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European Parliament elections Search and Rescue The EU's eastern border

This policy update's special focus covers the 2019 European Parliament elections. The centre-right and centre-left blocks have lost their combined majority, while smaller political groups made significant gains. In several countries, nationalist parties consolidated their grip on power. Overall, however, there was no far right surge. These European elections represent a watershed moment in the long process of reforms started in the previous institutional cycle, particularly those concerning the Common European Asylum System.

As discussed in the political developments section, NGOs conducting search and rescue activities in the Mediterranean continue to experience government crackdowns on their work. These come in the form of both criminal proceedings against their crews and organisations, as well as administrative fines on regulatory grounds. Among other things, the Italian government has adopted a new decree that will further restrict NGO's rescue capacity in the Central Mediterranean and includes significant fines.

At the same time, the EU continues to increase its cooperation with third countries on border control, most recently through the status agreement between the European Border and Coast Guard Agency (Frontex) and Albania. This comes amid growing concern about the precarious situation of migrants at the EU's eastern border, who face increasingly hostile treatment in Hungarian transit areas and are subjected to food deprivation.

This Update's Closer Look Section covers the European Summit of Refugees and Migrants where refugee and migrant-led organisations discussed key issues with several stakeholders. The summit produced recommendations for improving migration policies in five thematic areas: civic engagement, health & wellbeing, education, protection, and agency & participation.

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SPECIAL FOCUS

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The EP elections and the future of the CEAS

Asylum

This Special Focus examines the results of the 2019 European Parliament (EP) elections. A first section considers how questions related to migration influenced voting patterns. A second section looks at how the process of reform of the Common European Asylum System (CEAS) could be affected by the composition of the new EP.

The elections have resulted in the most fragmented EP in its history. This reflects a wider trend that is also visible in national elections. More specifically, the centre-right and the centre-left have suffered heavy losses. Compared to the previous legislature, the European People's Party (EPP) and the Social Democrats (S&D) have 34 and 31 fewer members of parliament (MEPs). The Liberals and the Greens have instead increased their representation, with an additional 39 and 22 MEPs respectively. This means the EPP and the

Epim
European Programme for Integration and Migration

S&D can no longer form a majority on their own, and will have to form an alliance with either the Liberals or the Greens, or both. The balance of powers in this coalition of pro-EU forces will be essential for negotiating long-awaited reforms, including that of the CEAS.

Questions concerning the EU's migration and asylum policies were debated during the campaigns ahead of the May elections, including by the "Spitzenkandidaten", the lead candidates for the presidency of the Commission. This contributed to raising the transnational significance of the election. Traditionally, European voters express their preferences in accordance with national considerations. Some analysts argued that, this time, a significant part of the electorate would express their preferences based on the challenges that Europe faces as a whole. Experts generally consider this to be a positive development for EU politics, because it increases democratic representation and it makes pan-European solutions to such challenges more likely. However, ahead of the elections, stakeholders and commentators feared that it would also facilitate the creation of a new block dominated by the far-right. In the recent past, xenophobic candidates exploited salient issues that elicit strong emotions among the public, such as migration.

Opinion polls and surveys carried out in the months preceding the EP vote showed that European voters did consider migration an important issue. However, migration did not define voting preferences across the board. Some surveys clarified that most Europeans see migration as one policy priority among others including, for instance, the protection of the environment and the rise of nationalism. The far-right also failed to transform the elections into a referendum on immigration because centrist groups avoided turning the topic into the core of their programmes. Populist and right-wing parties did effectively top the ballots in Italy, France, Poland and Hungary, but they did not sweep the board. The results were below expectations in several countries, such as Germany and Spain. In other member states, like in Denmark, Greece and the Netherlands for example, far-right parties lost seats.

Altogether, Eurosceptic and populist groups won about one fourth of EP seats. However, this share conceals significant internal divisions, especially in relation to migration. Right-wing parties share a strong anti-immigration rhetoric and do not, in principle, oppose a reform of the asylum system. However, the contentious debate on the reform of the Dublin system indicates that right-wing and nationalist forces have significantly divergent interests. Italian Interior Minister Salvini from the far-right Lega party has, for example, repeatedly called on other member states to show greater solidarity in taking in more refugees. In contrast, the Visegrád Four, and the populist and right-wing Hungarian government in particular, categorically refuse to participate in mandatory relocation schemes. That is why many analysts argue that, besides a focus on shifting power back to the national level, populist and radical right parties will not be able to develop a common agenda.

