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# **Migration and the Mediterranean: the EU's Response to the 'European Refugee Crisis'**

**Arne Niemann and Julia Blöser**

## **Abstract**

This chapter describes and examines the origin, nature and development of the so-called “European refugee crisis” and particularly analyzes the internal and external measures taken by the EU and its Member States in response to it. Our inquiry focuses on the following measures: (1) hotspots and emergency support for affected Member States, (2) relocation, (3) resettlement and other legal ways of entry, (4) the CEAS reform, (5) addressing irregular migration through border controls and countering smuggling and trafficking, (6) return and readmission, (7) the EU-Turkey Statement, (8) additional cooperation with third countries as well as (8) (trust) funds to support regions of origin and transit. We argue that the EU's overall response to the crisis has been more substantial and comprehensive than commonly perceived. However, we also hold that proper internal solutions and particularly a sustainable restructuring of responsibility among Member States have not materialized, and that a growing securitization and externalization of responsibilities by the EU have come to dominate human rights and refugee protection considerations.

## **Introduction**

In 2015 and 2016 Europe experienced the largest entrance of refugees since World War II. In each of these years more than 1.2 million asylum seekers submitted their asylum claims in the EU (Eurostat 2017a) as compared to 625,000 in 2014 (Eurostat 2015, 4). These increased applications were only a trigger and not a cause of the ensuing situation of crisis as they just revealed persistent dysfunctionalities and shortcomings of the Common European Asylum System (CEAS). The so-called ‘European refugee crisis’ may thus more rightly be termed a crisis of the CEAS (Niemann and Zaun 2018). While this system with common protection standards and a clear distribution mechanism had been introduced on paper in 2012 through several EU directives and the Dublin regulation, the lack of implementation became strikingly obvious since late summer 2015. At that time, the Dublin system – according to which border countries are responsible for any asylum seeker entering the Schengen area through their territory – had already broken down and border countries waived asylum seekers through towards traditional host countries in Western and Northern Europe. States receiving low

numbers of asylum applications were hesitant to adopt responsibility sharing mechanisms and some Member States were openly hostile towards the idea. Some countries which initially adopted a welcoming attitude towards refugees such as Germany, Austria and Sweden therefore closed their external borders, suspending the Schengen system temporarily. Despite being in line with EU law, this measure called freedom of movement, one of the key pillars of European integration, into question and further incited the crisis.

Moreover, the deaths of thousands of migrants at the Union's external borders, and some of the measures taken to limit the arrival of refugees at Europe, have cast doubts on the role of the EU as a promoter of human rights in the world. Meanwhile, the considerable media attention and politicization of the issue, accompanied by the rise of populist parties, have exerted great pressure on both EU institutions and member governments to come up with solutions. Together with the Eurozone trauma, this crisis and its aftermath have the potential to seriously damage the overall project of EU integration. Against the background of almost two decades of EU co-operation on asylum policies, the lack of a concerted approach in times of crisis is puzzling and leads us to evaluate and question the state of integration in this policy field. Therefore, this chapter provides a condensed account of the origin and development of events leading up to the crisis and examines the measures taken in response to it by the EU and its Member States in order to evaluate the Union's performance and its implied consequences for future cooperation.

### **The development of the 'European refugee crisis'**

Phenomena such as civil war, protracted conflict, terrorism, deteriorating internal security and increasing poverty in many countries, especially in the Middle East, Africa and Southern Asia, have triggered massive departures of civilian populations in recent years (Karageorgiou 2016, 200; Metcalf-Hough 2015, 2; Vătăman 2016, 545; Wagner et al. 2016, 24-25). This has led to a mixed-motive-migration phenomenon which refers to persons both fleeing persecution and searching to improve their socio-economic living conditions. Yet, the largest group of immigrants entering the EU came from war-torn countries, such as Syria, Afghanistan and Iraq (Eurostat 2017b). The war in Syria, which displaced over 5 million people until 2017 (UNHCR 2017), has by far been the largest factor for the strong increase in migration, both in Syria's neighborhood and in the EU. It should thus be noted that neighboring states like Lebanon, Jordan and Turkey where a considerable refugee population fled to increasingly struggled with and resisted the tasks of hosting and integration, given a lack of basic and financial means in the camps, a deterioration of their own security situation and growing tensions within their

populations (Hanewinkel 2015, 2; Metcalf-Hough 2015, 3). Since the world community did not react adequately to ameliorate those camp conditions and due to a lack of perspective to be resettled to another country or other legal ways of entry, many people who were temporarily accommodated in their region of origin continued their way towards Europe.

Signs of a looming crisis in Europe became visible already in the years prior to 2015. Along with gradually increasing arrivals of migrants in Europe, there has been a dramatic rise in shipwrecks and deaths related to crossing the Mediterranean. Whereas the Italian government reacted by upgrading previous search and rescue operations in the area through the launch of '*Mare Nostrum*' in 2013, the latter was replaced by the much smaller EU operation 'Triton' the following year (Pastore and Henry 2016, 52-53). The countries of first entry Italy and Greece faced a particularly strong increase from spring 2015 on, which incentivized these countries to abstain from a proper registration of migrants and thus enabling them to pass through towards Northern destinations (Börzel 2016, 23; Menéndez 2016, 397; Trauner 2016, 319). In effect, being intrinsically ineffective and slowing down procedures by imposing additional administrative burdens, 'the Dublin system collapsed under its own weight' (Menéndez 2016, 397). With the routes increasingly shifting to the Western Balkan and Eastern Mediterranean (Hanewinkel 2015, 3; Pastore and Henry 2016, 53) as well as growing evidence that asylum seekers were systematically detained and subject to degrading treatment in Hungary, a by then top-recipient country of asylum seekers in the EU, the German government unilaterally suspended the implementation of the Dublin regulation for Syrians in August 2015, thereby admitting them into the national asylum system, irrespective of their first country of entry (Euractiv 2015).

Yet, about three weeks later, the German government, pressurized by an enormous rise in arrivals in Bavaria, to some extent reversed its course by temporarily reinstating border controls at the internal Schengen border with Austria. This provoked a chain reaction, pushing other countries along the Balkan route to also introduce border controls to circumvent becoming a 'dead end' where unwelcome refugees could get 'stranded', later followed by Sweden, Norway, Denmark and Belgium (European Commission n.d.). In October 2015, in response to the higher numbers of asylum seekers and disappointed with EU efforts to coordinate external border control, Hungary took the drastic measure of building a fence along its borders to Croatia and Serbia. This step allowed Hungary to shift migration flows to neighboring countries, particularly Slovenia (Trauner 2016, 320). Hence, these decisions, resulted in a closure of the

‘Western Balkans route’, compelling tens of thousands of people to get stuck in Greece where they often had to live under devastating conditions (Der Spiegel 2016; Weber 2016, 38).

