shall prevent individual member states from becoming overburdened. Secondly, (further) harmonisation of the standards for asylum procedures and the reception conditions shall prevent secondary migration. Besides the recast of the relevant directives, plans also call for strengthening the Eurodac system⁷ and replacing the European Asylum Support Office (EASO) with an EU Asylum Agency featuring new competences.

According to the Commission's plans, the June 2018 European Council is meant to reach a political agreement on the overall reform of the CEAS. Some parts are scheduled to be concluded earlier. Of course, the timetable is ambitious, as the reform of the Dublin III Regulation in particular is the subject of much debate among the member states.

The proposed recast seeks to provide for a "fair system for determining the member state responsible for examining asylum applications". The major amendments primarily aim at three issues:

- The criteria for determining responsibility. Apart from the country of first entry principle, relevant criteria relating to family links shall also be amended. The definition of family members shall be extended in two ways: by (1) including the sibling or siblings of an applicant and by (2) including family relations which were formed after leaving the country of origin but before arrival on the territory of the member state.
- The rules and time limits relevant to asylum application and to readmission procedures. Amendments here look to accelerate the determination procedure and prevent repeated procedures in different countries. For this purpose, the obligations for applicants, e.g. cooperation with the competent authorities, shall be clarified, as well as the consequences of violations of these obligations. Among others, an applicant shall be entitled to the (full set of) reception conditions only where he or she is required to be present.
- Introduction of a corrective allocation mechanism "in order to ensure a fair sharing of responsibility between member states". This mechanism shall be triggered automatically "when a member state is confronted with a disproportionate number of applications for international protection".
- The number of applicants for which a country would be responsible under fair conditions shall be specified by means of a reference key. This key shall be based on two criteria: the size of the population and the GDP of a member state. The mechanism is triggered if the real number of applicants is 50% higher than a state's relevant reference figure. When this happens, all new applications shall be allocated to other member states where the number of applications for which these states are initially responsible is below the number identified in the reference key.

Member states shall be allowed to (temporarily) refrain from participating in the corrective mechanism. However, they will then be obliged to make a solidarity contribution of EUR 250,000 per applicant to the member states that were determined to be responsible for the respective asylum procedures.

In November 2017, the European Parliament (EP) endorsed a position paper with major principles for the planned reform with a clear majority (390 to 175,

⁷ The extended competences shall facilitate the identification and registration of third-country nationals who are staying illegally, including applicants without identity documents.



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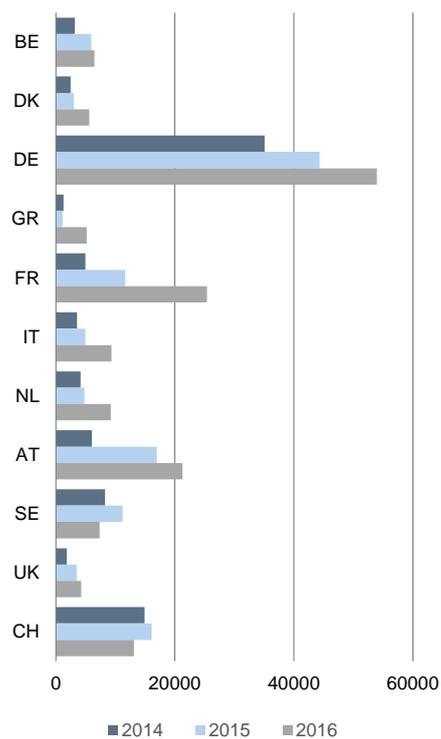
with 44 abstentions). These principles are, by and large, compatible with the Commission's proposals. The main points of the EP's position are:

- The country of entry shall no longer be automatically responsible for processing asylum applications.
- All EU countries should accept their fair share of responsibility for hosting asylum seekers.
- Those member states that refuse could lose EU funds.