Unresolved issues regarding political programmes also explain why far-right and populist parties have struggled with the question of which Parliamentary group to join. Some have joined Identity and Democracy, a new group formed by the Italian Lega, Marine Le Pen's National Rally and by other far-right parties. Other parties may eventually converge in the EPP. This seems to be the aspiration of the Hungarian far-right party Fidesz led by Viktor Orbán, although the party's current suspension may result in its expulsion from the group. Others could join Poland's Law and Justice in the European Conservatives and Reformists. In general, however, most populist entities will resort to disruptive strategies, a tactic they have used in the past in an effort to filibuster institutional dynamics.

The elections for the new Parliament inaugurate a period of institutional transition. The alliances between parliamentary groups will play a major part in the turnover. Given the fragmented composition of the EP, political families that did not have a powerful voice in the past, such as the Greens and the Liberals, will acquire unprecedented influence in the

next cycle. In this sense, fragmentation is not necessarily a negative process. Representatives of civil society organisations have highlighted that this can, for instance, offer opportunities for smaller partners to make their participation in any new coalition conditional on the pursuit of progressive and humane migration and asylum policies.

However, fragmentation not only affects the creation of the new coalition, but also the composition of the groups. Traditional members and potential partners of centrist groups, including those which have pursued an aggressive anti-immigration agenda, could also set specific terms of engagement for their participation. This case is exemplified by Fidesz which, as NGOs have warned, may be able to exert greater influence from inside the EPP than from outside. But the same may hold true for left-wing parties traditionally associated with the S&D, which also took a hard line against immigration, such as the Danish Social Democrats. Seen from this viewpoint, it is still unclear how weaker and shifting majorities will affect the institutional dynamics.

New power relations in the EP could be an important factor in the process of reforms in the upcoming cycle, although their adoption will remain contingent on the Council. In this respect, the elections also offer an opportunity to reflect on the achievements and setbacks of the CEAS reform, as well as on its future. Four years down the line, analysts agree that the so-called "migration crisis" was the result of insufficient harmony between national rules and structural asymmetries between solidarity and responsibility. The previous EP and the Juncker Commission shared a broad desire to close the gaps between national provisions governing asylum procedures, qualification and reception conditions. As part of the wider efforts to reform the asylum system, the former LIBE Committee also adopted a common position on the reform of the Dublin system and on the resettlement framework.

However, the controversy surrounding the Dublin IV Regulation made it impossible for the Council to reach an agreement, which in turn blocked the entire reform process. Since the beginning, the different proposals in the CEAS reforms, including the reform of the Dublin system, were thought to be part of a package of interconnected measures. Accordingly, as long as the Dublin reforms remained stuck, the other files in the packages were blocked from adoption too. In spite of the legislative impasse, members of the Council and leading MEPs dismissed calls for unpacking the different sets of reforms. Former MEPs feared that separating the various proposals would put the Dublin reform in danger. Southern and eastern states also defended the package approach because they could use it as leverage to protect national interests. In the end, no agreement could be reached before the EP elections.

The CEAS reforms now face an uncertain future. Under the "unfinished business rule", the new EP could revive the proposals, either as a package, or as stand-alone initiatives. Prior to that, the new Parliament's Conference of Presidents, which comprises the president of the EP and the leaders of the political groups, will have to decide whether to continue, or discard, the work done in the previous legislature. Experts have emphasised that, given the resources invested and the progress made, it is unlikely that the entirety of the package will be dropped. Since it has become clear that some initiatives enjoy greater support than others, the idea to sub-divide the package may therefore find new advocates in the upcoming cycle. In that case, the most problematic proposals, most notably the Dublin IV Regulation and the Asylum Procedures Regulation, may not make it through.

Some analysts have argued that unpacking the reform proposals and advocating for small(er) changes should be viewed favourably, as it could improve the lives of many. Accordingly, they have called on civil society to start campaigning on the most urgent human rights issues. On the other hand, partial harmonisation may take the focus away from the need to solve structural deficiencies. Aiming for consensus on specific measures rather than on systemic protections may diminish overall standards, and further endanger

migrants' rights. This is a serious risk, especially since internal divisions could make the Parliament more vulnerable to interventions from the Council. As shown by its 2019-2024 agenda, the European Council aims to make the strengthening of external borders and so-called "effective returns" an absolute priority in the upcoming cycle. Documents published by the EPP, S&D and ALDE prior to the elections already indicated a notable convergence towards strengthening external controls and enhancing return policies.

In response, international organisations have urged new MEPs to commit themselves to the protection of fundamental rights. The Red Cross has called on them to seize the opportunity and design an asylum system that is consistent with the legal and moral obligations of the Union. The UN High Commissioner for Refugees noted that a comprehensive approach to asylum and migration is still lacking, and expressed the hope that the process of reforms could gain fresh momentum with the formation of a new EP. NGOs joined the appeal and argued that, following the 2019 elections, the EU agenda must shift towards a more compassionate approach to asylum. For this to happen, progressive MEPs will have to effectively engage the Commission and the Council and, at the same time, hold out against their conservative counterparts. NGOs maintain that a humane migration and asylum policy is still within reach. They invite other organisations to come together and jointly call on European leaders to deliver on their promise of change.