### **The EU’s response to the crisis<sup>1</sup>**

Once the crisis was approaching its peak, in May 2015, the European Commission (2015a) presented its ‘European Agenda on Migration’ between two European Council emergency summits. Therein, the Commission outlined both immediate measures to be taken in response to the crisis in the Mediterranean and steps for the coming years for a better management of EU migration policy. Following an immediate first ‘implementation package’ adopted on 27 May 2015 (European Commission 2015b), in September of the same year, the European Commission (2015c) put forward comprehensive priority actions. After two and a half years of working on the agenda, the Commission (2017f) replenished its original approach by a roadmap in preparation of the European Council’s summit on migration on 14 December 2017 which set out concrete aims and a time-frame to achieve a comprehensive asylum policy. This section outlines the measures proposed since May 2015 and, to some extent, reviews their state of play/implementation, and, to a lesser extent, their appropriateness.

Given the European Commission’s (2017f, 2) insight that ‘only a comprehensive approach works’, referring to ‘combining a range of international and external policy tools’, the following analysis organizes measures by the dimension they concern. Although the measures are listed under separated sections, they are often closely interconnected and should thus be considered in context. The following analysis focuses on the following measures: (1) hotspots and emergency support for affected Member States, (2) relocation, (3) resettlement and other legal ways of entry, (4) the CEAS reform, (5) addressing irregular migration through border controls and countering smuggling and trafficking, (6) return and readmission, (7) the EU-Turkey Statement, (8) additional cooperation with third countries as well as (8) (trust) funds to support regions of origin and transit.

#### *Internal dimension of the response – Help for highly affected Member States: Hotspots and in-kind/financial support*

To tackle one of the crisis’s most urgent issues, the European Council decided in June 2015 to help those Member States facing the highest numbers of refugees at their external borders, i.e.

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<sup>1</sup> This section draws on Pauly, Bank, Blöser, Niemann and Zaun (2016) and on Niemann and Zaun (2018).

Greece and Italy, through the so-called ‘hotspot approach’. It seeks to support them by deploying Migration Management Support Teams that work in five key areas: creating functional hotspots, implementing the relocation decisions (see below), ensuring the effective return of migrants not entitled to international protection, improving border management and establishing sufficient and adequate reception capacity (European Commission 2015a; Statewatch 2015). To fulfil these tasks, the EU agencies Frontex, the European Asylum Support Office (EASO), Europol and Eurojust provide operational support on the ground in cooperation with local authorities. Meanwhile, other Member States are required to meet the demand for sufficient experts and equipment to support these Migration Management Support Teams.

The agencies’ tasks are supposed to be complementary to each other and they shall assist the Member States with the registration, identification, finger-printing and debriefing of asylum seekers as well as with return operations. The erection of Hotspot facilities in combination with the temporary relocation decisions of 2015 provided an incentive for Greece and Italy to properly register migrants as specified in the Eurodac regulation if they intended to profit from the relocation scheme (Trauner 2016, 320).

After substantially delayed construction and implementation, it seems that the hotspots have indeed delivered greater order and considerably improved the rates of registration and finger-printing. However, there has been a lot of criticism focusing on: (1) the lack of a specific legal act/framework regulating the hotspot approach, thus challenging the fundamental rights of refugees (Menéndez 2016, 408); (2) the approach’s failure to relieve the pressure from Greece and Italy as intended (ECRE et al. 2016), which may be partly due to Member States not employing enough experts for the Support Teams (European Commission 2016a); (3) the chaotic conditions: medical services, catering, security, accommodation has often been poor (Human Rights Watch 2016a); (4) inadequate, unfair or repressive measures, especially since the EU-Turkey Statement: many newly arrived refugees have been kept in prolonged detention without access to asylum procedures on which they received inaccurate information or have been swiftly returned (ECRE et al. 2016). As a result of this practice, several NGOs left camps, which reportedly led to a worsening of conditions in the hotspots. Four years into the launch of the approach, the situation – particularly on the Greek islands – has deteriorated blatantly due to heavy overcrowding and a serious lack of basic care provision. With suicidal tendencies and prostitution being the most revealing consequences, the head of the EU’s Fundamental Rights Agency, Michael O’Flaherty, described the situation as ‘the most worrying fundamental rights issue that we are confronting anywhere in the European Union’ (cited in Nielsen 2019b).

Apart from Italy and Greece, the EU has supported the Western Balkans outside the hotspot framework in ‘improving reception conditions and capacity for migrants and refugees and building capacities to strengthen migration management systems’ (Commission 2018b, 8). In addition to the hotspot approach, there are two alternative ways of supporting pressured states like Greece and Italy in financial and physical terms, regarding the latter, since 2015 more than a million blankets, mattresses, beds, tents, teams and equipment as well as shelter and medical supplies have been provided by the other Member States through the EU Civil Protection Mechanism. In financial terms, the ‘Asylum, Migration and Integration Fund’ (AMIF) and the ‘Internal Security Fund’ (ISF) provided funding for ‘migration management’. These two funds are replenished with an Emergency Support Instrument (ESI) meant to help refugees in urgent need in Greece via cooperation with UN agencies, NGOs and international organizations (ibid.). This way, as of January 2020, Greece, for instance, received around 2.23 billion Euro in emergency support since 2015 via AMIF (1.18 billion Euro), ISF (415.4 million Euro) and ESI (643.6 million Euro) (European Commission 2020).

On the whole, while the Commission’s budget proposal for the term 2021-2027 envisages almost a tripling of funding for migration and border management compared to the previous long-term period, reflecting a 75% increase in the funding initially foreseen for migration until 2020 (European Commission 2017f, 8), the institution also proposed the set-up of an Asylum and Migration Fund to strengthen the CEAS, legal migration and integration as well as to counter irregular migration and improve the effectiveness of return and readmission (European Commission 2018d, Art. 3).

