Facts & Findings

Revised edition

Lessons from the stress test. What the EU has learned – and still needs to learn – from the refugee crisis

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Key Points

- In 2015, the migration crisis illustrated the lack of resilience of the European asylum and migration policy. Since then, the EU has succeeded in making greater progress than in the entire decade before.
- The numbers of irregular border crossings into the EU have dropped significantly in 2016 (from 1.8 million in 2015 to roughly 500,000 in 2016). The main migratory route has shifted from the Eastern Mediterranean (from Turkey to Greece) to the Central Mediterranean (from Libya to Italy).
- Although the EU has invested a lot of financial and human resources into the "hotspots" in Greece, the situation there remains volatile.
- Still no consensus has been reached on a solidarity mechanism for the distribution of those seeking protection; the search for mechanisms of burden sharing is ongoing.
- There are a number of positive developments: Some long overdue measures, such as the harmonisation of asylum legislation, the creation of a joint border and coast guard and enhanced collaboration with the countries of origin and transit, have been intensified. First positive experiences with "Migration Partnerships" have been gained.
- Migration will remain one of the EU's key challenges during the years and decades to come. The efforts made in the last 20 months can only represent the beginning of a long process of reform.

Introduction

Over the last 20 months, the EU has come under a great deal of criticism regarding its response to the refugee crisis. From outside of Europe, the EU has been accused of a lack of political will and common purpose. However, the external criticism was exceeded by far by the opposition from some of the Member States and its exaggerated depiction as a policy of non-compliance by some of the media.

Despite the complex issue and the immense pressure to act quickly, the European Union has shown itself capable of taking action in many areas over the past 20 months and passed numerous measures and reforms. While there have been and still remain some disputes about the distribution of the asylum seekers, much has been achieved with the establishment of the First Reception Centers (the so-called "hotspots") in Greece and Italy, the EU-Turkey Agreement and the enhanced border and coast guard – to name but a few elements of the policy. These and other mechanisms have allowed the migration to the European Union to be redirected into regulated pathways, at least for the time being. The purpose of this analysis is to describe what has been achieved over the last 20 months, highlight challenges and put forward some recommendations for action for the future development of European refugee policy.

I.   Original Situation and Background

1.   The global context: 2015 – a year of superlatives

In 2015, more people than ever fled their homes.

2015 was a year of extremes: globally, 65.3 million people found themselves forced to leave their home due to political persecution, military conflict as well as a general increase in violence and human rights violations. More people than ever before were displaced within the borders of unsafe or failing states or had to flee their home country altogether. These included 21.3 million recognised refugees, 40.8 million internally displayed persons and 3.2 million asylum seekers. The great majority of the recognised refugees, 86 per cent, settled in developing countries. The least developed countries, such as Ethiopia and Chad, accounted for the protection of 25 per cent of all the people in need of aid worldwide. Over half of the recognised 21.3 million refugees were children under 18. Most people fled from Syria (accounting for 4.9 million refugees), followed by Afghanistan (2.7 million), Somalia (1.1 million), South Sudan (0.8 million) and Sudan (0.6 million).[1] Although the global statistics have not been released, it is estimated that the numbers of forcibly displaced persons have continued to grow in 2016.

In terms of absolute figures, Turkey accommodated the largest group of refugees in 2015, namely some three million, followed by Pakistan (1.6 million), Lebanon (1.1 million), Iran and Ethiopia (around 1 million each). Measured by the size of its own population, every fourth person in Lebanon was a refugee, while it was roughly every tenth in Jordan. In Sweden and Malta, the two most affected EU countries in relative terms, refugees made up two per cent of the population.

Definition of a refugee:

Wars and conflicts, human rights violations and persecution, terror and repression, poor governance and corruption, poverty, overpopulation and a lack of prospects as well as natural disasters and climate change are forcing people to migrate.

However, only those who can prove a well-founded fear of persecution are recognised as refugees internationally. The reasons for the persecution must be substantiated specifically during the asylum procedure and related to criteria of political opinion, religion, nationality, race or membership of a particular social group. That was how it was laid down in the Geneva 1951 Refugee Convention, the purpose of which at the time was to find a solution for hundreds of thousands of people who had to flee or were driven out of their homes in Europe during World War II and its aftermath and to create a solid and sustainable protection system.

Since then, international and European refugee legislation has evolved and additional instruments of protection, temporary and subsidiary, have been introduced for war and civil war refugees. However, the criteria of the Geneva Refugee Convention continue to be at the centre of refugee protection, making a distinction between recognised refugees, who require international protection, and other migrants, who cross borders to join family members, to find work or to study. While the numbers of the latter group can be limited and regulated, international law prohibits countries from rejecting those in need of protection (non-refoulement).

2. The EU is facing a Herculean task: implementation of common asylum legislation

Before 2015, there were already clear signs of the repercussions of war, terror, displacement, destitution and lack of prospects in the Middle East and Northern Africa and therefore in the immediate neighbourhood of the European Union. The numbers of irregular border crossings registered by Frontex alone rose over the past three years from 72,500 (2012) to 283,500 (2014) and then to 1.8 million (2015). This illustrates the extent of the migration pressure at the external EU borders, caused by new conflicts such as the one in Syria in addition to protracted crisis situations such as in Afghanistan, which have persisted for decades. In 2016 the numbers of irregular border crossings into the EU dropped to about 503,700 – this being the strongest evidence for the effectiveness of the first set of EU policy reforms.[2]

Countries at the external EU borders are overburdened.

The number of asylum applications lodged in the EU also doubled from 2011 to 2014 and once again from 2014 to 2015. The available data indicates that in 2016 roughly 988,000 asylum applications were filed in the EU – two thirds of all applications were made in Germany with 658,000 cases. This already shows a steep decline in comparison to 2015. The numbers though decreased, remain high, due to the backlog of cases from persons entering in 2015. – In 2016 the recognition rate of protection needs remained high. In the third quarter of 2016 63 per cent of all asylum seekers in the EU were granted protection.