POLITICAL DEVELOPMENTS

Human rights under pressure at the eastern border

Asylum Immigration Detention

The situation of refugees and migrants at the EU's eastern border continues to be worrisome. As discussed in a previous EPIM Policy Update, reports of violence and arbitrary detention frequently surface in testimonies about the treatment of migrants stuck in border areas. In March 2019, Amnesty International released a report on the dire conditions for migrants along the entire Western Balkan route. They registered multiple cases involving illegal push-backs and collective expulsion, sometimes accompanied with violence and intimidation. Other reports and monitoring exercises also collected detailed statements from migrants on similar circumstances, in particular along the Bosnian-Herzegovinian borders with Montenegro, Croatia and Slovenia, and the Serbian borders with Croatia and Germany. Accusations relate to the inability to access medical services, poor detention conditions and pushbacks to remote locations.

One particular area of concern is the increasingly hostile treatment in the Hungarian transit areas, where it is reported that migrants continue to be routinely deprived of food, as Human Rights Watch already documented last year. The Hungarian Helsinki Committee

stated that the "deliberate starvation of detained persons is an unprecedented human rights violation", possibly amounting to inhumane treatment or even torture under international human rights law. In addition, reports emerged in mid-May of Afghan families being forced to choose between returning to Afghanistan and crossing the border from Hungary back into Serbia. UNHCR stated that this development was "deeply shocking and a flagrant violation of international and EU law". At the end of May, the Council of Europe's Commissioner for Human Rights, Dunja Mijatović, similarly published a critical report about the situation. She documented the inhumane detention conditions, harassment of civic organisations, increasing pressure on the rule of law in Hungary and a further breakdown of the protection system. The Commission responded by stating that it had taken "these allegations quite seriously". Nevertheless, commentators are not sure if outside pressure has any influence on the Hungarian administration's position on migration.

Frontex agreement with Albania

Asylum

The EU is increasing its cooperation with third countries on border controls, including countries close to its eastern border. At the beginning of May, a status agreement between the European Border and Coast Guard Agency, also known as Frontex, and Albania came into force. Adopted in October of 2018, this is the first agreement of its kind with a third country and gives Frontex the mandate to carry out joint operations and deploy teams at the border shared by the EU and Albania. The first operation within this cooperation was launched at the end of May 2019, with the aim to prevent so-called "irregular migration" along the Balkan route. This entails Frontex deploying officers and equipment to the Albanian-Greek border by means of "mobile offices" working alongside national authorities. The mandate includes border checks and surveillance activities, as well as support in determining the nationality of migrants. Similar agreements with North Macedonia, Serbia, Bosnia and Herzegovina and Montenegro are currently under negotiation.

These developments are also significant against the backdrop of the recently adopted reform of the Frontex Regulation. While these status agreements apply to countries that share a border with the EU, the updated Frontex Regulation provides a legal basis for similar agreements to be concluded with countries beyond the EU's immediate neighbourhood. This would include the deployment of staff to cooperate with local authorities on border management and the potential setting up of antenna offices to coordinate operational activities.

NGOs have been critical of these status agreements and Frontex's cooperation with third countries. Statewatch highlighted that the apparent urgency in adopting these status agreements does not correlate with the drop in numbers of migrants coming to the EU via the Balkan Route. The organisation was also critical of the status agreements' provisions on Frontex's fundamental rights responsibilities. ECRE warned that the agreements could contribute to the effective closure of the Balkan route, to keeping asylum seekers in flawed asylum systems, and to limiting access to protection in the EU.

The continued criminalisation of solidarity

Asylum Immigration Detention

Migrant-supporting NGOs and individuals continue to be criminalised across Europe. Laws that were originally designed to deter human smuggling are increasingly being used

against humanitarian actors, individual activists and grassroots organisations. Many have been targeted for providing food, transport or shelter to migrants without official papers or for documenting police abuse against migrants. Civil society organisations concur that this ongoing criminalisation of NGOs and individuals is aimed at systematically discouraging these actors from providing assistance to refugees and migrants.

