



# **Rebuilding the European Asylum System: A Rights- based Approach**

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## Abstract

We argue that the so-called refugee crisis only exposed and amplified existing problems of the European asylum system, while legitimizing and catalyzing actions putting in place highly questionable policies. Looking at the law making and breaking on EU level in the past couple of months, the EU has clearly missed its opportunity for introducing a truly *common* European asylum system. Implemented in practice, the alleged solutions to the refugee crisis risk to put the institute of asylum *per se* in danger. To restore and uphold the meaning of international protection in the long term, a different paradigm for crisis management is necessary. One which will be anchored in a consequently rights-based approach, granting refugees their own agency.

The proposed measures aim at re-orientating refugees from life threatening journeys towards safe and legal pathways to Europe. The paper discusses the pre-conditions for family reunification, consequent issuance of humanitarian visa at embassies of Member States and Schengen Visa Centers established in third countries to this end. It further presents a mechanism for permanent responsibility-sharing among Member States which accounts for Member States' and refugees' preferences and needs. Moreover, the paper suggests possibilities for putting into practice accelerated asylum procedures which go to the benefit of particularly vulnerable groups and proposes safeguards for guaranteeing that no one who has the right to asylum will be prevented from presenting his or her claim. In addition to that, the paper suggests ways in which the EU can reinforce its role as a regional standard setter, by pushing for further harmonization of asylum standards in law and by continuously monitoring and assisting their implementation in practice. The paper advocates for consequently reducing the use of coercive means, including administrative detention and forced returns. In cases where the Member States deem such measures absolutely indispensable, additional monitoring and accountability mechanisms must be put in place. Last but not least, the paper looks into the planned Migration Compacts with third countries. It suggests that such approaches create high reputational costs for the EU and are unlikely to lead to the envisaged ends. Rather, the EU shall use bilateral negotiations as a means of safeguarding human rights, thus reducing the push factors forcing people to flee.

All in all, the proposed rights-based approach shall restore EU's credibility and reputation vis à vis its commitment to fundamental rights, democracy and the rule of law. Ultimately, its foremost goal is to put a halt to continuous human rights violations and unnecessary suffering on EU's soil and in its neighborhood. Meanwhile, such approach benefits not only the refugees but also the Member States. It makes the arrivals to and movements within the EU more predictable, orderly, and more safe for all parties involved.

## Introduction: New paradigm for change

EU's attempts to contain refugees outside or at its external borders have failed tremendously in the course of 2015/16, leading to chaos and unnecessary human suffering. Currently, refugees are forced to embark on life-threatening journeys across the Mediterranean, or even through the Arctic Circle<sup>1</sup> in order to seek international protection. All safe routes towards asylum hinge on Europe's ability to fulfill the refugees' right to seek protection on its territory.<sup>2</sup> While many call

<sup>1</sup> Given current rates, the Finnish Border Guard estimated 7,500 refugee arrivals on the Russian-Finnish border in 2016.

<sup>2</sup> Article 14(1) of the Universal Declaration of Human Rights, 1948, guarantees the right to seek and enjoy asylum in other countries



for air-tight closure of external EU borders, no walls, barbed wires or armed guards will seal Europe from desperate people seeking safety. Not only has the politics of 'Fortress Europe' proven contrary to international law, but also contrary to the basic values on which the Union was founded. A new architecture of the EU asylum and migration policy is essential: one which will be based in the understanding that durable solutions require the EU to take a pro-active role in the protection of those displaced, one acknowledging that the complexity of the asylum-migration nexus needs to translate into a complexity of solutions offered, and one putting the rights of those in need at the forefront of its approaches.

Proposals are inspired by draft measures tabled and under negotiation by the European Commission or other relevant European institutions, by the needs presented by contemporary humanitarian crisis on the European borders, as well as by best practices observed on local and national levels across the EU. Their implementation will lead to a more coordinated, coherent and orderly response to the current and future emergency situations, fulfilling a dual function: protecting individual rights of refugees and adequately responding to the state's need for keeping overview about persons entering their territory.

## External Management

**External management shall aim at offering functional protected entry in order to: (1) fulfill states' legal obligations towards refugees, (2) allow for control over migration flows, and (3), to ease human suffering. Enabling legal routes to Europe will also (4) decrease pressure on EU frontline member states (MSs) and (5) divert funds from people smuggling networks. Such goal can only be achieved if refugees can be reoriented from self-initiated, life-threatening travel towards safe, reliable legal pathways, which give consideration to their own agency.**

Technically, asylum seekers already have a choice between four legal pathways of entry into the EU, including tourist visa, humanitarian admission, family reunification and resettlement. In practice, none of these is reliable, feasible, and/or more promising than a smuggler's offer. If open at all, Western embassies are unlikely to grant tourist visas to (potential) refugees. The remaining options, however, hold more potential, both for refugees and European leaders alike. With EU borders closed, frontline MSs oversaturated, and human smuggling businesses booming, effective external registration of asylum applications is the only option for managing the volume of the migration flows towards Europe as well as maintaining dignified conditions for the applicants. The pressure on over-saturated states could be relieved, therefore improving conditions for both EU MS and refugees themselves, de-escalating the humanitarian crisis as well as its financial cost.<sup>3</sup> Thoroughly reviewed, enhanced, and harmonized, humanitarian admission, family reunification, and resettlement form the backbone of the proposed CEAS.

In order to offer working Protected Entry Procedures (PEP)<sup>4</sup>, the following measures are proposed:

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<sup>3</sup> The idea of the SVCs was offered by the COM already in 2014, 2014 EU Strategic Vision Communication, p.6, and again and again revived by the LIBE Committee of the EP in April 2016, The proposal for a regulation of the European Parliament and of the Council on the Union Code on Visas passed on 16. 3. 2016, Amendment n. 11

<sup>4</sup> Throughout this paper, the term will be used as "an overarching concept for arrangements allowing a non-national to approach the potential host state outside its territory with a claim for asylum or other form of international protection, and to be granted an entry permit in case of a positive response to that claim, be it preliminary or final," as defined by the Danish Center for Human Rights and the European Commission in the foundational study On the Feasibility of Processing Asylum Claims Outside of the EU (2002)