#### *Internal dimension of the response – Relocation*

Another internal approach addresses the matter of responsibility sharing in the form of a ‘temporary emergency relocation scheme’ which refers to the transfer of persons deemed in need of international protection from one EU Member State to another. The background for introducing the relocation scheme is the de facto failure of the Dublin system to meet the challenges of a massive entrance of asylum seekers into the Union, putting disproportionate responsibility on countries with EU external borders, particularly Greece and Italy. After a first decision was adopted on 14 September by the Council (2015b) to relocate 40.000 asylum applicants from Italy and Greece to the other Member States, a second decision to relocate 120.000 protection seekers (50.400 from Greece, 15.600 from Italy and another 54.000 to be determined) within two years was taken on 22 September – this time based on a binding



distributing key taking into account population size (40%), total GDP (40%), the unemployment rate (10%) and the average number of asylum applications and resettlements per million inhabitants 2010-2014 (10%) (Council of the EU 2015c). The decisions taken in the Council were particularly controversial and several Central and Eastern European Member States (especially the Czech Republic, Hungary, Romania and Slovakia) opposed a *compulsory* temporary relocation scheme and were subsequently outvoted. Slovakia and Hungary even filed a lawsuit over the EU's mandatory asylum quotas at the European Court of Justice (ECJ) in November 2015, which the latter, however, dismissed (Rankin 2017).

The agreed scheme suffered from an implementation deficit, in part because of Member States' reluctance and in part due to operational and logistic difficulties. At its point of expiration in September 2017, about 27,700 applicants had been relocated in total (European Commission 2017c, 2). As thousands of eligible persons still waited for their transfer, however, the Commission urged the Member States to continue their efforts on a voluntary basis with financial support by the Union. As a result, by October 2019, 96% of eligible persons have been relocated, summing up to 34,690 asylum seekers (European Commission 2019g, 1). Yet, this figure only amounts to 35.3% of the 98,255 places legally dedicated to Italy and Greece. The discrepancy results, inter alia, from the narrow definition of eligibility: only asylum seekers from countries with an EU-wide recognition rate of 75% or higher qualified for the scheme which made it inapplicable to large numbers of applicants, particularly in Italy (Costello et al. 2017, 17, 20). According to the EU auditors, 'at least 445,000 Eritreans, Iraqis and Syrians may have been potentially eligible in Greece alone' (Nielsen 2019d) – yet, lacking capacities of the Greek and Italian authorities, the artificial deadline of the EU-Turkey Statement and mistrust on many refugees' part prevented their registration for the scheme. As a result, those two countries continued to be under pressure.

Furthermore, Member States differed in their determination and the actual efforts they made to meet their legal obligations. As Poland, the Czech Republic and Hungary had by then either not relocated any single asylum seeker or had stopped pledging for almost a year, the Commission (2017b) launched an infringement procedure against these countries in June 2017. Critics further contend that the scheme did not adequately include asylum seekers' preferences as well as their economic capability and personal/family circumstances when deciding on the state of relocation (Ekathimerini 2015; The Guardian 2016). Similar to the Dublin system, this distribution mechanism expected asylum systems across the EU to offer comparable protection standards and similar access to welfare. However, case law from both the European Court of

Justice (2011) and the European Court of Human Rights (2014) has demonstrated that some Member States, particularly in Southern Europe, failed to provide even basic standards.

The temporary emergency relocation scheme diverted from the ‘first-country-of-entry’ logic of the current Dublin regulation and might be seen as a first effort by the EU towards sharing the responsibility for refugees among its members. Yet, in view of its temporary nature, it failed to establish a longer-term sustainable alternative to Dublin. Thus, in December 2015 deliberations began in the Council on a permanent relocation scheme (European Commission 2015d; Zaun 2017). Yet, in early 2016 the talks were aborted as opposition prevailed.

As an alternative, the Commission (2016b) launched a proposal for a ‘Dublin plus’ regulation that would maintain existing rules, but would include a ‘corrective fairness mechanism’, as a result of which refugees could be redistributed in times of crisis to take the pressure off external border states. The European Council (2018a) suggested that those who are saved, according to international law, should be transferred to controlled centers set up in Member States only on a voluntary basis. The emphasis of voluntary actions renders this vision improbable and prompts the question of which country is willing to build these centers and accept refugees whose asylum claims were found admissible.

A potential solution seemed to crystalize after harsh negotiations informed by the imperfection of the temporary relocation scheme and revolving around different perceptions of solidarity and diverging positions on obligations vs. voluntary contributions when it comes to the allocation of asylum seekers (European Commission 2017f, 6; Ministry of the Interior of the Republic of Poland 2016). A proposal by the Bulgarian Presidency called for a dynamic model distinguishing ‘three phases of the crisis mechanism: normal circumstances, challenging circumstances and severe crises’ (Council of the EU 2018a, para. 21) associated with different measures taken and monitored by different EU institutions (see *ibid.*, annex II). In order to relieve EU countries with external borders through solidarity, financial as well as expert, technical and operational support would be provided automatically under harshening circumstances and the external dimension would be addressed by cooperating with third countries of origin, transit or first asylum. Notably, the proposal intends to replenish these measures with ‘targeted allocation primarily on a voluntary basis, with strong incentives, and, as a measure of last resort, on the basis of a Council Implementing Decision as an effective guarantee of triggering allocation’ (*ibid.*, para. 24). In other words, the Commission’s more ambitious vision of introducing an automatically triggered relocation mechanism was abandoned in favor of Member States’ leeway and willingness, thereby leaving scope for

national resistance. Insistence on the first-country-of-entry principle would denote that external border states would continue to be allocated the responsibility for asylum applicants, further putting their authoritative and logistical capacities under strain. Given strict registration orders under the new Eurodac regulation and the strengthened focus on countering ‘secondary movements’ (cf. European Council 2018a, para. 11), Greece and Italy would no longer be able to let migrants pass on to other countries. As a result, a further crisis would be likely to occur, triggering first the mode of voluntary relocation and ultimately a binding Council decision.

With no compromise reached on the basis of the Bulgarian model and despite new dynamics under the Finnish and Croatian Presidencies, by early 2020 no visible progress has been made for arriving at a just allocation of responsibility among states and thus for effective protection of asylum seekers and a guarantee of their right under EU law.

#### *Interdimensional response – Resettlement and alternative legal access to the EU*

Resettlement refers to the process of admitting displaced people in need of protection from outside the EU to the Member States to prevent refugees from taking dangerous paths across the sea or risking their lives by exposing themselves to smugglers. Prior to resettlement under the EU Turkey Statement which resulted in a transfer of roughly 21,000 Syrians by March 2019 (Council of the EU 2019b), the heads of state and government agreed on a two-year European resettlement scheme concerning 20,000 persons. By March 2019 over 24,000 refugees have found protection in Europe under this scheme (European Commission 2019e), yet by September 2017 nine Member States had not contributed (European Commission 2017c, 7). In fact, each Member State and some associated states had agreed to voluntarily resettle a specific number of people in need through national and multilateral schemes (Council of the EU 2015a). This process has led to substantial differences between the Member States concerning selection criteria, length of procedures and the number of places. Thus, in July 2016, the European Commission (2016d) proposed a permanent framework with a unified procedure for resettlement across the EU (see below).