Increasing number of outgoing taking back requests*

15

Number of the respective countries' outgoing taking back requests*



* requests made to other EEA (EU28 + CH, IS, LI and NO) member states, according to the Dublin regulations

Source: Eurostat

Reform of the Dublin Regulation is much debated

While the Commission and the EP have paved the way for the trilogue negotiations, the member states have so far failed to agree on a common position. At the moment, it is still unclear whether and how the member states will be able to reconcile their divergent ideas. Not only Greece and Italy, but also other countries with high numbers of applicants, such as Germany and the Netherlands, have repeatedly called for solidarity among all member states. In Germany, however, the new extended criteria relating to family links are likely to meet with opposition, especially from the Ministry of the Interior. Austria and the Visegrád Group (Czech Republic, Hungary, Poland, and Slovakia) have repeatedly refused compulsory allocation mechanisms. It therefore seems questionable whether the actors involved will be able to reach a compromise in time before the relevant June meeting of the European Council. There is also the risk that this meeting will end without an agreement on a reform of the Dublin III Regulation.

Only partial reform of the asylum procedures and reception conditions?

The prospects for an agreement are better with regard to the second reform package initiated in 2016. This package aims at the (improved) harmonisation of the asylum procedures and reception conditions in order to prevent secondary migration. Plans therefore call for the replacement of the Asylum Procedure Directive and the Qualification Directive by new regulations that would be directly binding for the member states, as well as the modification of the Reception Conditions Directive.

The new Qualification Regulation looks to harmonise the criteria for applicants to qualify for asylum and subsidiary protection, as well as the rights for persons who benefit from these statuses. The planned Procedure Regulation aims to provide for "simpler, clearer and shorter procedures". These new regulations will also amend and specify the (recast) Reception Conditions Directive. The planned new set of rules provides for major amendments with regard to four areas:

- Clear standards with regard to the procedures and the reception conditions. The latter stipulate, for example, that applicants shall always be entitled to healthcare and to a dignified standard of living, in accordance with fundamental rights.
- Integration and labour market access. For example, the time limit for access to the labour market should be reduced from no later than nine months to no later than six months from the lodging of the application.
- Freedom of movement. Beneficiaries of international protection shall enjoy freedom of movement within the territory of the member state that granted protection. However, member states shall be allowed to impose residence conditions on a refugee who receives certain specific social security or

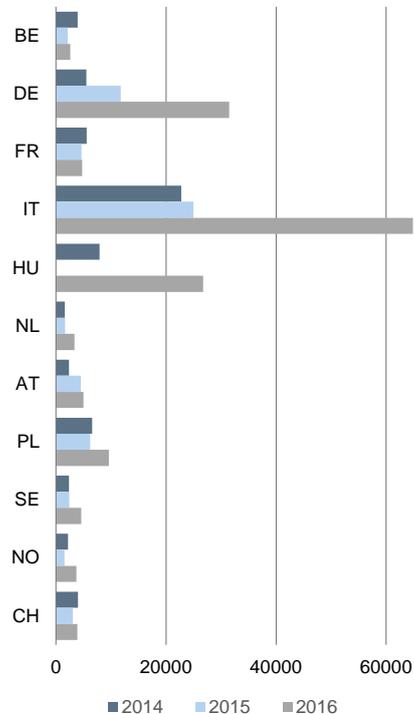


Reform of the Common European Asylum System

Incoming taking back requests
by member states*

16

Number of incoming taking back requests from
the other EEA countries* by member state



* EU28 + CH, IS, LI and NO

Source: Eurostat

social assistance benefits (only) where those restrictions are necessary to facilitate the beneficiary's integration. Beneficiaries of international protection shall not have the right to reside in member states other than the one that granted protection.

- Obligations and sanctions. The proposed new regulations not only ensure and harmonise the applicants' rights, they also stress their obligations, for example to cooperate with the authorities throughout the procedure, and specify sanctions. According to the proposals, member states can reject applications in the event that applicants do not comply with the obligations. In addition, if applicants stay irregularly in a member state because of fraud or illegal immigration from another member state, claims on (material) benefits for an appropriate standard of living – such as access to the labour market – would expire.

Furthermore, the procedures for returning people who have illegally immigrated to the EU from safe countries of origin shall be sped up. The proposal for a new Procedure Regulation stipulates the following: "Where applicants are manifestly not in need of international protection because they come from a safe country of origin, their applications must be quickly rejected and a swift return organised". Harmonised rules and a binding EU common list of safe countries of origin shall therefore be established.

The EP and the Council are likely to approve major elements of the Commission's proposals, albeit with amendments. However, the EP has voiced objections to the intended new emphasis on sanctions, for example on asylum seekers who irregularly move to other member states. Instead, the EP would favour enhanced incentives for applicants to stay in the responsible member state. Furthermore, removals shall remain the ultima ratio. Council representatives have objected to plans to extend access to social security and social assistance to other public benefits. Among other things, the Council is opposed to a reduction of the time limit concerning access to the labour market.