## Establish coordinated Schengen Visa Centers (SVC) in 3rd countries

The visa points should be located primarily in relatively stable transit countries in the European neighborhood, such as Turkey, Jordan, Lebanon, or Egypt. A sufficient number of these centers must be determined in order to prevent large secondary movements towards them. Refugees of any nationality would be eligible to apply for an assessment at a visa center.<sup>5</sup> A single, transparent formal procedure for the evaluation of applications submitted on humanitarian grounds needs to be established across all SVCs. The examination shall determine whether the applicant has a 'reasonable chance'<sup>6</sup> for receiving any form of international protection in an EU MS. Following positive evaluation, the SVC would create a matching profile for the purpose of applicant's assignment to a single MS for asylum proceedings.<sup>7</sup> Following a successful matching, the SVCs would be authorized to issue a single-entry humanitarian visa for that MS only. Rejected applicants could appeal the SVC decision once to an independent authority, and, in case of a negative decision, be referred to local integration programs and/or IOM in order to assess eligibility for return assistance programs.<sup>8</sup>

As proposed above, the SVC form a cornerstone of a functional, manageable and resistant EU asylum processing system. The SVC provide orderly, dignified way of seeking safety in Europe, and allow EU MS to screen applicants before they make territorial contact with Europe. They also direct resources towards the most vulnerable by increasing the success rate of asylum applications submitted to individual MSs as a result of the pre-screening process. Reliable local knowledge regarding persecution faced by individual applicants in the region as well as those belonging to commonly persecuted groups present in the area can be aggregated at the centers. Such knowledge database would increase efficiency of processing, thereby reducing administrative costs of the procedure and increasing accuracy of the asylum evaluation EU-wide.

### Policy recommendations:

- COM and EP to task EEAS<sup>9</sup> and EASO/EUAA to oversee the immediate establishment of the SVC program<sup>10</sup> as a permanent structure alongside current and future acquis, in order to benefit from its long-term stabilization effects<sup>11</sup> and to adjust EASO and EEAS budgets accordingly.
- COM and EUAA/EASO to work with reliable non-profit refugee-aid partners (UNHCR, the Red Cross, MSF) prior to and during implementation of the SVC programs in refugee saturated regions.

<sup>5</sup> In the next 5 years, each center should have the capacity to schedule appointments for a min. of 200 new individual cases per day, and offer a min. of 40 appointments per day, pending demand.

<sup>6</sup> A specific condition, defined by, for example, proven persecution together with average EU wide success rate of applicants' nationality.

<sup>7</sup> The procedure for humanitarian visa screening is outlined in existing Schengen Visa Code (2009). The pre-screening would include: preliminary evaluation of applicant's claim for asylum, collection of further information and documents to corroborate individuals' claim, completing individuals' files with locally accessible information, and, in approved cases, completing a 'matching card' for processing in the common European asylum system.

<sup>8</sup> Return assistance should not be disbursed automatically in order to discourage rise in weak applications

<sup>9</sup> The European External Action Service has experience running its 139 EU Delegations worldwide, effectively making it fit for a partnership role alongside EASO's mandate.

<sup>10</sup> Further reading on feasibility of extraterritorial Asylum procedures M. den Heijer (2011), Europe and Extraterritorial Asylum,

<sup>11</sup> As asserted by the DCHR and EC, if implemented on ad hoc basis, such system of extra-territorial processing would be „unable to interfere with human smuggling.” Study on the feasibility of processing asylum claims outside of the EU (2002), p.4



## Harmonize and increase the use of humanitarian visas

The so called humanitarian visa (Limited Territorial Validity visa<sup>12</sup>) is to be obtained directly in third countries at common SVCs and at MSs' consulates. Individual MSs could fulfill an increasing portion of their yearly European redistribution quotas using humanitarian visas.<sup>13</sup> The SVCs issuing humanitarian visas would feed into the CEAS by ensuring that information collected during pre-screening travels with applicant to a Reception center in a MS - to prevent re-traumatization by repeated questioning and to speed up the process.

Humanitarian visas are not a new solution, but certainly an under-used one. At least 16 EU MS have experience issuing some form of humanitarian visa.<sup>14</sup> However, despite clear need and legal obligation, the humanitarian visas have not yet surfaced as a reliable route towards safety. One of the crucial obstacles towards a common-use of humanitarian visa is the non-binding and inconsistent phrasing of the related articles of European Visa Code.<sup>15</sup> The Visa Code reform should therefore offer clear, unified procedure for European humanitarian visa (EHV) system, establishing the obligation of MSs to open humanitarian assessment for a LTV visa (also via the SVC system) where humanitarian need is proven, as well as the maximum length of processing and the right to appeal the visa decision.

### Policy recommendations

- COM to initiate negotiations on the reform of the Schengen Visa Code, for the purpose of setting a clear procedural guideline, establishing EHV as a desirable common practice, specifically focusing on amending Article 25 regarding the issue of LTV visas on humanitarian grounds.
- Given the pre-existence of all basic legal provisions, COM should encourage MS to begin and/or scale up issuing LTV visas on humanitarian grounds immediately even before coordinated Schengen-wide system becomes operational.<sup>16</sup>

## Make family reunification an effective second pillar of the European PEP

Accounting for stable 30% of migration flows into the EU<sup>17</sup>, in words of the UNHCR, "family reunification is essential to the successful integration of resettled refugees."<sup>18</sup> Despite encouraging better and faster integration, limiting feelings of disconnection and vulnerability to radicalization (esp. in case of unaccompanied and separated minors), and improving psychological and material wellbeing of the refugees, the family

<sup>12</sup> As outlined by Schengen Visa Code (2009), Art. 25

<sup>13</sup> According to the following outline: 10% within 1st year and 25% in 2nd year to prioritize releasing pressure in EU frontline states, 50% in 3rd year and 60% thereafter to discourage potentially life-threatening (and uncontrollable) self-initiated travel towards European borders.

<sup>14</sup> These MSs issue or did in the past issue some form of humanitarian visas - specific national formats, Schengen, and/or LTV visas on humanitarian grounds. Humanitarian visas: option or obligation? (2014), p.41. The study by Policy Department for Citizens' Rights and Constitutional Affairs offers a comprehensive case for the EU-wise harmonization of the humanitarian visa scheme.