Asylum applications in the EU from 2010 to 2015

	2010	2011	2012	2013	2014	2015	2016
European Union (28 member states)	259,400	309,040	335,290	431,090	626,960	1,321,600	app. 988,000

Source: Eurostat

Before 2015, the countries most affected by migration due to their location at the EU periphery, such as Italy, Malta, Greece and Cyprus, had already appealed repeatedly for solidarity to other member states– requesting both financial support and measures to ensure an equitable distribution of refugees. At the same time, countries such as Germany and Sweden pointed out, that they were accepting a far higher per capita ratio of asylum seekers than the above-mentioned countries and called attention to the failure of some southern EU member states to apply the existing EU asylum legislation. Regular calls, by the EPP group in the European Parliament amongst others, for a strengthening of important instruments such as the border protection agency Frontex and the European Asylum Support Office, EASO, had also been unheard, due in part to opposition from the larger member states – among the Germany. In addition, the political agenda was dominated by the stabilisation of the Eurozone, which overshadowed all other topics.

After the disaster off the Italian island of Lampedusa, in which almost 400 people lost their lives in October 2013, another catastrophe occurred during the night from 18 to 19 April off the Libyan coast, where up to 800 people perished during their attempt to cross the Mediterranean. Following this event and in view of the exponential increase of irregular migration by October 2015, almost all subsequent European Council summit meetings have dealt with the challenges arising from the migration and refugee crises. In the past 20 months the focus has moved from immediate response to a long-tern strategy.

There was no shortage of EU asylum policy instruments.

However, even before the attention shifted due to the crisis, the EU did, already have a wide set of asylum policy instruments at its disposal. In the past two decades, the European Union had been working intensively on directives for simplifying procedures, setting standards and rules, resulting in a Common European Asylum System (CEAS) in 2013, which comprises the following elements:

- The Dublin Regulation, which determines the responsibility for an asylum application and ascribes it to a specific EU member state. Aiming towards – on the one hand - preventing those seeking protection from remaining in the EU without a clear destination and ultimately receiving no proper protection (refugees in orbit) and – on the other hand - towards avoiding asylum seekers from moving from country to country seeking out the best conditions or benefits at different locations (asylum shopping),

- The Directive on the Definition of Standards for the Reception of Persons who have applied for International Protection (Reception Directive),

- The Directive on the Recognition of Refugee Status, which prescribes harmonised principles and standards (Qualification Directive),

- The Asylum Procedures Directive,

▪ The directive for the Temporary Protection of Displaced Persons, which describes a flexible mechanism for war and civil war refugees.

There was and is no shortage of ideas, but implementation at member state level has remained a sore point. The Dublin Regulation, for example, had to be suspended in 2011 for Greece, which means that no country has been able to return asylum seekers to Greece ever since.[3] The European Court of Justice and several national courts have also identified systematic weak points in the asylum process and in the legal protection process in Bulgaria, Italy, Malta and Hungary, resulting in a departure from the application of the Dublin Regulation by court order on various occasions. Generally, there have been deficiencies in applying the regulations of the European Asylum System in nearly all EU member states.

II. EU Reforms in Response to the Refugee Crisis

Political quantum leaps 2015/2016

In 2015, although the legislation was in place, the EU and its member states were nowhere near a truly workable common asylum system. However, due to the increased need for action and new prioritisation by the heads of state and government and the European Commission significant progress has been made. Numerous reform proposals have been devised and many already adopted. This was underlined by EU Commissioner for Migration Avramopoulos when he stated in July 2015: "In the last few months, we have achieved more than we have done in the past decade".[4]

The initial decisions taken by the EU heads of state and government related to sea rescue, the fight against trafficking and people smuggling, and cooperation with third countries (including Turkey, Lebanon and Jordan). These were followed by decisions about the relocation from Greece and Italy of individuals seeking protection, the resettlement of persons living in precarious situations in first host countries (above all Turkey) as well as the strengthening of Frontex to create an effective border and coast guard. In addition, the changes adopted during the last 20 months included the creation of eleven First Reception Centers, the so-called "hotspots", greater financial support for humanitarian aid, as well as the initiation of the transformation of the European Asylum Support Office (EASO) into a European Union Agency for Asylum (EUAA). The reforms implemented to date have concentrated on measures in the following areas:

▪ Sea rescue and combating people smuggling ,
▪ Regaining control over the external EU borders and control of migration into the EU,
▪ Improvement of the EURODAC-registration at the EU external borders,
▪ Implementation, adaptation and harmonisation of existing EU asylum arrangements,
▪ More intensive cooperation with third countries in the fight against the causes of flight,
▪ Further development of channels for regular migration.

The following specific measures were approved:

1. Sea rescue and combating people smuggling

In view of the serious maritime disasters and deaths related to the desperate attempts to cross the Mediterranean, the EU initially focused on improving the sea rescue efforts. As one of the first measures, the funds and capacities for the sea rescue programmes "Triton" and "Poseidon" were trebled from 2.9 million to some

9 million euros per month in April 2015. Furthermore, the sea rescue measures were complemented by the EUNAVFOR MED EU mission (renamed "Operation Sophia" last September) since mid-June 2015, which concentrates on combating people smuggling and human trafficking. Two UN Security Council resolutions[5] cover this mission. They justify the monitoring of ships on the high seas off the Libyan coast for the purpose of stopping the activities of people smugglers and human traffickers. Section 12 underlines that "this resolution is intended to disrupt the organised criminal enterprises engaged in migrant smuggling and human trafficking and prevent loss of life and is not intended to undermine the human rights of individuals or prevent them from seeking protection under international human rights law and international refugee law." The three EU missions (Poseidon, Triton and Sophia) combined have already saved the lives of over 50,000 people who had come into difficulties at sea so far this year (2016).[6] Still in 2016 over 181,000 irregular migrants crossed the Central Mediterranean to reach Europe (90 per cent of them boarded a ship in Libya) – over 4,500 persons died in the attempt.[7] In November 2016 NATO launched its new maritime operation named "Sea Guardian". Under this operation NATO ships conduct surveillance activities, counter-terrorism and capacity building of regional navies. "Sea Guardian" supports the EUs Operation Sophia.[8]