Search and rescue (SAR) NGOs operating in the Mediterranean have been hit particularly hard, as discussed in a previous EPIM Policy Update. After the success of the far-right Lega party in the Italian elections in March 2018, the Italian Minister of the Interior, Matteo Salvini, has introduced increasingly restrictive asylum policies to crack down on civilian SAR operations, and at the same time has closed Italian ports to their ships. More recently, the Italian government agreed on a new decree that aims to bar vessels conducting SAR activities from accessing territorial waters and ports. The most controversial details of the text include giving NGOs fines of up to EUR 50,000 in case they disembark migrants in Italian ports, and allowing a possible confiscation of their ship. Initial disagreement within the government led to the decree being advanced only after the European Parliament elections. It was signed by the Italian president and has entered into force, but the Italian Parliament could still withdraw the decree. This is unlikely to happen, however, as the governing coalition enjoys a comfortable majority in the chamber. The new decree is seen as a reaction to the SAR vessel Mare Jonio rescuing 49 migrants in international waters in defiance of a previous restraining decree. UN Human Rights Special Rapporteurs called for the decree's withdrawal, stating that SAR operations cannot represent a violation of legislation on border control. UNHCR also called on Italy to reconsider the decree, in particular with regard to the potential penalisation of shipmasters for refusing to disembark migrants in Libya. Some Italian authorities voiced criticism as well, with Italian Admiral Vittorio Alessandro condemning the decree as "an abnormal text, clearly illegitimate and disqualified by abuse of power".

Meanwhile, ten crew members of the Iuventa face charges of "aiding and abetting illegal immigration", an accusation that the organisation strongly rejects. While the trial is expected to start in the autumn, the ship itself remains impounded under Italian custody in Sicily. Jugend Rettet criticised that this drawn-out situation does not allow the crew to bring evidence in their defence, given that no formal charges have been pressed so far, while also preventing the organisation from conducting further SAR missions. The Observatory for the Protection of Human Rights Defenders condemned the proceedings as "judicial harassment". At the beginning of May, the Mare Jonio, a ship of the Italian charity Mediterranea, was also seized by Italian officials in the port of Lampedusa where it awaits the official launch of a criminal investigation on grounds of "promoting illegal immigration". At the end of May, the vessel Sea Watch 3, operated by the Dutch NGO Sea Watch, was seized by Italian authorities for breaching immigration rules and aiding so-called "irregular" immigration, yet was released shortly afterwards.

In parallel, several NGOs are facing administrative proceedings that severely hamper their ability to provide SAR services. In mid-April, due to significant public pressure, the NGO ship Open Arms received permission to leave the Barcelona harbour after being held in the port for three months on grounds of safety issues. However, the ship, whose crew was cleared of parallel criminal charges in Italy, is still not allowed to conduct SAR activities. In May, a Maltese court charged the captain of the ship Lifeline with a fine of EUR 10,000 for not having correctly registered the vessel. Mission Lifeline, the organisation behind the SAR team, intends to appeal the judgment.

In response to the number of dangerous migrant crossings, a group of lawyers submitted a request at the beginning of June 2019 to the International Criminal Court over the EU's

migration policy, arguing that the EU and its member states are responsible for migrants' deaths on land and at sea. The submission also accuses them of the persecution of SAR NGOs and for the cooperation with the Libyan Coast Guard, which has resulted in the return of migrants to detention centres in Libya, where conditions are dire.

The most recent, high-profile case on the criminalisation of SAR activities relates to the situation of the Sea Watch 3. On 29 June, the vessel's captain, Carola Rackete, defied the orders of the Italian authorities by sailing into the port of Lampedusa in order to allow for the disembarkation of 40 migrants that had been saved before the coast of Libya. Previously, the ship had been ordered to stay outside of Italian territorial waters until an agreement on the relocation of the migrants on board would have been reached. Italy had enabled the disembarkation of 13 vulnerable migrants from the ship. The Italian government had also been obliged to provide basic care to the migrants, in keeping with an interim measure granted by the European Court of Human Rights (ECtHR) in January 2019 with respect to proceedings that also involved the Sea Watch 3. A new case was brought before the Strasbourg Court, including a new request for interim measures asking for the disembarkation of those on board. The request for an interim measure was not granted, but the ECtHR reminded Italian authorities of their obligation to continue providing all necessary assistance. The proceedings themselves, including the earlier case from January, remain pending before the Strasbourg Court and will only be decided later.

Following its arrival in the port of Lampedusa, the vessel was impounded and its captain, Carola Rackete, taken into custody by Italian authorities, amidst widespread condemnation from civil society and several European governments. The German Foreign Minister publicly called on Italy to stop the criminal proceedings against Rackete. The French government also criticised the mishandling of the situation by Italian authorities. Carola Rackete was released on 2 July following an order by an Italian judge who ruled that she had been carrying out her duty to protect human life. The migrants are planned to be relocated to Finland, France, Germany, Luxembourg and Portugal.