<sup>15</sup> The LTV visas are to be issued where states "consider it necessary (...) because of international obligations". While the possibility to derogate from standard visa admissibility requirements is outlined in Article 19[4], the document does not link this derogation to humanitarian visas (Article 25[1]), opening space for inconsistent, non-transparent interpretations. Schengen Visa Code (2009), Art. 19, Art. 25

<sup>16</sup> Further reading on the need for EU humanitarian visa scheme: ECRE (2014), An Open and Safe Europe - What Next?, European Migration Network (2012), Visa Policy as Migration Channel, Raoul Wallenberg Institute (2016), Humanitarian Visas Key to Improving Europe's Migration Crisis

<sup>17</sup> Eurostat (2015), First residence permits issued in the EU-28 by reasons

<sup>18</sup> UNHCR (2001), Background Note for Family Reunification in the Context of Resettlement and Integration, Annual Tripartite Consultations on Resettlement, p.2



reunification scheme as practiced by MS has failed to protect many refugee families.<sup>19</sup> MSs apply stricter conditions and rules on beneficiaries of int. protection than on others applying for family reunification.<sup>20</sup> The Family Reunification Directive is implemented unsystematically, its interpretations often close to violating or clearly infringing on the right to enjoy family life<sup>21</sup> enshrined in European<sup>22</sup> and international treaties.<sup>23</sup> The MSs' margin of appreciation thus ought to be restricted by clear partiality for family life and other fundamental rights.<sup>24</sup>

#### Policy recommendations:

- The EU COM to initiate negotiations on the reform of the Family Reunification Directive. Specific measures to be included:
- Include real family ties running between the sponsor and dependent adult children, adopted children, cared-for orphans and elderly, same-sex partners and partners in non-institutionalized marriages and long-term partnerships in the Directive's legal understanding of 'a family' in order to meet the requirements of international law related to the protections of family life.
- Soften requirement for additional proof of dependence for parents and adult children; do not reject applications on the basis of lack of documents, which are non-essential to the fulfillment of the conditions for family reunification.
- Include pathways towards individual legal status to dependents who have received protection as a result of family reunification to provide them with protection in the event of divorce, deportation, separation, or death of the guarantying family member.<sup>25</sup>
- Offer family members priority in humanitarian visa distribution and ensure immediate geographical proximity to family and existing support network in matching for asylum procedure.
- Prevent temporary halt on family reunification pathways such as that currently in place e.g. in Germany, Denmark, or Austria (as of August 2016)

<sup>19</sup> UNHCR.org, UNHCR concerned at reports of sexual violence against refugee women and children, 23.10.2015. Further reading on women and children refugees' vulnerability: Women's Refugee Commission (2016), No Safety for Refugee Women on the European Route: Report from the Balkans, Impact (2016), The Most Vulnerable in Europe's Refugee Crisis

<sup>20</sup> The European Council on Refugees and Exiles (ECRE), The European Legal Network on Asylum (ELENA) (2016), Information Note on Family Reunification for Beneficiaries of International Protection in Europe, point no. 87

<sup>21</sup> The requirement of minimal length of residence for a sponsor is only one of many examples of problematic implementation of the Directive. Currently, MSs have the right to require up to two years of lawful residence before a sponsor may be joined by his/her family members (Article 8). Among other lucky legal rebuttals, the European Court of Human Rights has found (Nunez v. Norway, ECtHR, Application no. 55597/09, Judgment of 28 June 2008) that two years of separation between a mother and a young child would not be in compliance with the best interest of the child and the family.

<sup>22</sup> TEU (Articles 2, 3, 6, 21), TFEU (Art. 67), and The EU Charter of Fundamental Rights (Article 7, 9 and 33)

<sup>23</sup> The Universal Declaration of Human Rights (Articles 12 and 16), The International Covenant on Civil and Political Rights (Art. 17, 23 and 24), The Convention on the Rights of the Child (Art. 10, 16 and 22), and The European Convention on Human Rights (Art. 8).

<sup>24</sup> As already asserted by the European Court of Justice in C-540/03 European Parliament v Council, judgment of 27.6.2006

<sup>25</sup> As repeatedly recommended by, among others, the Parliamentary Assembly of the Council of Europe (Resolution 1811 (2011) of the Parliamentary Assembly of the Council of Europe on Protecting migrant women in the labour market; Resolution 1697 (2009) of the Parliamentary Assembly of the Council of Europe on Migrant women: at particular risk from domestic violence; Recommendation 1686 (2004) of the Parliamentary Assembly of the Council of Europe on Human mobility and the right to family reunion; or Recommendation 1261 (1995) of the Parliamentary Assembly of the Council of Europe on the situation of immigrant women in Europe



in order to offer relief to oversaturated border MSs and families split across the continent.

- Task EASO with real-time monitoring of full implementation of the amended Directive at the Schengen Visa Centers and Reception Centers.

### **Offer a larger, common European Resettlement Scheme (ERS) as a continually growing component of the European PEP**

In times of crises, resettlement can play a crucial role in reaching out to the most vulnerable populations, who are unable to remove themselves from dangerous situations on their own.<sup>26</sup> The new European framework should include a strong common European resettlement program.

Policy recommendations:

- EU MS states' to increase resettlement pledges via the Global Compact on Responsibility Sharing for Refugees.<sup>27</sup>
- MSs to introduce sizeable and quality resettlement programs or significantly increase the size of the existing ones, extending existing cooperation with the UNHCR resettlement programs.<sup>28</sup> MSs should especially focus on more sizeable resettlement programs from Turkey and other countries of transit and origin which do not or cannot ensure sufficient standards of refugee protection.
- MSs and later EUAA together with UNHCR to combine refugee status determination interviews and resettlement interviews<sup>29</sup> as conducted by UNHCR in order to avoid delays in processing times, known to force vulnerable asylum seekers to feed into and fall prey to the illegal smuggling networks. Explore opportunities to integrate aspects of the matching assessment for refugee placement once common European scheme is functional.
- COM to follow up on the development of the proposed European Resettlement Scheme<sup>30</sup>, outlining a harmonized, clearly articulated European resettlement program managed by the EASO/EUAA in conjunction with UNHCR.

### **Explore other possible legal pathways to Europe**

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<sup>26</sup> Amnesty International's resettlement campaign explains the benefits of the protection scheme (2016), and an Urgent Call made by the world's 35 most prominent refugee NGOs and IOs asks for emphasis on resettlement.

<sup>27</sup> The Global Compact on Responsibility Sharing for Refugees was proposed by UN Sec. Gen. In his May 2016 Report on Addressing Large Movements of Refugees and Migrants, seeking to obtain the international political commitment for comprehensive refugee responses pursued 'from the outset of any large refugee movement'.

<sup>28</sup> "The UNCHR expects to be able to only resettle up to 170,000 refugees in 2017, out of 1.19 million of the most vulnerable refugees considered eligible for resettlement, a small fraction of the world's 60 million displaced people." Inter Press Service, June 17, 2016

<sup>29</sup> The UNHCR Resettlement Handbook provides detailed guidance on the identification of refugees in need of resettlement and the requirements for the resettlement submission categories.