As the first ad hoc program of July 2015 was only set up for two years and resettlement from Turkey was limited in scope, the Commission (2017f, 9) urged Member States in its December 2017 roadmap to bridge the transition to the Union Resettlement Framework by asking Member States to pledge 50,000 places by February 2018 and implementing them by May 2019 with a 50% target in October 2018. With 41,300 persons actually resettled under the scheme by December 2019, Member States have followed the Commission’s call by collectively pledging

to resettle another 30,000 refugees in 2020 (European Commission 2019e). These resettlements were meant to focus on transfers from Turkey under the EU-Turkey Statement, Lebanon and Jordan as well as Libya, Niger, Chad, Egypt, Ethiopia and Sudan ‘to contribute to the stabilization of the situation in the central Mediterranean’ (European Commission 2017d., art. 3c). In particular, the EU started to cooperate with the United Nations High Commissioner for Refugees (UNHCR) on the financial basis of the EU Trust Fund for Africa to evacuate refugees from Libya to Niger and Rwanda under the ‘Emergency Transit Mechanism’ (ETM) in order to resettle them to European countries (European Commission 2019e).

For refugees, the only legal alternative to enter Europe besides resettlement has been family reunification so far. Yet, the Commission also launched a ‘study on the feasibility and added value of sponsorship schemes as a possible pathway to safe channels of admission to the EU’ (ibid., 18). Furthermore, the Commission invited Member States to launch pilot projects on legal economic migration with African partner countries under the Mobility Partnership Facility (ibid.). This instrument, however, seems to be mainly tailored to address labor needs (European Commission 2018h). Similarly, the EU offers a number of (other) legal (temporary) entry possibilities for highly skilled and seasonal workers, students and researchers (Council of the EU 2018c), which, however, hardly apply to people fleeing persecution.

### *Internal dimension of the response – the CEAS reform*

While the first generation of EU asylum legislation merely arrived at common minimum standards, the second generation of EU laws in this area did not manage to go significantly beyond the status quo ante (Ripoll Servent and Trauner 2014; Den Heijer et al. 2016). In the wake of the crisis, it became clear that the lack of harmonization of asylum legislation had (significantly) contributed to the crisis, not least in terms of prompting diverging migratory pressures across the EU. Therefore, the Commission proposed seven closely interlinked legislative reforms on 4 May and 13 July 2016 respectively. With (1) the new Dublin IV regulation at their heart, these proposals aimed at (2) establishing a European Union Agency for Asylum, (3) turning the Asylum Procedures and (4) Qualification Directives into enforced regulations, (5) recasting the Reception Conditions Directive, (6) deciding on a reinforced Eurodac regulation and (7) setting up a Union Resettlement Framework. These reform proposals aimed at ‘limiting secondary movements and making asylum procedures more efficient’ (Council of the EU 2018a, para. 14) by striking a balance between responsibility and solidarity as well as by harmonizing provisions concerning procedure, reception and

qualification as to avoid incentives to head for a certain Member State with more favorable conditions. These proposals were joined by two additional initiatives on 12 September 2018: (8) besides the strengthened EBCG, the Commission presented its proposal for (9) a revised Return Directive regarding which the Council (2019a) partially agreed on a common negotiating position in June 2019. Inter alia, the latter seeks to render procedures faster and clearer, enforce cooperation by concerned migrants, facilitate detention for security reasons and enable returns to ‘safe third countries’ if necessary.

While controversial discussions in the Council have prevented substantial progress regarding the Dublin reform (cf. section relocation above) and the planned Asylum Procedures Directive, headway has been made on most of the other legislative acts by early 2020: The principal consensus on the Eurodac Regulation between the co-legislators will allow for the collection of more data to be accessed in an easier way by law enforcement authorities. The adoption of a new EU Asylum Agency, intended to guarantee uniform assessments of asylum applications and technically/operationally assist Member States, hinges on progress on the remaining CEAS reform proposals. Both, the debate on the Qualifications Regulation and the Reception Conditions Directive, have reached the negotiation stage between Council and Parliament. They respectively seek to redefine the common criteria for assessing asylum applications and set common standards for reception (including the right to work no later than nine months after applying for protection and guaranteed education and care for minors, while preventing secondary movements by means of area restrictions). Trilogue discussions have resulted in provisional compromise texts, which were, however, not endorsed by the Council, whose amendments were subsequently unacceptable to the European Parliament. As a result, trilogue negotiations have been on hold since. Finally, the EU Resettlement Framework shall determine the maximum number of refugees to be admitted, how it is divided up among Member States and which regions shall be given priority. Similar to the Reception Conditions Directive and the Qualification Regulation, trialogue negotiations are currently stalled.

As for the Asylum Procedures Directive, part of the controversy revolves around a common list of safe third countries and safe countries of origin. The latter instrument is used by Member States to define countries which, based on their stable democratic system and compliance with international human-rights treaties, are presumed safe to live in. While the ‘safe country of origin’ concept allows for an accelerated examination procedure, the application of ‘safe third countries’ and ‘first countries of asylum’ may result in declaring an application inadmissible (Council of the EU 2018a, para. 15). Critics suggested that the proposed regulation would in

practice tend to considerably limit asylum seekers' rights to appeal a negative decision and to lawfully stay in the country where an application is lodged during a pending appeal. A standardized EU list might consequently lead to harmonization on the lowest common denominator in protection standards (Amnesty International 2015).

*Interdimensional response – preventing irregular migration through border controls; trafficking and smuggling*

Since the Commission's Agenda on Migration has identified the fight against the business of smuggling and trafficking in human beings as well as against illegal migration as one of its priorities, the EU has started several activities. From its summit on 18 October 2018 the European Council (2018b, para. 3) concluded that

The fight against people-smuggling networks needs to be stepped up: work with third countries on investigating, apprehending and prosecuting smugglers and traffickers should be intensified, with a view to preventing people from embarking on perilous journeys.

To ensure better coordination among EU Member States, a European Migrant Smuggling Centre was established at Europol in February 2019. As regards the sea, the EU is operating three main naval missions (in addition to assisting operations like Hera, Indalo and Minerva): Poseidon, Themis (formerly Triton) and Sophia. Since June 2015, the EU has tripled its budget on the already existent missions Triton (since 2014) and Poseidon (since 2006), thus reverting the cuts from the above-mentioned abolition of 'Mare Nostrum' (Menéndez 2016, 397). Poseidon and Themis (replacing operation Triton in February 2018) both focus on border control and surveillance, with Themis operating in the Central Mediterranean and Poseidon along the Greek sea borders with Turkey (Council of the EU 2018b). Since providing help in emergencies is one of the operations' objectives, many lives of refugees in distress at sea could be saved – 250,000 by Triton/Themis and another 82,000 by Poseidon between January 2016 and June 2018. Notably, migrants saved under operation Themis now have to be disembarked at the closest harbor, rather than only on Italian territory (Deutsche Welle 2018). However, although both areas of operation have been heavily expanded since June 2015, Themis and Poseidon only intervene in situations near the EU's external borders.