Leaked Council working paper on temporary disembarkation arrangements

Asylum Immigration Detention

At the end of June, Statewatch leaked a working paper of the Council presidency containing guidelines on temporary arrangements for disembarkation. The paper proposes a non-binding framework of a temporary nature and with the voluntary participation of member states. The framework would be aimed at streamlining disembarkation practices that have, until now, been handled on an ad hoc basis. In particular, the paper covers circumstances in which temporary disembarkation arrangements would be triggered; the structures for operational coordination; and the workflow between the participating parties. The Council presidency proposes to develop these temporary arrangements in parallel to the reform of the Dublin Regulation, which is currently stalled.

Crucially, the paper makes no mention of a timeframe within which individuals should be relocated. In the past, and as appears from internal documents, Maltese actors have denounced member states not following up on their pledges to relocate people in a timely manner. This omission is also concerning in light of the strain that lengthy relocation processes pose on individuals. Moreover, the document mentions alternatives to detention, and the option of detaining individuals while their case is being processed. However, it is

vague on the circumstances in which these options would be considered, raising questions as to the safeguarding of migrants' fundamental rights.

As discussed in a previous EPIM Policy Update, NGOs have advocated for a more structural solution to the disembarkation and relocation of people in need of international protection. This is especially urgent when migrants are stuck on board of SAR vessels while member states negotiate their relocation. At the beginning of the year, ECRE provided recommendations on how structural relocation mechanisms after disembarkation could work, for instance, by establishing a pre-defined reference share for relocations among member states based on objective criteria, such as GDP or population size. The leaked working paper, however, does not sufficiently clarify the allocation of relocation spots among EU states. Instead, it returns to the current, and potentially discriminatory, modus operandi of basing relocation on the individual profiles a member state is willing to accept.

LEGISLATIVE DEVELOPMENTS

Adoption of the Interoperability Regulations

Asylum

After formal approval by both Council and Parliament, two regulations on the interoperability of EU information systems were officially adopted at the end of May. The new rules cover interoperability in the field of borders and visas and in the field of police and judicial cooperation, asylum and migration. The main elements of the new regulations comprise a European search portal with simultaneous access to different databases and a shared matching service for biometric data, such as fingerprints and facial images. Moreover, the regulations will establish a common identity repository for biographical information and a mechanism to detect the registration of multiple identities. The systems covered by the new rules are the Schengen Information System, Eurodac and the Visa Information System. In addition, the new European Criminal Records System for Third Country Nationals, the Entry/Exit System and the European Travel Information and Authorisation System will, upon operationalisation, also be accessible via the interoperability regulations. eu-LISA, the agency responsible for the operational management of large-scale information systems in the area of freedom, security and justice, will be tasked with implementing the new regulations.

During the European Parliament's plenary debate, MEPs supportive of the new legislation underlined its added value in fighting identity fraud and making border management more effective. Commissioner Avramopoulos called the regulations a "decisive step towards... managing the parallel and interconnected challenges of migration and security". Parliamentarians from the Greens/EFA and GUE/NGL groups, however, warned that the interoperability legislation was a point of no return in terms of data privacy ramifications and risked conflating migration and crime. While it endorsed the legislation, the S&D group also had some reservations, warning that the new regulations may prioritise security concerns over data protection. In addition, and as described in a previous EPIM Policy Update, several observers have raised concerns about connecting different information systems via these regulations. According to Statewatch, the interoperability regulations and the centralised EU database raise privacy concerns for non-EU citizens and EU citizens alike. Data protection experts have also warned that the interlinking of databases risks undermining EU data protection laws and could possibly lead to serious rights violations, in particular for migrants and minorities.

Council adopts position on Returns Directive

Asylum Immigration Detention

At the Justice and Home Affairs Council in June, the Council of the EU adopted its partial common position on the recast Returns Directive. This negotiating position covers all aspects of the revision of the file, apart from more controversial provisions related to the border procedure for return. After the Commission tabled the proposal to reform the Returns Directive in September 2018, member states agreed the following December on a compromise proposal that, overall, reduced fundamental rights safeguards.

On the side of the Parliament, the future of the Returns Directive remains uncertain. Judith Sargentini MEP, the rapporteur for the file, presented her draft report on the file at the beginning of this year. Her report seeks to strengthen protective standards by, among other things, extending the time limit for voluntary departures, introducing a complete ban on the detention of children and families, and deleting the return border procedure. However, the file has not been put to a vote in the LIBE Committee and the rapporteur will not return for the next legislative cycle. It is therefore uncertain whether the current report will be taken up again by the new Parliament in the autumn (see the Special Focus above). Moreover, the negotiations between the co-legislators in the Parliament and Council are expected to be cumbersome, given their diverging positions.