<sup>30</sup> Recommendation on a European Resettlement Scheme, June 8, 2015



Besides the pillars of the European PEP's outlined above, other pathways to safety could include: short-term tourist visas, labor mobility programs, medical evacuations, private sponsorship schemes or student scholarship programs.

## Internal Management

Even in the presence of safe ways to Europe, it can be expected that refugees will keep arriving to EU to some extent spontaneously and/or irregularly. In order to respond to these arrivals in a dignified and organized manner, protection responsibility for *all* refugees must be shared equally by *all* MSs, in line with common standards and criteria for protection and to the benefit of frontline MSs and refugees alike.

### Ensuring Respect for Dignity en route

The EU must maintain respect for safety, dignity and rights of people en route to seeking int. protection via reduced detention. Abuse and inhuman conditions in detention centers contribute to sense of alienation and dehumanization, possibly making asylum seekers more vulnerable to dysfunctional behavior and radicalization.<sup>31</sup> The existing Returns Directive<sup>32</sup> and the recast Reception Conditions Directive<sup>33</sup> already require EU MSs to give priority to 'less coercive measures' over detention, however, practice shows that prisons, police stations, or prison-like centers continue to be states' primary choice of 'dealing' with those seeking protection. Not only are alternatives to detention less costly for a state and less threatening to the fundamental rights of migrants, evidence shows that the risks of absconding are also not necessarily higher outside of detention.<sup>34</sup>

Policy recommendations:

- MSs to abolish automatic detention placement in favor of transparent process of asylum application. Stop criminalizing persons who enter a MS territory "irregularly" for the purpose of seeking safety.
- Abandon isolated detention/asylum processing centers in favor of open Reception Centers in urban areas to reflect change in emphasis on integration from day one and encourage positive attitude of asylum seekers towards host MSs.

### Sustainable Responsibility Sharing Accounting for States' and Refugees' Needs

Responsibility for irregular arrivals is regulated by the Dublin (III) Regulation. However, instead of providing for responsibility-sharing in line with article 80 TFEU,<sup>35</sup> the Dublin Regulation legitimized responsibility-shifting towards frontline MSs who were symbolically penalized for letting refugees enter EU territory.

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<sup>31</sup> The Detention Project (2015), *The Uncounted*

<sup>32</sup> (2008/115/EC)

<sup>33</sup> (2013/33/EU)

<sup>34</sup> European Migration Network (2014), *The use of detention and alternatives to detention in the context of immigration Policies*, Synthesis Report, p.7

<sup>35</sup> Art. 80, TFEU: "The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the MSs. Whenever necessary, the Union acts adopted pursuant to this Chapter [Chapter 2 Policies on Border Checks, Asylum and Immigration] shall contain appropriate measures to give effect to this principle."





Its implementation became increasingly infeasible due to the deteriorating reception conditions in these MS<sup>36</sup> and practically collapsed in the course of last year's events.<sup>37</sup>

The pressure on frontline MSs must be eased systematically. This can only be done some form of with a redistribution mechanism of permanent character. In order to be functional, the Permanent Redistribution Mechanism (PRM) would have to define the obligatory redistribution quota by taking into account the following criteria, weighted: (1) GDP, (2) unemployment rate, (3) population density, (3) the number of asylum applications registered and (4) number of refugees relocated or resettled in the previous year, and (5) the total number of persons under international protection already residing in the country.<sup>38</sup> On the basis of the quota resulting thereof, each MS would be responsible for relocating a given share of refugees to its territory, assess their asylum claim and take further steps in relation to the applications' result. By establishing clear responsibility for a given number of refugees, the PRM would not only contribute to fairer burden sharing but also reduce the number of 'refugees in orbit'.<sup>39</sup>

While particularly vulnerable and individuals manifestly in need of international protection shall gain priority within the PRM,<sup>40</sup> responsibility sharing requires that all refugees are made part of the redistribution, regardless of their country of origin, country of transit or asylum prospects.<sup>41</sup> In cases where MSs fail to fulfill their quota obligation, the COM shall establishing a sanctioning mechanism e.g. in form of obligatory financial contribution to the Asylum, Migration and Integration Fund (AMIF). These shall go primarily to the benefit of frontline MSs, who shall ensure dignified living condition for refugees waiting for relocation, including housing in an open facility and temporary documentation.

In order to ensure sustainability of the PRM, the relocations shall be based on a Matching Mechanism (MM), taking into account states and refugees needs. An MM would offer refugees the prospects of being relocated to the country of preferred destination within a reasonable timeframe. The MSs could on their part count on a decrease in secondary movements and the possibility to influence the composition of newcomers, enabling them for longer-term planning. The MM could take into account, e.g. the following factors: previous stays in a MS, language knowledge, family links or other ties to a MS, job or study prospects in a MS

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<sup>36</sup> With regard to conditions asylum seekers were facing in Greece or Italy, the ECtHR ruled in several cases that readmitting refugees to these countries would constitute a breach of the ECHR. See ECtHR Grand Chamber Judgement (2011), *M.S.S. v. Belgium and Greece*, ECtHR Grand Chamber Judgement (2014), *Tarakhel v. Switzerland*, see also CJEU, Grand Chamber Judgement (2011), *N.S.*

E.g. the German national courts suspended in several decisions transfers to Hungary and Bulgaria, as well, the legal opinion on the legality of these transfers remained, however, divided. See AIDA, Dublin - Germany.

<sup>37</sup> Comp. ZEIT ONLINE (2015), *Deutschland setzt Dublin-Verfahren für Syrer aus. Konsorcium nevládních organizací pracujících s migranty v ČR* (2015), prohlášení k nezákonnosti a bezúčelnosti zajišťování uprchlíků v zařízeních pro zajištění.

<sup>38</sup> The COM can build upon the existing temporary relocation mechanisms, adopted by the Council on September 14 and September 22 2015, on as well the German "Königsteiner Schlüssel" national relocation mechanism. Council (2015) Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece. Council (2015) Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece. Thym, D., Beverungen, C. and Gies, S.(2013), Germany's Domestic „Königstein Quota System“ and EU asylum policy, *Verfassungsblog*.

<sup>39</sup> The term refugees in orbit refers to a situation where asylum seekers are being transferred between several MSs, each claiming not responsible for examining their claim.

<sup>40</sup> E.g. nationals whose EU-wide recognition rate at 1st instance is 75% or higher. See also UNHCR's profiling and referral mechanism from 2007. UNHCR (2007), *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*.