Europol plays a key role in the fight against people smuggling and human trafficking. It collects data on numbers, routes and the practices of people smugglers and human traffickers. Europol also established that 90 per cent of the persons registered at the "hotspots" in Greece and Italy had arrived through smugglers and traffickers.[9] In 2015 and 2016 the EU had apprehended 2000 suspected traffickers and smugglers and removed 375 vehicles. The European Council summit meeting in November 2015 thus called for a European Migrants Smuggling Center, which was subsequently set up in February 2016. In addition, decisions were taken at the EU-Africa summit in La Valletta in November 2015 to improve the exchange of information as well as cooperation in the areas of policing and jurisdiction between the EU and the African countries.

2. Regaining control over the external EU borders and control of migration into the EU

a. Improving the registration rate

Since the beginning of the crisis, so-called "hotspots"/First Reception Centers for refugees were set up in Greece and Italy, where new arrivals are registered and their asylum applications are examined. After years of turning a blind eye and allowing people to pass through, the registration rate in both countries has now virtually reached 100 per cent. In Greece, for instance, "hotspots" were set up on the islands of Lesvos, Chios, Samos, Leros and Kos, with capacities for some 5,500 people in total created for the purpose of first reception, registration and the asylum procedure. Over 400 Frontex officers are operating at the sites, and the EASO is represented with 68 asylum legislation experts and 53 cultural mediators.[10] In Italy, there are operational "hotspots" on Lampedusa, in Pozzallo, Taranto and Trapani; they offer a total reception capacity of 1,600. The staff there includes 80 officers from Frontex, nine asylum legislation experts from EASO and ten cultural mediators. A lot of energy, resources and thought have been put into the establishment of the "hotspots". Nevertheless, especially the capacities of the Greek "hotspots" are insufficient leading to a volatile atmosphere.

"Hotspots" operational in Greece and Italy

In addition, the European Commission has proposed a reform of the Eurodac system, a European database for storing fingerprints. The objective is to expand the

scope of the regulation, allowing member states to also store and retrieve data of nationals from third countries who are in the EU illegally. The determination of their identity is to facilitate their return or readmission. Furthermore, facilities are to be added to allow additional data to be stored to provide national asylum authorities with simpler and particularly faster methods for identifying rejected asylum seekers.[11]

b.   Creation of an EU Border and Coast Guard

For years, the limited mandate of the EU border control agency Frontex (no dedicated resources, no dedicated personnel to conduct operations, no authority to conduct operations of its own to safeguard the external EU borders) represented a key problem for the protection of the external EU borders. In June 2016, the Council of Ministers and the European Parliament came to a fundamental agreement on upgrading the border control agency Frontex and transforming it into a **European Border and Coast Guard**, simultaneously enhancing its resources and its mandate significantly. For one, the mandate of the agency has been broadened substantially, allowing it to provide assistance on return, both voluntary departure and deportation: so far out of 690 needed specialists to carry out these tasks, 395 have been seconded. Since the entry into force of the regulation, the Border and Coast Guard effected 78 return operations, repatriating 3,421 irregular migrants.[12]

Furthermore, the border control agency will intensify the monitoring of the external EU borders and identify weak points through regular inspections. The new border guard also envisages the possibility of dispatching European border guard personnel into sovereign national territories. This involves liaison officers being sent to the affected member states, who will be able to provide assistance with eliminating identified weaknesses. The agency should be able to call upon a reserve pool of 1,500 border guards, who can be deployed at short notice. The border agency also has the authority to call upon a member state to take concrete measures. The degree to which the member states are relinquishing sovereignty in this context is remarkable. If a member state is not capable of protecting its external border, the newly established European Border and Coast Guard can take action itself. If a member state refuses to allow the border agency to act, the other member states will be entitled to introduce border controls with respect to that member state. In addition, the agency can conduct joint operations with third countries.

The proposal first put forward by the European Commission in December 2015 was thus adopted by the Council of Ministers and the European Parliament within only some six months. The new, upgraded border guard has started its work in early October – as planned. Up to a year ago, the creation of such a border control agency in particular – which the EPP group in the European Parliament among others had demanded for a long time – still seemed illusory. The first weeks have demonstrated the will to make the border guard a viable instrument: The member states have already confirmed the availability of 1,500 border guards for the so-called Rapid Reaction Pool. However, there are still sizeable gaps for equipment (particularly patrol vessels and helicopters).[13]
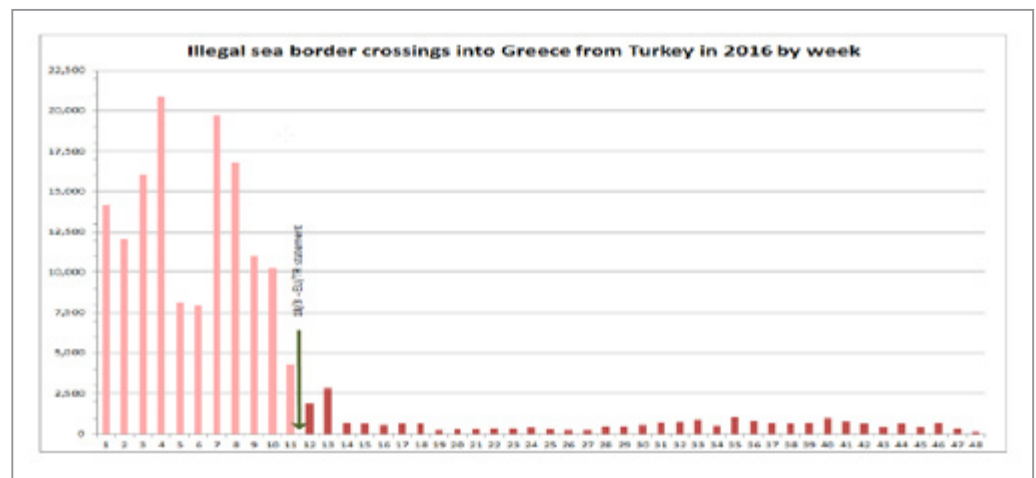
c. Strengthening cooperation with Turkey