The recast of the Returns Directive has generally been subject to much controversy. Earlier this year, a substitute impact assessment commissioned by the Parliament's research service found that there was no clear evidence that the Commission's proposed recast would actually lead to so-called "more effective returns of irregular migrants". Instead, the substitute impact assessment found that some of the proposal's provisions entail strong risks of breaching migrants' fundamental rights. Similarly, the EU Fundamental Rights Agency published an opinion on how to better respect fundamental rights in the recast text. Civil society organisations also highlighted the impact the recast could have, including increased detention levels and the lowering of safeguards of third country nationals' fundamental rights. This is particularly worrying in the context of the border procedure which, as NGOs have argued, could be used to "stop and detain people at borders, carry out truncated procedures, and rapidly return them". These concerns were echoed by experts who fear that the recast proposal would disregard the international human rights framework on so-called "irregular migrants".

Council adopts amendments to Visa Code

At the same JHA meeting, the Council also adopted amendments to the Visa Code Regulation for short-stay visas. This follows the Parliament's adoption of the agreed text in April 2019 and concludes the legislative process on the file. The new rules are expected to improve conditions for travellers by simplifying visa application processes, but they also raise visa fees.

The Visa Code Regulation is part of the EU's closer cooperation with third countries to manage migration and provides the basis for using visa processing as a leverage for cooperation on readmission. This applies in particular to cooperation on border management, on countering migrant smuggling and on preventing the transit of so-called "irregular migrants" through a third country's territory. Migration experts have been critical of the EU's restrictive approach in this respect, criticising the apparent blackmailing of third countries to force their cooperation on readmission and return. Others found that this leverage could also lead to the discrimination of third country nationals from different countries when applying for a visa.

SELECTED ECJ CASE LAW & LEGAL ACTIONS

Asylum

Judgment in Joined Cases C-391/16, C-77/17 and C-78/17 M v Ministerstvo vnitra, and X, X v Commissaire général aux réfugiés et aux apatrides, 14 May 2019

These joined cases concerned two refugees and one asylum seeker who were convicted for serious crimes in the Czech Republic and Belgium. In line with the Qualification Directive, national authorities revoked the refugee status in the first two cases, and rejected the application for asylum in the latter case. The three individuals contested the decision, arguing that the Qualification Directive establishes grounds for cessation and exclusion, which are not set out by the Geneva Convention on the Status of Refugees. The Geneva Convention permits the expulsion of a foreign national who represents a danger to the security of the host state. However, it does not state that such a person is no longer a refugee. In its ruling, the Court took the view that the Qualification Directive does not violate the provisions of the Geneva Convention. The Court grounded its decision on the difference between "being a refugee" and having "the status of refugee". The Court emphasized that being a refugee is not conditional on the formal process of recognition that assigns the status of refugee. On that account, revoking refugee status or rejecting an

application for asylum does not mean that the person concerned is no longer a refugee. This ruling could be seen as having both adverse and positive effects. On the one hand, the Court stated that only a person who enjoys the status of refugee is entitled to the full spectrum of rights laid down in the Qualification Directive. Following this decision, a person who is convicted of a serious crime or is considered a threat to national security may be lawfully deprived of several rights and benefits. However, the Court also specified that states cannot strip a person of the rights to family life and to engage in work, nor of the rights to health and social assistance. In addition, the Court underlined that the protective net guaranteed by EU law is more extensive than that of the Geneva Convention. Contrary to the Convention, EU law prohibits the removal of a person to a state where (s)he may be subjected to torture or other forms of inhuman treatment, regardless of his or her conduct.

Case C-720/17 Mohammed Bilali v Bundesamt für Fremdenwesen und Asyl, 23 May 2019

This case concerned the situation of Mr Bilali, who filed an application for international protection in Austria. Mr Bilali is, on his own account, stateless. He was granted subsidiary protection status as the Austrian Federal Asylum Office considered him to be 'probably an Algerian national', and feared that he could be exposed to inhuman treatment if returned to that country. This status was later withdrawn as the Austrian Asylum Office became aware that Mr Bilali was eligible for both Moroccan and Mauritanian nationality. The temporary right of residence coupled to that status was also revoked, and a return decision indicating Morocco as country of destination was issued.