<sup>41</sup> Note: In order to clear the backlog of pending cases, refugees who register to the authorities of the frontline MSs yet who have not had the initial interview before the new mechanism enters into force shall be made part of the yearly quota obligations in the first three years



or to a limited extent, specific skills of know-how.<sup>42</sup> On the contrary, factors such as religion, gender or age shall be made part of the MM only insofar as they serve to protect particularly vulnerable groups. In any case, ambiguous factors such as 'ability to integrate' shall be omitted.

Last but not least, the COM should consider mechanisms enabling for bilateral negotiations between MSs failing to meet their yearly quota and those willing to accept additional refugees.<sup>43</sup>

Policy recommendations:

- COM to withdraw its existing Proposal for recast Dublin Regulation<sup>44</sup> and replace it with a new proposal in order to: (1) abolish the first country of arrival responsibility principle; (2) introduce an annual PRM taking into account the criteria described above; (3) ensure that all refugees are part of the PRM, regardless of their country of origin, country of transit or asylum prospects; and (4) ensure that procedural and other guarantees of the current Dublin III Regulation such as the right to family unity or the possibility to voluntarily take over cases for which another MS is responsible remain untouched.
- COM to present a Proposal for a Regulation establishing a Matching Mechanism in order to: (1) design the relocation on the basis of preferences of the MSs and refugees; (2) ensure that the criteria applied are in line with MSs' obligations under international law; (3) ensure however, that the final decision on concrete relocation is left with the national authorities.
- The EP and the Council to adopt a Regulation developing the EASO into a fully operational European Asylum Agency (EUAA) on the basis of existing COM Proposal.<sup>45</sup>
- COM to mandate and equip EASO/EUAA in order to: (1) help administer initial reception centers in the frontline MSs; (2) inform refugees about their relocation options, including the advantages and disadvantages thereof; (3) compile individual matching profiles;<sup>46</sup> (4) inform MSs about refugees preselected to their territory; and (5) provide further assistance with the final selection and relocation.

## Efficient and Fair Applications Processing

Fast-tracked recognition or, on the contrary, rejection of asylum applications on the basis of nationality has become a *de facto* practice in a range of MS in the past several years and even more so in the course of 2015/16.<sup>47</sup> Admittedly, accelerated processing of manifestly well-founded or manifestly un-founded cases can help clear

<sup>42</sup> In order in order to ensure transparency and non-discriminatory treatment, 'integration prospects' or 'ability to integrate' shall be part of the criteria only as long as they are broken down into concrete, well-defined factors.

<sup>43</sup> On tradable refugee quotas see Rapoport, H. Jones, W. Hillel (2016), Tradable refugee-admission quotas, matching, and EU asylum policy, Refugee Studies Center.

<sup>44</sup> COM (2016), Proposal for a Regulation of the European Parliament and of the Council 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 (recast).

<sup>45</sup> COM (2016), Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010.

<sup>46</sup> For more on the possible algorithms see Jones, W. and Teytelboym, A. (2016), An Algorithm to Alleviate the Refugee Crisis, Newsdeeply.

<sup>47</sup> See e.g. CoE (2005), Resolution 1471. Accelerated asylum procedures in Council of Europe member state. Oakley, S. (2007), Accelerated Procedures for Asylum in the European Union Fairness Versus Efficiency, Sussex Centre for Migration Research.



the backlog of pending decisions and enable for a smoother processing to the benefit of all applicants. Nevertheless, continuing divergences between individual MSs as regards which applications to fast-track and how not only decrease legal certainty for refugees but go also to the detriment of MS themselves, as they give further impetus to secondary movements.

With an important part of asylum applicants coming from countries with high recognition rates such as Syria, Iraq or Afghanistan,<sup>48</sup> attempts at clearing the backlog of pending applications can be made most efficient if focusing primarily on groups presumably in protection need. To this end, the EU should invoke the Temporary Protection Directive<sup>49</sup> which enables for fast-track recognition and redistribution of manifestly well-founded claims on the basis of nationality.

Meanwhile, a range of MSs operates with the concept of safe countries of origin which enables them to fast-track asylum claims of applicants coming from a country deemed generally safe, taking into account its legal and constitutional safeguards, human rights record or status as a candidate for EU accession. Nevertheless, conflicting views between individual MSs and the MSs and (i)NGOs as to which countries can legitimately be deemed safe illustrate that such assessment is far from self-evidentiary. In particular, accelerated procedures risk to fail particularly vulnerable groups such as LGBTI, national, ethnic or other minorities who may be at risk even in countries generally deemed safe. Providing for their due protection requires additional procedural and institutional guarantees.

#### Policy recommendations:

- COM to propose the Council to invoke the Temporary Protection Directive by establishing the existence of a so-called 'mass influx situation' with regard to, at minimum, Syrian nationals entering EU territory.
- The Council and the EP to amend the COM Proposal for a Regulation on Common Procedure<sup>50</sup> in order to (1) exempt from the fast track procedure applicants who provide facts or evidence of being part of a vulnerable group or otherwise at risk in a country designed as safe; (2) unify requirements on the burden of proof to be presented; and (3) abolish procedures at border check points, airports or other transit zones unsuitable to present such evidence.<sup>51</sup>
- The Council together with the EP to adopt a Regulation defining an EU list of safe countries of origin which shall replace the national lists, to agree on strict, fair and transparent criteria of defining a country as safe and to agree on concrete procedures for involving IOs and iNGOs in the legislation process.<sup>52</sup>

<sup>48</sup> 99 % if Syrians, 73 % of Iraqis and 57 % of Afghanis received international protection in Q1 of 2016. Eurostat (2016), First time asylum applicants by citizenship, EU-28, absolute change between Q1 2015 and Q1 2016. Eurostat (2016), First instance decisions by outcome and recognition rates, 30 main citizenships of asylum applicants granted decisions in the EU-28, 1st quarter 2016.

<sup>49</sup> Council (2001). Council Directive 001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

<sup>50</sup> COM (2016), Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU.

<sup>51</sup> Peers, S. (2015), 'Safe countries of origin': Assessing the new proposal.

<sup>52</sup> Compare the existing COM and LIBE proposals: COM (2015), Proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU. EP LIBE (2016), Asylum: EU list of safe countries of origin to replace national lists in 3 years.



## Harmonization of Protection Standards across the EU

In order to further lower the scale of secondary movement, the EU has to ensure refugees are treated equally in all its MSs. To this end, legal requirements for qualification for international protection, material and other standards of protection as well as the processes on the ground have to be unified to the greatest extent possible.