The third naval mission is EUNAVFOR MED operation Sophia launched in June 2015. It originally had two main goals: disrupting trafficking and smuggling and preventing further loss of life in the Mediterranean high seas. In order to achieve them, it seeks to identify, seize and dispose of vessels used by migrant smugglers or traffickers. By the end of June 2018, the

mission saved almost 45,000 lives, while arresting about 150 smugglers and destroying roughly 550 boats (Council of the EU 2018b).

Starting in August 2016, the mission's mandate was extended inter alia to training the Libyan coast guard and navy (Council of the EU 2016). While, according to the International Organisation for Migration (IOM), the Libyan authorities have presumably saved almost 5,000 migrants in the first trimester of 2018 (European Commission 2018b, 3), reports of refugees being abused and maltreated by the Libyan coast guard (Campbell 2017; CNN n.d.; Nielsen 2017b), which is accused of partly being involved in smuggling (Campbell 2017), as well as cases of interference with civil rescue operators like Seawatch in which several people drowned (Forensic Oceanography 2018, 87-99) caused the EU to set up a monitoring system of the Libyan coast guard – which, however, basically consists of self-reporting (Nielsen 2017a). Yet, the Commission (2018b, 11-12) concluded from the first monitoring report in March 2018 that ‘capacity and professionalism are progressing but [...] effective monitoring could further benefit from a continued presence of EUNAVFORMED personnel in the operation centers of the Libyan Coast Guard’. With regard to its support of Libyan authorities, the EU is accused of using the Libyan coast guard to ‘operate *refoulement by proxy*’ on its own behalf ‘with full knowledge of the Libyan Coast Guard’s violent behavior and the detention and inhumane treatment that awaited migrants upon being returned to Syria’ (Forensic Oceanography 2018, 7; see also Amnesty International 2017). According to Campbell (2017), the current cooperation resembles operations under the EU-Turkey Statement and the former Hera joint operation with the Senegalese and Mauritanian coast guards in ‘using the coast guards of bordering countries to do what European coast guards can’t, that is, physically prevent people from getting to Europe’. Despite these concerns, Sophia’s mandate was extended until 31 March 2020 in September 2019, while naval assets were temporarily suspended since.

Over time a debate has evolved on how to proceed with irregular migrants rescued at sea. The discussion resulted in plans for external disembarkation platforms (European Council 2018a, para 5) – in addition to European processing centers. The Commission (2018f, 3) finds that a ‘regional arrangement could function by identifying partner countries and working with the UNHCR and IOM to ensure those disembarked can be channeled to existing EU resettlement schemes if they are in need of protection or into the return and reintegration programmes run by the IOM if they are not.’ In fact, the Commission (2018g, 2) was clear that, in order to avoid creating a pull factor, ‘resettlement possibilities will not be available to all disembarked persons in need of international protection and points of reception should be established as far away as

possible from points of irregular departure'. This approach risks to severely undermine the Union's identity of being a defender of human rights and international law. Stefanov (2018) questions the overall approach of establishing refugee centers in third states by underlining the legal and jurisdictional uncertainty as well as the difficulty to ensure the centers' security and maintain control on external ground. In addition, this approach practically depends on third countries' agreement which they are likely to grant only at a considerable amount of concessions.

Meanwhile, during Lega Nord's populist coalition government, Italy closed its havens to refugees rescued at sea by NGOs, thereby putting them at high risk. Attempts by France, Germany, Italy and Malta to establish a fast-track plan for disembarking and relocating these migrants have received insufficient support by other Member States, thus preventing a de facto change to the distribution of responsibilities under the Dublin Regulation (Nielsen 2019a).

Due to the limited capacities and competences of Frontex to 'protect' the EU's external borders, the Commission launched a proposal for a European Border and Coast Guard Agency (EBCG) in December 2015 that was negotiated rather swiftly and entered into force in October 2016. The EBCG goes significantly beyond the former Frontex due to its enhanced resources, enlarged mandate and increased independence vis-à-vis Member States. For instance, it carries out regular mandatory vulnerability assessments of Member States' border management capabilities. Where deficiencies are discovered and not acted upon by Member States, the EBCG's 'right to intervene' may be invoked by a qualified majority in the Council to dispatch border guards to a Member State, even against its will. Although some noticeably integrative steps have been taken (Niemann and Speyer 2017), critics have held that the EBCG fails to establish a common European border management, inter alia since substantial responsibilities (e.g. the implementation of border controls) have been left to the Member States (Carrera and den Hertog 2016; de Bruycker 2016).

In meetings its tasks, the agency has long been hampered by significant shortfalls in personnel and assets to be provided by the Member States (European Commission 2017f, 9, 2018b, 17). In November 2019, the Council adopted a revised regulation to better equip the EBCG – for example through a standing corps of up to 10,000 operational staff – and strengthening its mandate regarding return and border control: besides collecting information and travel documents as well as financing return operations, the agency also gained the competence to deploy its forces beyond EU territory/and in neighboring countries (European Commission 2019d).



Apart from operating at sea, the EU has increasingly put a general emphasis on border control (or ‘border protection’ as it is often framed), arguing that this step is necessary to ensure the functioning of the common Area of Freedom, Security and Justice. Specifically, Frontex assists countries like Hungary and Croatia, inter alia by deploying officers and border surveillance equipment. Such controls, paired with a lack of legal ways of access, however, entrain serious consequences: with the alleged closure of the Western Balkans route being unable to prevent forced migration and continued efforts by refugees and other migrants to reach EU territory, these border controls actively prevent access to the EU’s protective system. As a consequence, the case of the Bosnian camp of Vučjak has become an infamous example of the inhumane conditions migrants face when stranding in countries with insufficient supporting capabilities. This fact alone is severely aggravated by reproaches of systematic illegal push backs conducted, inter alia, by the Croatian border police (Shaun 2019).

#### *Interdimensional response – Return and readmission*

While returns are considered a vital element to the functioning of the CEAS by European leaders, they still tend to be dysfunctional with a decreasing return rate from 46% in 2016 to 37% in 2017, indicating that return decisions are often not implemented which is partly due to a lack of cooperation by states of origin (European Commission 2018b, 14-15). Returns are legally based on the EU Return Directive and rely on readmission agreements – whereby third countries agree to readmit both their own nationals and nationals of other countries that illegally reside in the EU. By the summer of 2019 the EU had concluded 23 of such readmission agreements (European Commission 2019f).