Since the EU-Turkey Agreement of 30 March 2016 has been in force, the number of people crossing the Aegean and therefore the overall number of those entering the EU has reduced significantly (see Fig. 1).

Source: German Federal Government

EU-Turkey Agreement is working

While the refugees arriving in Greece still reached over 210,000 in October 2015, their number had gone down to 3,650 by April 2016. The data also reveal that the EU-Turkey Agreement has had a direct effect on the people smuggling "business" which had thrived in the Aegean. In 2016, the average number of persons setting out on the crossing every day was around 81. In 2015, it had still been up to 15,000 people a day. Contrary to what critics have claimed, the cooperation has largely been a success – above all because the Turkish side is adhering to the operational part of the agreement. Overall, the EU-Turkey Agreement has made a massive contribution to stabilising the situation and reducing irregular migration. At the same time, the loss of life along this route has also significantly decreased. 63 fatalities and missing persons were reported in the Aegean since the start of the Agreement – in comparison to 592 people who died in the Eastern Mediterranean in 2015.

Source: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20161208-4th_report_on_the_ progress_made_in_the_implementation_of_the_eu-turkey_statement_en_0.pdf

The Statement covers cooperation in the area of border control and sea rescue, financial and practical support for Turkey in caring for the approximate three million refugees in the country, and relief provided to Turkey through a refugee resettle-

ment programme. The Statement has had a number of positive effects in addition to curbing irregular migration:

1. It has contributed to progress in the cooperation between Turkish and Greek authorities, which are now regularly sharing information about routes and departures of boats – unlike the situation in previous years.

2. The Statement has resulted in an improvement in the conditions for refugees in Turkey. The promised disbursement of two tranches of each three billion euros in EU aid funds by 2018 will help to support humanitarian and structural projects (mostly conducted by international organisations, state institutions and NGOs, such as UNICEF, IOM, CARE, KfW, GIZ and DAAD) for providing food, accommodation, healthcare and education to refugees in Turkey. Since March 2016, the European Commission has already approved project funding in the amount of 2.15 billion euros. After a difficult start, the EU has thereby started fulfilling its responsibilities from the agreement.[14]

3. Under the influence of the refugee crisis, which has had a massive impact on Turkey since 2012, the Turkish asylum legislation has developed significantly. Originally, while Turkey had signed the 1951 Geneva Refugee Convention, it did not ratify the 1967 Protocol, which removed the geographic limitation to Europe. That meant that only people from Europe could obtain refugee status in Turkey until recently. However, things changed in 2014, and Turkey now also grants protection to people from other parts of the world. Since 2015, people enjoying temporary protection can also apply for a work permit in Turkey. The EU-Turkey Agreement and its arrangements for direct refugee acceptance and aid funds are having an enhancing effect on these reforms.

4. The agreement has also meant that the existing asylum structures and capacities in Greece have been expanded – with support from the EU (Greece has received 357 million euros for basic provisioning as well as for enhancing its own asylum system).[15] Contrary to what human rights activists had feared, people crossing the Aegean and arriving in Greece in search of protection are not automatically deported, which would represent a breach of international law. Instead, asylum proceedings are conducted in the "hotspots" – including appeal proceedings (which have already been reformed). The key question in the proceeding is whether the asylum seeker will be safe in Turkey or whether there are recognised reasons mitigating against a return. By September 2016, 1,187 people had been sent back to Turkey from Greece after a negative asylum decision, a withdrawal of asylum application or because they never asked for protection. Of these 1,187 persons 869 returned voluntarily, with an assisted voluntary return and reintegration program. Throughout Greece this special program was granted to more than 5,700 migrants in 2016. Most of them came from Pakistan, Afghanistan, Algeria and Iraq.[16] In general asylum legislation is applied more stringently in Greece than in the past. The length of the determination process however, represents a problem, although this is an issue throughout Europe.

5. The EU resettlement programme, which forms part of the Agreement, further provides a regular and direct way for Syrians in Turkey who are in need of protection to enter the EU. Consequently, the agreement represents a key element for regulating migrationto the EU. According to the Agreement, for every Syrian returned from the EU – because Turkey represents a safe third country for them – one Syrian will be allowed into the EU via the resettlement programme. This approach aims to curb irregular migration. As the asylum process obviously

takes time and no Syrians have been returned as yet, the 1:1 mechanism is not yet in operation. However, as a demonstration of solidarity, the EU has actually started the resettlement programme. Since April, 20 EU member states have accepted a total of 2,386 Syrians (selected by UNHCR) from Turkey.

The migration figures for 2016[17] indicate that the reduction in migration has not been due exclusively to the closing of the Western Balkan route and changes to migration policy in Greece, but also at least in equal measure to the EU-Turkey Agreement.