While the standards laid down in the Procedures, Qualification and Reception Directive already present the lowest common denominator, their transposition in national laws varies greatly among individual MSs.<sup>53</sup> In order to overcome the gaps, the common standards have to become binding in all MSs and the EU has to take a more pro-active role in monitoring and enforcing them. To this end, the COM should institutionalize systematic review mechanism on the basis of concrete quality indicators.<sup>54</sup> To support MS who struggle to comply with the requirements, EASO should expand its training offer, e.g. by establishing regional training centres for national administrative staff on the basis of already existing practices and curricula.<sup>55</sup>

In the long term, it is indispensable that the EU takes the necessary steps towards creating a common EU Codebook on Asylum and, eventually, a European Asylum Appeals Court.<sup>56</sup>

### Policy recommendations:

- The EP and the Council to adopt Regulations incorporating the standards laid down in the Procedures and Qualification Directive on the basis of the existing COM proposals and in line with the amendments suggested in other sections of this paper.<sup>57</sup>
- The EP and the Council to amend and adopt the recast Reception Conditions Directive on the basis of the existing COM proposal and suggestions in other sections of this paper.<sup>58</sup>
- COM to issue further Recommendations on the interpretation of the common standards in cases where interpretation gaps emerge in law or in practice.
- COM to systematically review MSs' compliance with common minimum standards and to launch infringement procedures where necessary, in particular in cases where such non-compliance amounts to a violation of international human rights law.<sup>59</sup>

<sup>53</sup> Türk, V. (2016), *Envisioning a Common European Asylum System, Forced Migration Review*.

<sup>54</sup> European Agenda on Migration, p. 12.

<sup>55</sup> EASO (2014), *Training Curriculum*.

<sup>56</sup> Comp. Hailbronner, K. (2008), *Briefing Note No. 4. Towards a Common European Asylum System – Assessment and Proposals – Elements to be Implemented for the Establishment of an Efficient and Coherent System*. See also Türk, V. (2016), *Envisioning a Common European Asylum System, Forced Migration Review*.

<sup>57</sup> COM (2016), *Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU*. COM (2016), *Proposal for a Regulation of the European Parliament and of the Council 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 and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents*.

<sup>58</sup> COM (2016), *Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)*.

<sup>59</sup> In September 2015, the COM announced its intent to launch over 40 infringement procedures. COM (September 23, 2015), *More Responsibility in managing the refugee crisis: European Commission adopts 40 infringement decisions to make European Asylum System work*. In order to prioritize cases for infringement, they Commission can take into account among others relevant judgements of the ECtHR.



## Responding to Non-Refugees

Individuals who do not qualify for international protection and whose status cannot be regularized otherwise shall be dealt with in a respectful manner. The MSs must pay attention to their particular vulnerability prior to, during and after an eventual return. With coercive measures often costly and at risk of breaching international law, prioritizing positive incentives may prove the most feasible option for MS and the individuals in cases where return is deemed unavoidable. To this end, return arrangements shall be designed in a way to offer a viable alternative for the rejected applicants, enabling them to set for a new start in their countries of origin or transit, e.g. with the help of tailor-made small grants or vocational training. If forced return policies are deemed unavoidable, their implementation has to be transparent, predictable, in line with international human rights standards, and subjected to independent control. Detention shall be used as a measure of last resort and alternatives to detention are to be used to the widest extent possible.<sup>60</sup>

At the same time, alternative, long-term solutions have to be offered to persons who do not qualify for international protection yet cannot be returned to their countries of origin, as it is in the interest of the EU to reduce the number of persons living on its territory in a state of de facto vacuum.<sup>61</sup>

Policy recommendations:

- COM to equip and mandate EASO to assist MSs in providing complementary solutions for individuals who do not qualify for international protection.
- COM to amend and incorporate the standards laid down in the Return Directive<sup>62</sup> and Return Handbook<sup>63</sup> in a Return Regulation Proposal in order to: (1) strengthen procedural and legal safeguards for people subjected to administrative detention; (2) further limit the use of and length of permissible detention.<sup>64</sup>
- COM to ask MS to appoint independent special observers to be present during returns in order to monitor their compliance with the EU and international law, paying special attention to cases involving children and minors.
- COM to propose a Directive on Regularization, offering durable solutions to persons who prove non-returnable to their countries of origin in the long-term.

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<sup>60</sup> As proposed in the proposed in the EU Action Plan on Return, the COM shall give further recommendations as regards alternatives to detention. See COM (2015), Communication from the Commission to the European Parliament and to the Council. EU Action Plan on Return.

<sup>61</sup> Individuals may become non-returnable e.g. due to missing passports and/or their countries of origin unable or unwilling to readmit them. They usually reside in the EU under the “tolerance” regime, which has to be renewed frequently and thus places high restrictions on their possibilities for employment or meaningful integration.

<sup>62</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

<sup>63</sup> COM (2015), Recommendation of 1.10.2015 establishing a common “Return Handbook” to be used by Member States’ competent authorities when carrying out return related tasks, including Annex (Return Handbook).

<sup>64</sup> Despite its numerous shortcomings, the Return Directive has introduced at least some level of safeguards for people subjected to immigration detention which were further developed in several CJEU rulings, including clarification of acceptable grounds for detention, maximum time limit on detention and procedural standards for decision-making and review, as well as overall detention conditions. See Peers, S. (2014), The EU’s Returns Directive: Does it improve or worsen the lives of irregular migrants? EU Law Analysis Blog.



## Integration

With regard to the lengthy asylum procedures putting refugees at risk of becoming dependent on the receiving societies, it is indispensable to allow registered asylum seekers to take part in a range of integration measures long before a final decision on their application can be made. To this end, MSs should invest in refugees' integration from the first day of their arrival.<sup>65</sup> Refugees need to have immediate access to psychosocial and health care services, seconded by access to education, in particular language classes, decentralized housing and, finally, the job market within a reasonable time-frame of maximum six months from launching the application.

Most importantly, the MS shall not restrict access to integration measures on the basis of the expected application outcome. Even in cases where applicant's prospects are very low, having participated in some of the integration measures may contribute towards a successful new start in his/her country of origin.

While refugees can be legitimately expected to integrate into certain structures and institutions of the society which are binding to all its members, including the legal order, their rights, in particular political rights and freedom of movement, should increase gradually with the length of stay. Meanwhile, requirements on assimilation into the perceived dominant national culture are neither necessary nor likely to succeed.