European leader’s agreed that regarding external border control and return of irregular migrants, ‘the supportive role of Frontex, including in the cooperation with third countries, should be further strengthened through increased resources and an enhanced mandate’ (European Council 2018a, para. 10). The agency comprises at least three pools of return specialists, escorts and monitors which can be deployed at Member States’ request (European Commission 2017e, 1). Furthermore, the set-up of an autonomous return department and the development of individual national operational plans and the advancement of ‘pilot projects to develop and test innovative solutions for joint management of returns’ (ibid., 2) was intended to further enhance the efficiency of European and national return policy. Meanwhile, the role of the EBCG in operating returns was subject to widespread criticism in view of reports on insufficient internal monitoring of misconduct (Nielsen & Fotiadis 2019).

With regard to repeated requests by the European Council and Council to render return more efficient, in September 2018, the Commission proposed a new Return Directive to 'reduce the length of return procedures, secure a better link between asylum and return procedures and ensure a more effective use of measures to prevent absconding' (European Commission 2018i, 2). In June 2019, the Justice and Home Affairs Council agreed on several amendments to the proposal, including extending the maximum duration of entry-bans from five to ten years, and rules allowing Member States to decide that costs related to removal and detention of returnees are borne by the returnees themselves. The European Parliament has not reached a common position by the end of 2019.

Over the years, the EU's determination to count more on return in a context of general stronger demands against third parties in controlling migration has remarkably grown. During his hearings in October 2019, the responsible Commissioner, Margaritis Schinas, revealed that besides rendering returns more efficient through a harmonized set of rules, he aims to conclude further readmission agreements (Nielsen 2019e). To this aim, in an amendment to the Visa Code Regulation adopted in May 2019, the EU facilitated the use of visa policies as leverage against third countries to increase their cooperation on readmission (European Parliament 2019).

#### *External dimension of the response – EU-Turkey Statement*

Confronted with the relative failure of the internal measures taken to resolve the refugee crisis, the EU increasingly tried to find additional external solutions. Building on the 'EU-Turkey Joint Action Plan' activated on 29 November 2015 (European Council 2015), the 'EU-Turkey Statement' of 18 March 2016 (European Council 2016) is at the heart of this strategy (Slominski and Trauner 2017). It contains the following main aspects: (1) as of 20 March 2016 new irregular migrants entering Greece through Turkey have been taken back to Turkey. This applies to all migrants who have either not applied for asylum or whose applications have been declared 'inadmissible' or 'unfounded'. (2) A 1:1 resettlement scheme: for every Syrian returned to Turkey, another Syrian already registered in Turkey is resettled to the EU. The maximum number of refugees who would be returned through this mechanism is 72,000. (3) Turkey promised to take the necessary measures to stop new sea or land routes to the EU. (4) In return, the EU would grant Turkey (i) visa liberalization, provided that Turkey would take the necessary steps to fulfil the remaining requirements, (ii) disbursement of 3 billion Euros under the 'Facility for Refugees in Turkey' fund and an additional funding of 3 billion Euros,

which should both be spent on specific projects aiming to help Syrian refugees in Turkey, (iii) further negotiations and work on the upgrading of the Customs Union and (iv) the resumption of Turkey's accession negotiations to the Union.

Observers have credited the EU-Turkey Statement for the considerable reduction of refugees entering Greece via Turkey. In fact, arrivals in Greece dropped by 98% between 2015 and 2016 and registered deaths and missing persons in the Aegean Sea went down by 94%, a trend which continued in the following years (European Commission 2019c). Yet, the relative impact of the EU-Turkey Statement has been questioned because it concurred with the closure of the Western Balkans route, reporting on poor reception conditions in Greece and the introduction of internal border checks by several EU countries (de Marcilly and Garde 2016, 6; Koenig and Walter-Franke 2017, 4). Moreover, monthly arrivals in Greece had been declining prior to the EU-Turkey Statement already (Spijkerboer 2016), possibly induced by the approaching winter and the deteriorating weather conditions. Furthermore, the low number of returns (2,441) under the EU-Turkey Statement until March 2019 show that it did not have an impact of scale (European Commission 2019c). Yet, the projects funded under the facility have actually contributed to ameliorating the living conditions of Syrian refugees in Turkey, *inter alia* by granting (partial) access to education, healthcare, vaccinations and monthly cash transfers (*ibid.*) – although EU Member States only agreed in June 2018 on how to fund the second tranche.

Still, many criticisms can be levelled against the EU-Turkey Agreement. (1) Doubts have been raised whether asylum protection in Turkey is in accordance with international standards. Claims of insufficient capacity and experience of the Turkish authorities and the judiciary (Ulusoy 2016) contrast with the UNHCR (n.d., 1) evaluation that Turkey now 'provides protection and assistance for asylum seekers and refugees, regardless of the country of origin', referring to the Law on Foreigners and International Protection. In addition, Human Rights Watch (2016b) published reports claiming that Turkish border guards shot at migrants trying to cross the border and Amnesty International (2016a) reported that large numbers of Syrians have been removed to Syria. (2) The legal obstacles of taking refugees back to Turkey were partly solved by declaring Turkey a safe third country, a practice that can be considered problematic and may now be seriously disputed on the basis of the steps taken after the failed coup in July 2016 (Menéndez 2016, 410). (3) By making the deal with Turkey such a central element of the EU response to the crisis, the Union has risked to become considerably dependent on Turkey and thus susceptible to blackmail by a leader with clear authoritarian leanings – a fear that has

materialized with President Erdoğan using migrants repeatedly as a bargaining chip after his military offensive on north-eastern Syria started in October 2019 (Nielsen 2019c).

(4) The situation in Greece is not covered coherently: the agreement does not involve refugees who entered Greece before 20 March 2016 – more than 46,000 migrants according to Greek estimates at the time of this deadline. In fact, the return arrangement did not lead to an effective relief of Greece since many refugees now directly applied for asylum in Greece rather than other preferred countries of destination in order to avoid being returned (Collett 2016; Human Rights Watch 2016c). Therefore, the share of returns in 2016 only represented a small fraction of total arrivals (*Alarm over effectiveness of EU-Turkey refugee deal grows in Brussels* 2016).