A further important element – in parallel with the closing of the Western Balkan route – has been the NATO mission approved in February 2016 at Germany's initiative, which has contributed significantly to better monitoring of the Aegean and therefore enhanced border control. At the same time, the mission has contributed to a noticeable improvement in Greek-Turkish cooperation within the NATO framework. The success of this measure is reflected in the fact that a similar form of support is under discussion for the EU NAVFOR mission (Sophia) in the Mediterranean.[18]

3. Implementation, adaptation and harmonisation of existing asylum regulations

The European Commission has made intensive use over the last few months to make the European asylum system function more efficiently, fairly and humanely. The Commission ensures transparency through regular updates about the reforming measures as well as the developments at the external EU borders and the effectiveness of the adopted regulations and mechanisms. This is complemented by direct action in dealing with member states when they fail to implement the asylum legislation. The following steps have been achieved:

a. *Implementation of existing legislation*

As the guardian of the agreements, the European Commission has increased the pressure on member states since 2015, urging them to implement existing obligations. In the summer of 2015 alone, the Commission opened 40 new proceedings against 19 member states.[19] These were cases of unsatisfactory implementation of the asylum directives, which only five countries have so far transferred fully into national legislation. Among others, Germany has also had a case brought against it for violation of common asylum standards. Responsibility for implementing reforms rests with the member states. The Commission consequently considers it one of its key aims to replace the directives with regulations with immediate validity. In the meantime, a new monitoring mechanism has been established, which is also aimed at the full implementation of the European Asylum System.

European Commission acting as guardian of the agreements.

b. *Adaptation and harmonisation of existing asylum rules*

In April, May and July 2016, the European Commission presented proposals to reform the existing asylum rules:

▪ The currently applicable **Asylum Procedures Directive** of 2013 is to be replaced by a regulation. The aim is to introduce a **common procedure for assessing applications for international protection**. At the same time, simplified, more precise and briefer asylum procedures are to be introduced. The length of time for an asylum application to be processed should not exceed six months, and inad-

missible or unsubstantiated applications should be dealt with within one to three months. The rights of asylum seekers are to be strengthened at the same time: after six months from having lodged their application, asylum seekers throughout the EU are to be granted access to the labour market. The procedural rights are also being strengthened by granting asylum seekers access to legal aid during the course of the asylum process in all EU member states.

European asylum leg-
islation is to become
more binding: moving
from directives to reg-
ulations

- The existing **Qualification Directive** is also to be replaced by a regulation, because both acceptance rates and protection standards still vary greatly between individual member states. There are also discrepancies in terms of the rights attached to refugee status in the different countries – for instance with respect to residence status (temporary or indefinite). These differences have resulted in secondary movements within the EU in the past. The protection of minors is also to be strengthened. Important: the new regulation is to provide clear definitions on safe countries of origin and safe third countries with the aim of obtaining a uniform common list within five years. At the same time, the reform shall introduce options of sanctioning asylum seekers who do not cooperate with the authorities or who leave the EU member state responsible for conducting their case.[20]

- The reform of the **Directive about the Standards for the Reception of Asylum Seekers** also aims at greater consistency within the EU. One of the objectives is to ensure that the so-called residential obligation of asylum seekers is enforced. This means that social benefits are linked to the location of an asylum seeker's place of residence. Individuals should only be able to obtain benefits and take advantage of integration services at the location where their asylum application is being processed; this rule is also included in the German integration legislation that was adopted this summer. In addition, a distinction is to be made early on between individuals with good or poor prospects of being granted leave to remain. The first group is to be given faster access to the labour market, namely within three months from the start of the asylum procedures. Generally, asylum seekers are to be granted access to the labour market within six months throughout the EU. The intention here is to foster the economic independence and integration of the individuals in need of protection.

- Furthermore, the European Commission is aiming at a long-term and comprehensive reform of the Common European Asylum System. Back in April 2016, the European Commission put forward some plans and two models for debate.[21] One model envisages retention of the Dublin Regulation, complemented by a "fairness mechanism". This mechanism would be triggered once a member state exceeds one and a half times the number of refugees that had been deemed reasonable for it to accept. The other model proposes a complete departure from the Dublin system and a direct distribution of the persons in need of protection across the member states organised by a central EU asylum authority.

  While the majority of member states do not reject the first model outright this is the case for the second model. The proposed correction mechanism, which would come into play once the threshold value was exceeded, seems to be a potentially useful instrument, which would allow the Dublin system, generally preferred by the member states, to be retained while providing effective relief for member states that are particularly affected. The threshold would be determined by the EASO, which would then be transformed into an EU Agency for Asylum (EUAA) with an enhanced mandate for action.

4. More intensive cooperation with third countries in the fight against the root causes

Since the La Valetta summit in November 2015 with representatives from African countries of origin and transit, cooperation with third countries to counter the root causes of migration has been a key topic on the agenda. One example involves the plans of the European Commission of 7 June 2016[22] for creating so-called Migration Partnerships. These envisage closer relations with a number of important transit countries, first and foremost Niger, Nigeria, Mali, Ivory Coast, Senegal, Lebanon, Jordan and Ethiopia. The idea is to conclude bilateral agreements with these countries to achieve sustainable improvements in their economic, political and social conditions. For this purpose, the entire range of instruments available to the EU and the individual member states – from humanitarian aid and development cooperation to economic policy to cooperation in education and research – is to be deployed in concert to strengthen economic development and resilience.