In the proceedings that Mr Bilali subsequently lodged against that decision, questions were raised before the Court of Justice on the interpretation of the Qualification Directive. These questions concerned, more specifically, the Directive's Article 19 governing the revocation or ending of subsidiary protection status. Of particular relevance was the observation that the incorrect information that led to the grant of subsidiary protection status was not attributable to any misrepresentation or omission of facts by Mr Bilali, which would be covered under Article 19.3. Instead, it rested on a mistake made by the national authorities in determining what was assumed to be his nationality, a situation not explicitly covered by Article 19. The Court considered the situation in light of the general scheme and objectives of the Qualification Directive, as well as the requirements arising under the Geneva Convention. On that basis, it concluded that, if a state granted subsidiary protection status when the conditions for granting it were not met, it had to revoke that status. Nevertheless, this did not imply, for the person concerned, a connected loss of eligibility to residence rights in accordance with the Long-term Residents Directive, nor did it preclude such a person from applying for 'another kind of protection' under national law. In such contexts, as the Court stressed, member states were obliged to observe the fundamental right to private and family life as enshrined in Article 7 CFREU and Article 8 ECHR.

Other relevant case law

Case C 631/17 SF v Inspecteur van de Belastingdienst, 8 May

Case C-677/17 Çoban v Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen, 15 May

Case C-235/17 European Commission v Hungary, 21 May

Case C 22/18 TopFit eV, Daniele Biffi v Deutscher Leichtathletikverband eV, 13 June

Photo: European Summit of Refugees and Migrants

The European Summit of Refugees and Migrants

Inclusion Asylum

By Anila Noor and Shaza Al Rihawi (Global Refugee Led Network & New Women Connectors)

Refugees and migrants are viewed as passive recipients of policy. In Brussels, they are classified as incapable of offering reasonable solutions and unable to serve as experts of their situation despite their lived experience of this reality. To change and challenge this perception, 60 refugee and migrant leaders from the 28 EU member states gathered in Brussels on 4-6 May 2019 for the first-ever European Summit of Refugees and Migrants. After two days of working together to develop policy proposals, they were joined by over 40 delegates from INGOs, the private sector, academia, EU institutions, UNHCR and foundations to discuss and exchange views on key issues.

The summit brought together refugee and migrant led organisations to plan and coordinate their efforts and influence the European policy agenda as new and active EU citizens. With the topic of migration inclusion dominating the political debates in many member states, this summit was deliberately scheduled before the European Parliament elections. The summit idea stemmed from three new refugees: Mohamed Badran, Shaza Al Rihawi and Anila Noor, whose experience of policy advocacy has often been one of tokenisation: "It's not that refugees are completely excluded from the Brussels policy arena; we are often invited to events and conferences but only to tell stories of our miserable existence, so our saviours can plan, pilot and practice policy solutions that continue to be questioned for being inefficient or inconsistent. They love our stories on the boat and how it bluffed the fortune to sail through, but do not appreciate the idea of refugees offering policy propositions that can reshape their futures. The process somewhat excludes the actual concerns of migrants/refugees despite the cherished slogans of inclusive and participatory processes."

Self-representation is a main challenge for refugee and migrant led organisations due to a lack of opportunities, networks and readiness of other stakeholders to partner with them. This summit drafted recommendations for improving migration policies in five thematic areas: civic engagement, health & wellbeing, education, protection, agency & participation.

For migrants, asylum seekers and refugees in Europe, access to protection is the prerequisite for further inclusion and participation in the host societies. While the CEAS aims to harmonise EU standards, large differences persist between EU countries with

regard to asylum procedures and access to protection. Migrants and refugees therefore face numerous challenges, such as barriers to accessing legal information. This leads to a lack of knowledge on their procedural rights, which can be particularly challenging for those with specific needs (women, children, the elderly, persons with disabilities, as well as LGBTQI). Moreover, employment and education are extremely valuable for the integration of refugees and migrants into the host society and are also beneficial for governments, employers, and other stakeholders. The numerous obstacles in accessing such opportunities, including discrimination, racism and xenophobia, need to be tackled head-on. The health and wellbeing of migrants and refugees are also crucial for their inclusion and participation in society. It is therefore indispensable to open up health care systems to migrant communities by, for instance, guaranteeing equal access for both documented and undocumented migrants. Finally, advocating effectively in national and regional dialogues requires sustainable resources and time to develop collective policy positions as well as access to advocacy opportunities.

FACTS & FIGURES

In 2018, 664.480 applications for international protection werde made in the EU+

Source: **EASO, June 2019.**

UNHCR statistics on arrivals

Asylum

Recent data by the UNHCR reveal the following trends:

- 27,301 sea arrivals have been recorded since the beginning of the year. 2,755 have arrived in Italy, while 12,863 have arrived in Greece and 9,841 have arrived in Spain;
- So far, an estimated 584 people have been reported dead or missing in 2019;
- In Italy, the majority of refugees come from Tunisia, Pakistan and Algeria, while more than half of all refugees arriving in Greece originate from Afghanistan and Syria. In Spain, the majority of refugees come from Morocco, Guinea and Mali.