(5) The speed of resettlement has been slow. Between April 2016 and March 2017 3,656 Syrians were resettled from Turkey to the EU. At this pace, it would have taken the EU around 13 years to resettle all Syrians it promised to (Koenig and Walter-Franke 2017, 5). (6) The arrangement fails to meet its aim of creating safe legal pathways to Europe because places were taken from promises already made under existing resettlement and relocation programs (Peers 2016). (7) The ‘EU-Turkey statement’ is not legally binding and has not been adopted as part of the EU architecture. Thus, EU institutions cannot be held accountable for it which evades the usual checks and balances present in the EU framework, such as scrutiny of the ECJ (Carrera et al. 2017). The statement became a (potential) blueprint for similar deals. (8) The closure of one route is unlikely to prevent migration, but rather to invite the usage of even more dangerous paths to Europe. Hence, the EU-Turkey cooperation turns out to be a band-aid solution that is displacing the problem (Collett 2016) and does not offer the necessary protection and integration to all persons in need – especially in a country already hosting millions of refugees (Atak 2015), while curtailing the right to seek asylum in Europe (Amnesty International 2016b; Human Rights Watch 2016c).

#### *External dimension of the response – Additional cooperation with third countries*

From the EU’s point of view, migration and asylum cannot merely be dealt with once migrants have reached European ground, but must also be addressed by countries of transit and of origin. On 18 October 2018, the European Council (2018b, para. 2) again emphasized ‘the importance of further preventing illegal migration and of strengthening cooperation with countries of origin and transit, particularly in North Africa, as part of a broader partnership’, including Egypt and the Arab League. As the route across the Central Mediterranean towards Italy became the most frequented one with the second half of 2016, in February 2017, the European Council (2017)

decided on its Malta summit to reduce irregular migration and to cooperate with Libya for this purpose. In addition, in November 2017, the EU, the African Union and UNHCR set up a joint migration task force to strengthen their cooperation concerning migration in Africa and especially Libya (Council of the EU 2018d). Yet, particularly regarding the latter, the Commission (2019a, 2) admitted in March 2019 that ‘continued efforts are needed to put an end to the untenable situation on the ground’ – an objective which it intended to meet through continued evacuation from detention centers, assistance at disembarkation, coordinated resettlement and facilitating voluntary returns. With crossings via the Western Mediterranean to Spain becoming the most frequented route in 2018, the EU decided to scale up its cooperation with Morocco – i.e. to encourage improvements in border control through a 140 million Euro program, finalize a readmission agreement and expand development support within the framework of the North African Window of the EU Emergency Trust Fund for Africa (see below) (European Commission 2019a).

In June 2016, the European Commission (2016c, 1) announced a New Partnership Framework (Migration Compacts) ‘with key third countries of origin and transit using a mix of incentives tailored to produce concrete results in stemming the flow of irregular migrants and helping third countries’ development in order to address root causes of irregular migration’. Besides ‘addressing root causes’, these partnerships also focus on return and readmission as well as legal ways of migration and countering trafficking and smuggling while saving lives at sea (ibid.). Financially, the framework builds on the EU Trust Fund for Africa and the External Investment Plan. The following countries were proposed as priority partners: Mali, Niger, Ethiopia, Lebanon, Senegal, Nigeria and Jordan. Partnerships add to the Global Approach on Migration and Mobility, the established Rabat, Khartoum and Budapest Processes and Regional Development and Protection Programmes; they build upon the European Neighbourhood Policy review 2015, the Western Balkans Leaders’ meeting in October 2015, the Valletta Summit on migration one month later, the EU-Turkey Statement as well as on naval operations Sophia, Triton/Themis and Poseidon (ibid., 3).

One and a half years after its launch, concrete implementation had started with Mali, Nigeria, Niger, Senegal and Ethiopia, while further work continued with other countries in North-West Africa and Asia (European Commission 2017i, 1): as a result, (1) political dialogue has been strengthened via regular meetings and the deployment of twelve migration liaison officers as well as cooperation with EBCG and Europol. (2) A Joint Investigation Team was established with Niger to combat smuggling and trafficking – functioning as a potential role model for other

countries. Moreover, local income support has provided an alternative to earning money through smuggling in the north of Niger and the EU continued to promote the G5 Sahel Joint Force with 147 million Euro. (3) Five transit centers offering assistance, medical care and psychological support were created in Niger in cooperation with IOM. Protection was also provided for migrants in Libya and voluntary returns are funded by the Commission. (4) Improvement of 'migration management systems' was achieved through IT support and the monitoring of migration and population (ibid., 2). (5) Overall, the EU aimed to create 188,000 new jobs in Ethiopia, Kenya, Somalia, South Sudan, West Africa and the Sahel. Besides, more than 1.6 million people started to receive basic social services.

Until May 2018, additional progress was achieved from the EU's perspective: (1) The Commission urges the Libyan authorities, inter alia, to comply with its commitments to facilitate humanitarian evacuations through exit visas, granting access to detained refugees, overcoming the current conditions in these detention centers and fully register all disembarked migrants (European Commission 2018b, 11). (2) Cooperation has further intensified with the African partners Ethiopia, Guinea, The Gambia, Côte d'Ivoire, Egypt and Nigeria in terms of dialogue and implementation work, including border management, smuggling and readmission. (3) As for the Horn of Africa, the Regional Operational Centre for the Khartoum Process in order to strengthen joint investigations on smuggling has advanced, while government officials have been trained on border management and migrant rights under the 'Better Migration Management Programme'. (4) Morocco continued to cooperate with Spain on border surveillance (ibid., 14).

Generally, these partnerships ought to be situated in the broader context of the EU's partnership with Africa which was again expressed at the fifth summit with the African Union on 29/30 November 2017. Regarding the focus of migration and mobility, the Unions reinforced their joint commitment to protecting migrants in Libya and on associated routes through their joint task force with UNHCR (European Commission 2017h, 3). Furthermore, by the end of 2017, the EU had participated in 14 Peace Support Operations in Africa, engaging in peace building, conflict prevention and training of military, police and judicial personnel (ibid., 4). Missions in Niger and Mali in combination with the EU Trust Fund for Africa assisted the Nigerien authorities and IOM in saving more than 1,100 migrants in 2017 (European Commission 2017g, 2).

Apart from Africa, other regions of cooperation include Asian and Western Balkan countries with whom the EU has signed readmission agreements. European Heads of State and

Government concluded from their summit on 28 June 2018 that ‘[c]ooperation with, and support for, partners in the Western Balkans region remain key to exchange information on migratory flows, prevent illegal migration, increase the capacities for border protection and improve return and readmission procedures.’ (European Council 2018a, para. 4). Since the Western Balkans meeting on 25 October 2015, exchange has continued via weekly and bi-weekly video conferences including EU agencies, UNHCR and IOM (European Commission 2018c, 1).