Instead of accentuating alleged differences, MSs shall seek ways towards creating new communities with a shared sense of belonging, based on universality of values such as human rights and democracy. Such can be achieved if local populations are included in offers tailor-made for refugees, e.g. via mixed social housing, shared language classes or vocational training opportunities.<sup>66</sup>

### Policy recommendations:

- The EP and the Council to amend and adopt the recast Reception Conditions and the Procedures Directive in order to avoid any distinction in access to integration measures in relation to the applications' prospects, type of procedure under which a claim is evaluated or the expected length of stay.
- COM to put forward a Proposal for Directive on Integration on the basis of the Action plan on the integration of third country nationals.
- COM to encourage MSs to adopt a holistic approach to integration in line with the Common Basic Principles for immigrant integration policy,<sup>67</sup> Common Agenda for Integration,<sup>68</sup> the European agenda for integration of third country nationals<sup>69</sup> and the Action plan on the integration of third country nationals,<sup>70</sup> and to issue Recommendations further specifying the principles laid down in these.
- COM to encourage MSs to develop strategic public-private partnerships with educational institutions, cultural and sports association, students'

<sup>65</sup> The concept of integration from day one is already applied in the city of Utrecht. Pieters, J. (2016), Asylum Seekers to Be Fully Included Into Utrecht Society, NLTimes.

<sup>66</sup> Comp. Pieters, J. (2016), Asylum Seekers to Be Fully Included Into Utrecht Society, NLTimes.

<sup>67</sup> JHA Council (2004), Common Basic Principles for Immigrant Integration Policy in the EU, p. 15.

<sup>68</sup> COM (2005), Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. A Common Agenda for Integration Framework for the Integration of Third-Country Nationals in the European Union.

<sup>69</sup> COM (2011), Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. European Agenda for the Integration of Third-Country Nationals.

<sup>70</sup> COM (2016), Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. Action Plan on the integration of third country nationals.



and workers' unions, and businesses by offering positive incentives for refugee inclusion in terms of financial or other contributions and to seek options to include local populations in offers originally tailor-made for refugees.

## Responsible Foreign Development Policy

EU has struggled to develop a coherent approach to its foreign and development policies aimed at tackling forced migration. An overwhelming variety of programs and initiatives under different institutional frameworks share overlapping goals, yet fail to coordinate within an effective, well-budgeted overall strategy.<sup>71</sup> It is imperative that in times of extreme pressure on development, humanitarian and domestic asylum budgets, MS's resources ought to be managed efficiently. Similarly, long-term planning intended to incentivize refugees to stay closer to home requires a shift in focus back from prevention to protection as well as responsible cooperation with third countries. The following section introduces in brief the most crucial measures needed in order to make European foreign policy an effective tool of protection.

### **Externalizing Protection: Ensure that EU efforts to externalize immigration and/or asylum claims processing do not worsen refugees' access to protection**

The EU ought to promote high standards of protection in countries of transit, improving the capacities of neighboring regimes to deliver protection and reasonable living standards to their populations as a positive incentive to stay. Especially in regions where SVCs are to be located, regional development and integration programs for both refugees and host communities are to be thoroughly reviewed, synchronized, and enhanced. Well-coordinated 3<sup>rd</sup> country programs will decrease pressure on these visa centers, and offer added protection and support to the local and refugee populations, as well as to those waiting for the outcome of their asylum pre-screening process. Only more thorough monitoring of progress in 3<sup>rd</sup> countries' capacities to provide protection will guarantee effectiveness of resources invested into asylum capacity building programs.<sup>72</sup>

Policy recommendations:

- COM to establish a task force to review EU development and migration related programs gathered under the Global Approach to Migration and Mobility framework (GAMM)<sup>73</sup> and the European Agenda

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<sup>71</sup> For example, a quick review uncovers that the Regional Development and Protection Program in the Middle East overlaps significantly with the EU Regional Fund in Response to the Syria Crisis (The Madad fund) in attempting to introduce sustainable living conditions for the refugees in the region. Each of the programs is administered entirely separately, however, while, as E. Collett points out in her analysis of the situation, the comprehensive UN 3RP initiative (Regional Refugee Resilience Plan) remains underfunded (Collet, E. (2016) EU Cooperation with third countries: Rethinking concepts and investments, Forced Migration Review, Vol. 51).

<sup>72</sup> Current simple quantitative assessment focuses on numeric output, measuring the numbers of asylum officers trained, for example.

<sup>73</sup> Global Approach to Mobility



on Migration<sup>74</sup> with the aim of eliminating administrative burden and ensuring complementarity.

- Where significant funds have been invested in 3<sup>rd</sup> states' protection and asylum systems capacity building, monitoring requirements ought to include frequent qualitative assessments of protection provided.
- COM ought to bring the Regional development and protection program for refugees and host communities (RDPP) that already exist in Lebanon, Jordan and Iraq into Turkey and Egypt.
- RDPPs should put a stronger emphasis on reinforcing national authorities' capacity to address human displacements.

### **EU ought not to 'outsource' its responsibility for refugees towards unreliable and/or undemocratic actors outside of its territory**

Recently, the EU has engaged in a number of questionable pacts with countries of transit in the European neighborhood, which cannot guarantee basic protection to refugees in their territory. Knowingly promoting policies which encourage refugees to stay in, return to, or prevent from leaving countries unable or unwilling to maintain a sufficient standard of protection amounts to a violation of international law.<sup>75</sup>

The Turkey-EU deal of March 18<sup>th</sup> 2016 stands as an example of the tendency to outsource Europe's legal obligations.<sup>76</sup> Such outsourcing denies refugees their right to seek protection from persecution, and compromises the European role as a global value-setter, a guarantor and promoter of int. human rights law. Similar *quid-pro-quo* deals open Europe up to dangerous blackmail from undemocratic third countries in the neighborhood.

Despite apparent breakdown of the EU-Turkey deal and protests from the refugee aid sector,<sup>77</sup> the European Council has adopted a decision to replicate the deal, negotiating Migration Compounds with additional third countries of transit, under the proposed Migration Partnerships.<sup>78</sup> The COM is currently negotiating Migration Compact agreements with dictatorships (Sudan, Eritrea), among other countries, threatening to push their already vulnerable populations under additional risk of forced migration as a result of EU-financed empowerment of their oppressive militaries,<sup>79</sup> or as a result of development aid withdrawal in case of their governments' non-compliance or inability to close the migration routes. Improvement of cooperation with third countries is necessary, however, and could prove beneficial to both European interests and the refugees, if focused on combating the root causes of migration and development assistance, including good governance.