Relevant reports

Asylum Inclusion Immigration Detention Children and Youth

EASO: Annual Report on the Situation of Asylum in European Union 2018

The European Asylum Support Office released its annual report providing a comprehensive overview of the situation of asylum in the EU+ in 2018. It concluded that, for a third consecutive year, the number of applications decreased on an EU+ level, notwithstanding a stark variation between member states.

Amnesty International: Targeting Solidarity – Criminalization and Harassment of People Defending Refugee and Migrant Rights in Northern France

This Amnesty International report highlights the situation of human rights defenders who provide humanitarian aid and advocate for the rights of people on the move in northern France (Calais and Grande-Synthe). The report focuses on developments in the last two

years and provides key recommendations. These range from recognising the legitimacy of human rights defenders and condemning any smearing against them to proposals for more general reforms in European asylum legislation addressing the French and UK authorities, and the European Union.

European Migration Network: Annual Report on Migration and Asylum

The European Migration Network (EMN) published its report of last year's political and legislative developments concerning immigration and asylum in the EU. Amongst the specific topics discussed are legal migration and mobility, asylum, the situation of minors and other vulnerable groups, as well as integration and citizenship issues. Further developments concern the areas of borders, visa and Schengen, so-called "irregular migration", trafficking, and return and readmission.

European Council on Refugees and Exiles: Housing out of reach? The reception of refugees and asylum seekers in Europe

This comparative report is an update by the European Council on Refugees and Exiles (ECRE) on its continuing monitoring of the reception capacity for asylum seekers in Europe. It also analyses the obstacles that asylum seekers face when searching for suitable accommodation after receiving international protection status. Particular recommendations are made to the European institutions, national parliaments and reception authorities on safeguarding accommodation and reception standards and increasing the transparency of reception systems.

Centre for Legal Aid – Voice in Bulgaria (CLA) and Bulgarian Lawyers for Human Rights (BLHR): Applying Engagement-Based Alternatives to Detention of Migrants in Bulgaria

The CLA and BLHR, supported by EPIM, have executed one of three national pilot projects on Alternatives to Detention (ATD) for migrants. In this report on their activities over the past two years the organisations highlight the opportunities and challenges around implementing community-based ATD in Bulgaria based on a sample group of fifty participants. Their report concludes that in 97% of the cases a positive impact was measured on indicators such as well-being, trust in the system and ability to make informed decisions. However, it also notes that case management methods cannot in themselves combat larger structural gaps in the country's migration system, such as the lack of adequate living conditions.

EU Funding opportunities

Inclusion

Calls for proposals - EU funding

- SU-BES01-2018-2019-2020: Call for proposals on human factors, and social, societal, and organisational aspects of border and external security.
  - Call out on 14.03.2019 – Deadline: 22.08.2019

Other opportunities

European Economic and Social Committee: Civil Society Prize; Deadline 06.09.2019

EU CALENDAR: UPCOMING EVENTS

European Council and Council of the European Union

7 October	JHA Council
17-18 October	European Council

European Parliament

15-18 July, 16-19 September	Plenary Sessions
24-25 July, 4-5 & 12 September	LIBE Committee Meetings

Other events

9 July	Hand in hand: Social and economic inclusion of newcomers, The European Economic and Social Committee
15 July - 9 August	Regional Trade Union Training on Labour Migration: "Enhancing trade union capacities and actions towards fair labour migration", ITC-ILO
1 October	Attracting third-country national start-up founders and innovative entrepreneurs, EMN-Luxembourg
17-18 October	Workshop: Cities and the global governance of migration. An under-explored link, Migration Policy Centre
24-25 October	From Tampere 20 to Tampere 2.0, EMN-Finland, Odysseus and EPC
21-22 November	Vienna Migration Conference 2019, ICMPD

This document provides a focused analysis of recent EU level policy-making, legislation and jurisprudence relevant to EPIM's sub-funds on (1) Immigration detention; (2) Reforming the European Asylum System; (3) Children and Youth on the Move; (4) Mobile EU citizens and (5) Building Inclusive European Societies and covers the period from 24 April to 3 July 2019. We kindly ask the readers to keep in mind that the present Policy Update is composed of a selection of documents and does not claim to be exhaustive.

Should you, as representatives from EPIM's Partner Foundations or EPIM-supported organisations, have questions related to the analysis provided in this document or on EU developments in the field of migration and integration in general, you are invited to contact the authors (k.bamberg@epc.eu, ah.neidhardt@epc.eu, m.desomer@epc.eu, i.vanbrouwershaven@epc.eu). The sole responsibility for the content lies with the author(s) and the content may not necessarily reflect the positions of EPIM, NEF or EPIM's Partner Foundations.

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