*External dimension of the response – (Trust) funds supporting countries of origin and neighboring regions*

To diminish further migration, the EU has built up several trust funds as an add-on to the external policy instruments of the EU that pool a substantial amount of financial aid from different sources. Currently, apart from the Facility for Refugees in Turkey described above, there are four main funds in action in response to the refugee crisis:

(1) The EU Regional Trust Fund in Response to the Syrian Crisis, the ‘Madad’ Fund, has been established in December 2014 to meet the regional challenges of the Syrian crisis; it provides aid for Syrian refugees within Syria and neighboring countries, namely Iraq, Jordan, Lebanon, Egypt, Turkey and the Western Balkans. More specifically, the Madad Fund aims to help 1.5 million Syrian refugees and also internally displaced persons in Iraq by providing basic necessities such as health care, education, child protection, water infrastructure as well as improved economic opportunities and social inclusion (European Commission 2018e). It wants to achieve both providing the youth with future prospects and alleviate pressure on host countries. By June 2018, contributions from 22 EU Member States, Turkey and the EU budget amounted to 1.5 billion Euro and 920 million Euro had by then been contracted in almost 50 projects (ibid.).

(2) The Bêkou Trust Fund for the Central African Republic, established in July 2014, is to fund post-conflict and transition-related activities, such as health, employment or refugee support. By the end of 2017, pledges have risen to 236 million and overall 149.3 million Euro have been allocated for a total of 15 projects which concentrate on rural development, infrastructure, water supply and sanitary coverage as well as support for displaced persons (European Commission 2017j, 5-6, 27).

(3) The Emergency Trust Fund for Africa, established at the Valletta Summit in November 2015, seeks to address the root causes of destabilization, forced displacement and irregular migration as well as provide improved access to basic social services and strengthen the economy and employment (Council of the EU 2018d). It is subdivided into three windows covering beneficiaries from the Sahel region/Lake Chad, the Horn of Africa and the North of Africa. Programs prioritize economic and equal opportunities, resilience, security and development (European Commission 2017a). By March 2019, 188 programs and €3.6 billion have been deployed to improve conditions for would-be migrants in African countries of origin and transit (European Commission 2019b).

Taking the example and special focus of Libya, the EU cooperates with IOM and UNHCR to help refugees and internally displaced persons at disembarkation points, inside and outside detention centers as well as in host communities (European Commission 2018a, 1). Given numerous reports of massive abuse and exploitation of migrants in Libya (Amnesty International 2017), in April 2017, a new 48 million Euro package for improving the living conditions of migrants – also in detention centers – was adopted, followed by a 50 million Euro program in support of migrants and host communities in March 2018 (Council of the EU 2018d). Notably, according programs managed to achieve the following results by July 2018: direct assistance (non-food items and hygiene kits) for 52,200 refugees and vulnerable migrants, medical assistance for 26,000, basic support for 3,500 Libyan families and medical equipment for four Primary Health Care Centers (European Commission 2018a, 1). The EU also undertakes a joint effort with UNICEF for the release of children from detention centers and supply of their basic needs (European Commission 2018b, 10). Yet, while Libyan municipalities are stabilized via the rehabilitation of schools, hospitals, nurseries and police stations as well as strengthening of water, sanitation and social infrastructure, other programs also focus on the training of Libyan authorities on human rights and ‘integrated border management’: as mentioned above, the Libyan coast guard receives training and important equipment through this fund and pilot activities are conducted ‘to increase capacity for the Southern border surveillance in the area of Ghât’ (European Commission 2018a, 2).

(4) Following a Commission proposal in September 2016, the co-legislators swiftly agreed within less than a year to establish an External Investment Plan (EIP) aiming to ‘use EU funds to leverage private investment into the realm of development in Africa and other parts of the EU’s neighbourhood’ (European Commission 2017f, appendix 1). According to the Commission (2017h, 2), ‘[s]uch investments will mainly be targeted on improving social and



economic infrastructure, for example municipal infrastructure and proximity services, on providing support to small and medium-sized enterprises, and on microfinance and job creation projects, in particular for young people'. In September 2017, a new regulation created the European Fund for Sustainable Development (EFSD) as the main channel to operationalize the EIP (ibid.). By March 2019, €3.7 billion had been allocated to EIP projects, helping to create jobs and growth in the European Neighbourhood and Africa (Commission 2019b).

Den Hertog (2016, 13) raises suspicion that the actual arrangements and priorities under these funds might rather serve the EU's short-term security interests. Similarly, a dedicated CONCORD study (2018, 6) on the impact of the EU Trust Fund for Africa (EUTF) and Migration Compacts raises 'concern that the EUTF is being used as a political tool focusing on quick-fix projects' and 'contribut[ing] unintentionally to inhumane treatment of migrants and refugees, as in the case of Libya'.

## **Conclusion**

The EU's overall response to the crisis has perhaps been more substantial and comprehensive than commonly perceived, given the wide range of internal and external policy measures. Yet, since the overall issue has deeply divided the European Union and its societies, proper internal solutions and particularly a sustainable restructuring of responsibility among Member States have not materialized. The increasing securitization and externalization of responsibilities under international law, while decreasing migration flows in the short run, also consciously deny access to protection for many people fleeing persecution and violent conflict. In this way, the EU not only backs away from its global share of responsibility, but also accepts and, in fact, nurtures suffering, maltreatment and exploitation of refugees. The arguments of 'fighting irregular migration' to retain control and prevent refugees from falling prey to smugglers and human traffickers lacks credibility, considering the insufficient provision of actual legal access for asylum seekers as resettlement is only offered to a fraction of those in need. While cooperation with countries of origin to create new opportunities and security at home make for a good start, the increased application of conditionality towards third countries to ensure their cooperation on readmission and 'border management' is but an evasive maneuver. Overall, security-oriented measures have come to dominate humanitarian considerations. The Commission is likely to follow this course with its new Pact for Asylum and Migration to be presented in spring 2020, just like the Finnish and Croatian Council Presidencies have done before (Agence Europe 2020; Council of the EU 2019b).

As a result, the EU still does not seem well prepared for another inflow of refugees and other migrants as long as no fair internal compromise based on solidarity and international responsibility has been reached. While a Common European Asylum System aiming at substantial harmonization among Member States, e.g. on the qualification, reception and redistribution of asylum seekers as well as on asylum procedures, would considerably contribute to legal certainty and clear/unitary rights (and duties) for refugees and asylum seekers across the EU, it is questionable – despite the legislative acts under way – that this kind of harmonization will come about in any substantial fashion soon, given the persistent hesitance of Member States to make real sovereignty transfers in this area.

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