Fight against root causes and solidarity with first host and transit countries

It is hoped that once stabilised and strengthened by these means, the countries can then become partners in implementing the returns policy. With the aid of various financial instruments, including a fund similar to the European Fund for Strategic Investments (EFSI), investments of up to 62 billion euros are to be leveraged to significantly improve economic development at the local level. At the same time, access to dedicated funds would be made conditional on the willingness of the third countries to take necessary steps to curb illegal migration and to readmit citizens. There are also concrete plans for a stronger engagement of the European Investment Bank in countries of origin and transit. However, there is some doubt about whether this joint coordinated approach will materialise. The "External Investment Plan" for Africa presented by the European External Action Service on 14 September 2016 has similar aims but negotiations have yet to be finalised.[23]

It is still too early to properly evaluate the impact of these partnerships: However, already some encouraging results can be seen – even though progress varies enormously among partnership countries: The number of migrants crossing the Sahara via Niger fell substantially. Furthermore, in cooperation with Niger, 102 smugglers were sent to court, 95 vehicles have been seized and 4,430 irregular migrants have been intercepted. Similarly positive results can be seen in Mali. In other partnership countries however effects have so far been less visible.[24]

At the same time EU member states have shown the willingness to step up their efforts to address root causes, such as the German Ministry for Economic Cooperation and Development with a "Marshall-Plan with Africa" presented on 15 February.[25]

Due to the increasing migratory pressure via the Central Mediterranean route, the EU has attempted to increase the cooperation with the Libyan authorities: During their meeting in La Valletta on 3 February 2017, the EU heads of state and governments have committed themselves to launch a variety of measures: training, equip and support the Libyan national coast guard, cooperate stronger against smuggler networks, support the development of local communities in Libya and improve the catastrophic situation in detention centers[26]. The EU also pledged 200 million Euros of additional funding which however have been considered as insufficient by the Libyan authorities. The signature of a memorandum of understanding signed on 2 February 2017 between Italy and the Chairman of the Libyan Presidential Council could be a first sign of development. However, as currently no central authority, no security, stability and rule of law exist in Libya, the possibilities of cooperation are narrow.

5. Proposals for regular migration

There are also plans to continue enhancing the options for people to enter the EU by regular means. The European Commission has put forward initial proposals to improve existing instruments. Specifically, it presented an action plan for integration and a reform of the system of Blue Cards, which has been rather disappointing to date and is used almost exclusively in Germany to attract highly qualified individuals.[27] The new arrangement increases the incentives for highly qualified third-country nationals through measures including a simplified procedure for changing the place of employment, an opening up of the labour market to recognised refugees ("beneficiaries of international protection") and the strengthening of their rights within the EU.

III. Need for Action and Recommendations for Action

After a difficult beginning, the EU and its member states have responded comprehensively and manifold to address the complex range of issues relating to refugees and migration. But while some important reforms have been initiated, there is still need for further action – not least because the issue of migration will continue to represent an urgent challenge over the coming years.

1. Solidarity: no breakthrough with respect to the distribution of refugees

Some elements of inner-EU solidarity already exist. The European Commission, for instance, promptly provided funds (83 million euros of emergency aid in April 2016) to support Greece in providing humanitarian assistance to refugees. However, solidarity is a more difficult issue where the distribution of refugees is concerned.

The question of a solidarity mechanism was already addressed at the first special European summit in April 2015, but the outcome was rather disappointing. The parties merely agreed to the voluntary distribution of 5,000 refugees. While the number was increased to 60,000 in June 2015, a more realistic figure given the considerable migration pressure, the principle of voluntary acceptance still applied. On 23 September 2015, the Council of Justice and Home Affairs Ministers then took a decision about the distribution of 120,000 refugees (across the different member states via a fixed distribution formula) by a qualified majority. While 23 member states accepted the proposal, four countries (Hungary, Slovakia, the Czech Republic and Romania) voted against it, and Finland abstained. The implementation of this decision on the ground is still not complete; Slovakia and Hungary have since lodged a complaint against the decision, and a referendum on the matter was conducted in Hungary on October 2nd. The emergency relocation scheme still falls far behind its expectations: Austria, Denmark, Hungary and Poland don't participate at all; Bulgaria, the Czech Republic, Estonia, Ireland, Lithuania, Slovakia and Sweden are partially involved. Leading to the current situation, were only 3,205 persons out of the pledged 35,000 that were to be relocated from Italy (between September 2015 and September 2017) to other EU member states have been distributed until February 2017. The relocation numbers from Greece are equally low: until February 8,481 persons (from the anticipated 63,000) were relocated from Greece to other EU states. However, it needs to be remarked, that since last December the numbers have gone up significantly: alone in December 1,959 persons from Italy and 6,212 persons from Greece were distributed throughout the EU.

Restore solidarity
within the EU through
a system of incentives

At the same time the search for common ground is difficult: The watered-down fairness mechanism (see above) proposed by the European Commission does not find much favour with some member states either, partly from fear that this would provide the wrong incentives to the affected states. One of the reasons for the opposition against the Commission's plans has to do with the penalties for non-participation in the fairness mechanism (a 250,000 euro penalty for each refusal to accept a refugee who has been assigned under the fairness mechanism), which are considered too draconian. The discussion has evolved only very slowly; after the alternative proposal of flexible solidarity by the Visegrad countries has found little favour with the other member states, the discussion has moved towards a form of 'effective solidarity'. The Maltese presidency of the EU is determined to work out further progress until June 2017 in order to at least have an agreement on some basic principles of the Dublin reform. The recently suggested Franco-German proposal which foresees a multi-phase model (with a minimum non-automatic distribution kicking in once a certain threshold has been crossed) is considered as an important element of such a compromise.

▪ While sanctioning is not likely to enhance solidarity, coupling the fairness mechanism to adherence to and implementation of the asylum regulations would be of benefit. With this approach, a country would only benefit from the fairness mechanism proposed by the European Commission if it actually implemented the European asylum legislation consistently and, for instance, was able to demonstrate registration of 100 per cent of migrants.

▪ Instead of sanctions, a budget item funded by all member states should be introduced – and this could be included in the planning of the next multiannual financial framework – that would be used to provide financial support to member states that accept migrants under the fairness mechanism. However, in those circumstances the respective funding should be earmarked for the local and regional level as those are most strongly affected by the need to care for the individuals in need of protection and take measures to integrate them.

▪ Alternatively, member states refusing to participate in the fairness mechanism could provide compensation by making proportionally greater contributions to the EU border guard in terms of funding and personnel[28] and proportionally larger payments to various aid funds. Nonetheless, at least a minimal, non-automatic distribution mechanism – such as presented in the Franco-German proposal – should not be part of the agreement.