Notwithstanding these differences, it still seems possible to finalise the trilogue by the end of May.



Conclusion: Postponement of the Dublin III Regulation reform – no lasting solution

Migration management will remain a difficult and complex challenge for the EU. Migration pressure is very likely to continue, given the various persistent push factors in relevant regions of origin. Several regions in Africa show a gap between high population growth rates and limited progress with regard to economic development which will be hard to bridge in the foreseeable future. Furthermore, there are various countries outside Africa, too, where the humanitarian, social and/or political situation is precarious as a result of (political) conflicts that here and there extend all the way up to (civil) wars, not to mention environmental problems as well.

Given these challenges, the EU is building on a mix of external and internal measures. Especially noteworthy among the external measures are various forms of assistance for transit countries and countries of origin, which aim at promoting the countries' economic and social development and at reducing the incentives for migration, resettlements and other options for legal immigration to the EU. Other measures include efforts to fight trafficking and smuggling as well as enhanced border management.

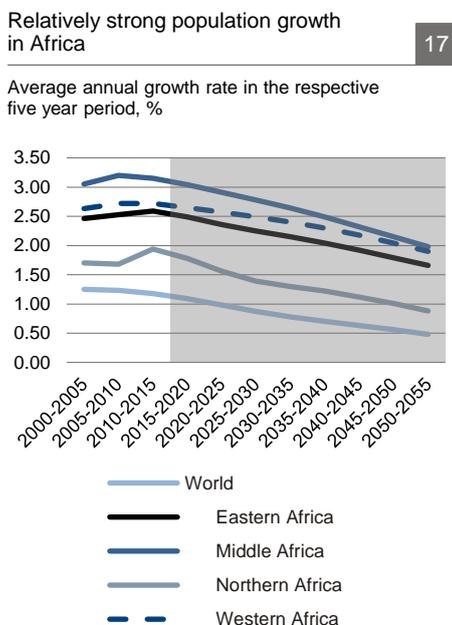
The difficult endeavour to differentiate among migrants who need international protection and poverty migration calls for an efficient border management system, in addition to measures that focus on the problems in the countries of origin. Such measures should be coordinated with other issues related to the EU asylum and migration policy. Generally speaking, however, labour migration falls under the member states' jurisdiction (Article 79 (5) TFEU).

The EU asylum policy's internal elements are based on the Common European Asylum System. The CEAS's reform has now reached a decisive phase, but major elements of the reform, especially the planned Dublin IV Regulation, are subject to debate. The debates do not solely revolve around details. Respective competences of the EU are on the table, too. The proponents of a strong EU in this field consider the reception of refugees as a common European public good.⁸ From this point of view, the allocation of this good lies within the EU's competences. The critics of expanded EU powers take a different view. They argue that the member states should be able to decide themselves whether and how many refugees they will host.⁹

Obviously, there is an area of conflict between the demands for national sovereignty, on the one hand, and the requirements for the proper functioning of the EU Single Market as well as the demand for solidarity and a fair distribution of responsibilities within the EU, on the other hand. Both the Commission and those member states facing high migration pressure cite the latter principles.

In fact, internal border controls do not square with the freedom of movement in the Single Market. Consequently, measures that aim to reduce secondary migration, such as the proposals to harmonise the asylum procedures and the reception conditions, are to be welcomed.

They could contribute to the lasting abolishment of border controls within the Single Market and thus enhance the market's efficiency. It therefore makes sense that, in recent debates, the Bulgarian presidency and some member states such as Germany have put the focus on these measures.



⁸ See Heinemann, Friedrich (2017). EU-Asylagentur: Wettlauf nach unten stoppen. Friedrich-Ebert-Stiftung (Hrsg.). Politik für Europa # 2017 plus.

⁹ For example, Austrian Chancellor Sebastian Kurz has made such an argument (see Bild am Sonntag, 24 December 2017).



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However, the issue of the allocation of asylum seekers within the EU will become more important again at some point. This is all the more true if the relevant actors in Brussels succeed in agreeing on efficient rules and procedures to prevent secondary migration. Ultimately, the debate on the EU's asylum policy competences points to the fundamental question of the interpretation and the development of the EU's institutional structure and powers.

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