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<sup>74</sup> European Agenda on Migration

<sup>75</sup> See landmark case from ECtHR: *Hirsi Jamaa et. Al vs Italy* (2012) regarding the principle of non-refoulement, or recent case involving Syrian refugees' forced return to Turkey from Greece, where appeals tribunal called halt on deportation of 9 Syrian men on May 20<sup>th</sup> 2016. The committee decided that the temporary protection which could be offered to the Syrian applicant in Turkey does not provide him rights required by the Geneva convention," *The Guardian* (20/5/16).

<sup>76</sup> Instances of state-sponsored violence against refugees and general inability of Turkish authorities to offer sufficient protection have been well documented. The many different legal and practical reasons for why Turkey cannot be considered a 'safe third country' are described by Human Rights Watch, Danish Refugee Council and ECRE, or the Oxford Faculty of Law, among many others.

<sup>77</sup> Joint NGO statement June 2016: NGOs strongly condemn new EU policies to contain migration

<sup>78</sup> EU Commission (2016), A New Partnership Framework - The Migration Compact agreements

<sup>79</sup> EU Commission: The Khartoum Process, Better Migration Management, Action Fiche for the implementation of the Horn of Africa Window, p. 7





#### Policy recommendations

- Frontex, Greek authorities, and any other MS to stop forcible, unlawful returns of asylum seekers into Turkey on the basis of proven lack of safety for refugees on Turkish land.<sup>80</sup> MSs to intensify relocation from both Greece and Turkey.
- COM to postpone negotiations of Migration Compounds under the proposed Migration Partnerships prior to re-evaluation of strategic goals of the program.
- Include safeguards for human rights, rule of law, and standards for protection mechanisms into the adopted proposal for the Framework Partnership proposal on Migration Compounds.

### **EU must limit the influence of security interests on its development assistance to third countries**

Recent years have seen European development budgets diverted away from fighting poverty and inequality toward ad-hoc, security-focused efforts such as the Migration Compounds discussed above.

Subjecting development to limiting migration flows to Europe<sup>81</sup> is morally questionable, and, irresponsible in the long term. In the past, similar projects mixing focus on development and security have failed to have influence on the migratory movements.<sup>82</sup> Besides limiting the availability of funding for standard developments projects, these initiatives lack the otherwise categorical emphasis on safeguards for human rights, on good governance as well as economic growth.<sup>83</sup>

#### Policy recommendations

- EU's external migration spending to be managed by a single COM directorate in order to ensure stronger coordination at all levels of management between the Commission's various departments, the European External

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<sup>80</sup> See also Amnesty International (2016), No Safe Refuge

<sup>81</sup> Ex: At the Valetta summit in November 2015 EU MSs decided to set up the "EU Emergency Trust Fund for Africa" („The European Union Emergency Trust Fund for stability and for addressing root causes of irregular migration and displaced persons in Africa"), intended to address root causes of forced displacement and irregular migration. The deal blurs the line between development aid and border control, however. Alongside small scale local employment-boosting projects in Sahel and the Horn of Africa, the fund includes projects aimed at improving local capacities for border control. 40 million Euros are currently allocated for a project "Better Migration Management (Horn of Africa)", which, among other objectives, plans to build two detention centers and provide equipment to the Sudanese Ministry of the Interior. The risk of supporting repressive regimes is identified in the project (EU Commission (2016), Action Fiche for the implementation of the Horn of Africa Window. p. 7), yet apparently, considered inferior to the need for securitization of the region against irregular migration.

<sup>82</sup> The Trust fund for Africa program bears strong resemblance to the highly criticized program "External migration spending in Southern Mediterranean and Eastern Neighborhood countries", for example The European Court of Auditors, among others, criticized its failures to prove limiting effects on migration as well as poor coordination of stakeholders and insufficient set-up of indicators.

<sup>83</sup> Good examples include the Generalised Scheme of Preferences (GSP) program, in which the EU started putting in place additional innovative ways of providing support to the GSP+ countries for the implementation, enforcement and monitoring of the relevant Human Rights treaties and International Labour Organisation (ILO) Conventions alongside preferential trade agreements intended to boost their economy. Another positive example comes from the "Lives in Dignity: from Aid-dependence to Self-reliance" project, introduced recently by the EU Commission. This policy framework aims to assist people living in long-term displacement. "The framework will harness the productive capacities of refugees and IDPs by helping them to access education, housing, land, productive assets, livelihoods and services, and by supporting interaction between them and their host community." (p.5)



Action Service, EU delegations in non-EU countries, involved MSs, and third countries.

- COM to ensure long-term approaches to development in fragile regions take precedence over short-term security measures. Establishing a needs-based system, tackling root causes of forced migration ought to include their political, environmental and economic dimension in countries where reliable local partnerships are possible, non-conditional on the immediate effects of such focus on migration flows<sup>84</sup>. These changes ought to be reflected in the implementation of already existing Migration Compounds with Morocco (est. 2013) and Tunisia (est. 2014).
- The EU Trust Fund projects as well as other EU development funding instruments ought to be amended with effective safeguards for accountability and transparency. Similarly, the COM must develop a coherent, overarching system of monitoring and evaluation standards.
- All funds available under the EU Trust Fund for Africa development scheme need to be invested directly into poverty alleviation and inequality reduction.

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<sup>84</sup> European aid must to be aimed at eradicating poverty and inequality in accordance with the Treaty of Lisbon Article 208,



## ANNEX

### ABBREVIATIONS

AMIF – Asylum Migration and Integration Fund  
CEAS – Common European Asylum System  
CJEU – Court of Justice of the European Union  
CoE – Council of Europe  
EASO – European Asylum Support Office  
ECHR – European Convention on Human Rights  
ECtHR – European Court for Human Rights  
EHV – European Humanitarian Visa  
EP – European Parliament  
ERS – European Resettlement Scheme  
EUAA – European Union Asylum Agency  
EUGS – European Union Global Strategy  
EU COM/COM – European Commission  
GAMM – Global Approach to Migration and Mobility  
JHA – Justice and Home Affairs Council  
LTV visa – Limited Territorial Validity visa  
MS – Member states  
PEP – Protected Entry Procedures  
PRM – Permanent Redistribution Mechanism  
SVC – Schengen Visa Centres  
TFEU – Treaty on the Functioning of the EU



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Policy paper was selected in the call for papers within the framework of the project “EU Asylum and Migration Policy One Year from Now”. The project is conducted by AMO and the Institute for Active Citizenship in cooperation with the Heinrich Böll Foundation Prague. The views presented in the text are not the official attitude of these organizations.