▪ In addition, the EU could continue the existing policy of humanitarian admission with a view to permanent resettlement and expand it further. This could alleviate the burden on countries such as Turkey as well as Lebanon and Jordan and give those seeking protection prospects for the future. The UN Resettlement Summit in September 2016 and President Obama's initiative were also aimed at boosting efforts in this area – so far without results however.

2. Implementation of and adherence to the concluded agreements

Important EU refugee policy reforms have been approved. But how well and how comprehensively these will be implemented by the member states remains to be seen. The harmonisation of the standards of reception conditions and adherence to the criteria for asylum procedures and the granting of refugee status will be equally as important in this context as a coordinated returns policy and conscientious data collection and sharing. The latter also requires standard digital technology for countering secondary migration.

3. Humanitarian responsibility

Aside from the urgent need to bolster inner-EU solidarity, further steps to improve the global situation are required. This is because the worldwide refugee crisis affects particularly third-world countries that are themselves striving for stability. While the EU and its member states are already among the most significant actors in the areas of humanitarian aid and development cooperation, more could be done. The funds pledged for central UN organisations such as the UNHCR (whose budget is funded from voluntary contributions) regularly lag far behind demand. Poor payment behaviour (by the EU member states as well) exacerbates the problem of underfunding further. 1 billion euros were, for instance, pledged for the EU Regional Trust Fund in response to the Syrian crisis, but only 266 million euros have been paid into the fund by member states (Austria leading the list of donors with 11.5 million, Germany contributing the average sum of 5 million). In the case of the Emergency Trust Fund for Africa announced in La Valetta, pledges in the amount of 3.6 billion euros were made. However, the fund is still short of 1.7 billion euros (in this case Belgium and Italy lead the list of donors with 10 million euros each while Germany has contributed 3 million). Things are different where the pledges associated with the EU-Turkey Agreement are concerned. Of the initial 3 billion euros pledged, only 130 million are still outstanding (here, Germany leads the list with 427.5 million euros, followed by the UK, France and Italy).[29]

The EU as a leader in humanitarian aid

At the UN Refugee Summit on 19 September 2016, the community of states pledged better international cooperation and coordination with respect to migration issues. This includes greater solidarity where acceptance rates are concerned and more equitable sharing of financial responsibility. The EU could give a clear signal for greater responsibility at the international level by making a funding commitment a fixed part of the budget, thereby leading the way. As the largest donors for development aid and humanitarian aid worldwide, the EU and its member states should act as humanitarian world leaders and pledge a fixed annual budget. Part of this would involve greater financial support being given to the NGOs involved in supplying refugees with accommodation and basic needs provision.

4. Cooperation with first host and transit countries

First, despite the fact that the current situation in Turkey is highly volatile – in view of its deficits in the area of human rights protection and the rule of law – the country remains an indispensable partner for the EU for overcoming the challenges posed by refugees and migration. Repeated threats by the Turkish government to withdraw from the agreement if the question of visa liberalisation for Turkish citizens can't be settled should not be responded to with a softening of the criteria that need to be met. That said, it would also be wrong to break off the negotiations prematurely and allow the situation to escalate. Ultimately, both sides have a definite interest in fulfilling the Agreement and in cooperating closely – putting the visa liberalisation and the shaky enlargement process to one side – not least due to the close bilateral economic links.

Second, the EU-Turkey agreement can however only to a very limited extent serve as a blueprint for an agreement with Libya: In the case of the Central Mediterranean Route. In the case of Libya, the EU should primarily support the stabilization process and improve the situation of the migrants in the horrible detention centers– beyond the commitments made at the EU summit in Malta in February 2017.

Third, In the context of the migration partnership framework, the EU should link funding to capacity building: In return for the development support these hosting counties should be encouraged to establish protection mechanisms and provide refugees with a legal status.

Finally, a very important element would be to agree on a European list of safe countries of origin and safe third countries.

5. Fighting the root causes

The Commission's proposals to fight the causes of flight are ambitious and innovative, but even more far-reaching measures could be taken.

<div style="float:left; width:25%;">Greater effectiveness through better coordination</div>

Once cooperation with third countries has been successfully established, the migration partnerships could become so-called reform partnerships.[30] Concrete measures could include opening the EU market, particularly the agricultural market, in the medium term to states willing to cooperate. But also investment guarantees to increase the incentives for direct investments could be thought of. It should be ensured, that the numerous efforts undertaken on a European and a national level are well coordinated – especially on the issues of compatibility of incentives and the question of conditionality.

Innovative development policy instruments alone will probably not be sufficient in the long term to overcome the causes underlying the refugee crisis. What is needed now more urgently than ever is an effective Common Foreign and Security Policy (CFSP). For years, the EU was incapable of formulating a clear stance towards the Syrian conflict, and even if the political will had existed the EU would not have had the appropriate instruments (including military ones) to prevent a lengthy military escalation in Syria. The fight against the causes of flight will therefore only succeed if the EU member states can bring themselves to come to an agreement about the fundamentals of a joint stance on current and enduring conflicts in their neighbourhood as well as finally creating an effective CFSP.

One key aspect in this context will remain a common European strategy for the long-term stabilisation of Libya. The steps made during the February European Council should be continued and intensified.

6. Calm and objectivity

Questions of asylum and migration policy touch the core of national sovereignty, although they cannot be considered purely at a national level because of international connectivity and legal obligations. Many refer to the migration crisis as the greatest challenge of our time, and probably rightly so. To do justice to the needs and interests of the affected individuals (both the refugees and the people in the host societies) and the involved actors – not least the states – requires thoughtfulness, calm and objectivity in the search for solutions. Over the last few months, the great majority of the EU institutions and member states have demonstrated that this is possible. And while the results may not be immediately visible, seeing that it takes time to harmonise processes and break with old habits, important reform steps are being taken within the EU and its member states. These efforts must be acknowledged and should not be played down. After a difficult start, the EU has succeeded in agreeing on the broad lines of a joint approach – dispensing with bilateral solo actions – particularly at the three European Council summit meetings in the spring of 2016. This approach is characterised by the will to seek the best

solutions supported by all. But it will be a long and arduous road ahead: Migration will remain one of the EU's key challenges during the years and decades to come as wars and conflicts continue, democracy and human rights are on the retreat and global disparities grow. The efforts made in the last 20 months can therefore only represent the beginning of a long process of reform.

1| *See: UNHCR: "Global Trends – Forced Displacement in 2015", 20 June 2016*
2| *http://frontex.europa.eu/news/fewer-migrants-at-eu-borders-in-2016-HWnC1J*
3| *The ECJ judgment of 21 Dec 2011 (C-411/10, C-493/10, InfAuslR 2012, 108) spells out that Article 4 of the Charter of Fundamental Rights of the European Union obligates the EU member states to desist from returning individuals to a country under the rules of the Dublin Regulation if it is general knowledge that there are systematic deficiencies in the asylum system and in the reception conditions for asylum seekers there, which pose the risk of inhumane or degrading treatment. Consequently the instruction by the BMI to suspend returns to Greece under the Dublin Regulation put in place in 2011 (cf. Bundestag Parliamentary Documentation 17/4827 of 21 February 2011) was extended to the beginning of 2015 by a decree dated 16 December 2013 (BAMF, Entscheiderbrief 2/2014, p. 4) and has been extended further since.*
4| *Dimitris Avramopoulos, "A European Agenda on Migration", 20 July 2015.*
5| *Cf.: Resolution 2292 of the UN Security Council of 14 June 2016 and Resolution 2240 (2015) of the UN Security Council of 9 October 2015*
6| *Cf.: European Commission: Infographic - Infographic - EU Mediterranean operations 2016 http:// www.consilium.europa.eu/en/policies/migratory-pressures/50000-lives-saved/, accessed 9 June 2016*
7| *European Commission "Migration on the Central Mediterranean route – Managing flows, saving lives", Brussels, 25.01.2017*
8| *http://www.nato.int/cps/en/natohq/news_137427.htm*
9| *See: Europol Unclassified: Basic Protection Level, 17 June 2016*
10| *See: European Commission: "Hotspot State of Play", 26 August 2016*
11| *See: Proposal for a regulation for the establishment of 'Eurodac' (recast), 4 May 2016 Brussels (COM (2016) 272 final*
12| *cf European Commission: Report from the Commission to the European Parliament, the European Council and the Council on the operationalization of the European Border and Coast Guard, COM (2017) 42 final, Brussels, 25 January 2017*
13| *see: European Commission: Report from the Commission tot he European Parliament, the European Council and the Council on the operationalization of the European Border and Coast Guard, COM (2017) 42 final, Brussels, 25 January 2017*
14| *Cf.: European Commission: Managing the Refugee Crisis, the Facility for Refugees in Turkey, 28 July 2016: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/ background-information/docs/20160713/factsheet_managing_the_refugee_crisis_the_facility_for_ refugees_in_turkey_en.pdf*
15| *See: http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2016/20160722_1_en.htm.*
16| *See: http://dtmodk.iom.int/docs/WEEKLY%20Flows%20Compilation%20No21%2028%20July%20 2016.pdf, 22 July 2016*
17| *From the week from 15 to 22 February 2016 to the week from 14 to 20 March 2016, weekly refugee numbers decreased from some 19,000 to just over 5,000. By the week from 2 to 8 May 2016 the figure had fallen further to under 400 arrivals per week (under the influence of the EU-Turkey agreement). Cf.: Eurocomment Briefing, March 2016.*
18| *Cf.: NATO and EU extend their cooperation, Europe Diplomacy and Defense, no. 906*
19| *More Responsibility in managing the refugee crisis: European Commission adopts 40 infringement decisions to make European Asylum System work. European Commission, 23 September 2015.*
20| *Cf.: European Commission - Fact Sheet: "Reforming the Common European Asylum System: Frequently asked questions" 13 July 2016: http://europa.eu/rapid/press-release_MEMO-16-2436_en. htm*
21| *Cf.: Communication by the European Commission (COM (2016) 197 final) of 6 April: Towards a reform of a common European Asylum System and enhancing legal avenues to Europe*
22| *Cf.: Communication by the European Commission on establishing a new Partnership Framework with third countries under the European Agenda on Migration (COM 2016 (385) final) of 4 June 2016.*
23| *Cf.: EU announces external investment plan for Africa, EEAS, 14 September 2016: https://eeas. europa.eu/topics/sanctions-policy/9820/eu-announces-external-invest-ment-plan-for-africa_en*
24| *European Commmission (2016): Communication from the Commission to the European Parliament, the European Council and the Council, 14.12.2016, COM (2016) 960 final.*
25| *BMZ: Afrika und Europa – neue Partnerschaft für Entwicklung, Frieden und Zukunft. 15 February 2017.*
26| *Malta Declaration by the members of the European Council on the external aspects of migration*

27| *See: Delivering the European Agenda on Migration: Commission presents Action Plan on Integration and reforms 'Blue Card' scheme for highly skilled workers from outside the EU, 7 June 2016, http://europa.eu/rapid/press-release_IP-16-2041_en.htm*
28| *This proposal is already under consideration.*
29| *See: European Commission: "Financial Pledges to Trust Funds", 7 June 2016*
30| *See: A detailed analysis of this topic can be found in the following paper: Partnership for Reform with North Africa*
Economic integration as the first step towards a comprehensive EU-Africa cooperation in Facts & Findings 206/2016, Sankt Augustin, 13 June 2016, http://www.kas.de/wf/en/33.45521/

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