

# TOWARDS DUBLIN IV: SHARING NORMS, RESPONSIBILITY AND COSTS

Henrik Enderlein | *Director of the Jacques Delors Institut - Berlin*

Nicole Koenig | *Research Fellow at the Jacques Delors Institut - Berlin*

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## EXECUTIVE SUMMARY

The massive inflow of migrants that the European Union (EU) has been facing in recent months and years has put the Common European Asylum System under intense pressure. It has exposed some important flaws in the system and has called one of its cornerstones, the Dublin Regulation, into question. The EU has attempted to compensate for these flaws through short-term emergency measures and has started a broader reform process aimed at addressing fundamental deficiencies in the medium-term.

This policy paper aims to contribute to this reform process by outlining a “first best” solution for a thorough overhaul of the Dublin system, backed by complementary measures in the fields of border management, internal security and external action. Our proposal aims to ensure fair, permanent and sustainable responsibility sharing in terms of norms, migrants and costs. It is based on five building blocks:

- 1. De jure and de facto norm harmonisation:** To ensure equal treatment of asylum-seekers, the EU should introduce a common European asylum status and procedure. A reinforced and more autonomous European Asylum Agency should monitor member state compliance with common norms and standards.
- 2. Fairer responsibility-sharing through relocation:** The EU should establish a relocation mechanism that allocates the responsibility for recognised beneficiaries of protection on the basis of a binding key and through a flexible preference-matching procedure. Member states would be financially compensated according to the number of received migrants. Migrants would receive a residence and work permit for their host country.
- 3. Upgraded external border control and internal security cooperation:** To address existing security concerns and ensure orderly immigration, the EU should push for an effective and truly European Border and Coast Guard. Internal security cooperation should be upgraded through effective information-sharing, intensified operational cooperation, and additional collective funding.
- 4. Global responsibility-sharing:** The EU should provide more forward-looking financial support to origin and transit countries as well as relevant international organisations. Tailor-made migration compacts could help re-focus the EU’s external migration policy, but they should not transform migration control into the single, predominant objective of external action. The compacts should be used to ensure better living conditions in transit and origin countries and to open accessible legal pathways in return for cooperation on readmission and return.
- 5. Tangible financial solidarity via a comprehensive Schengen Fund:** The member states should create a comprehensive Schengen Fund with four programmes: asylum and integration, external borders, internal security and external cooperation. The Fund would be based on national contributions weighted by GDP. The money would be allocated to the member states *ex post* on an annual basis and according to the action undertaken within each programme (e.g. lump sum by processed asylum application, relocated migrant etc.).

The implementation of such an encompassing proposal necessarily represents an incremental process. However, this process has to start now. If the EU wants to counter centrifugal forces, it will have to live up to the expectations of its citizens, which consider migration the number one pan-European challenge and are still waiting for a unified response.

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## INTRODUCTION: THE NEED FOR EXTENSIVE REFORM

In 2015, worldwide displacement hit at an all-time high. According to the United Nations High Commissioner for Refugees (UNHCR), one in every 122 humans was either a refugee, internally displaced, or seeking asylum<sup>1</sup>. The European Union (EU) has been one of the key destinations. In 2015, the number of first-time asylum applications reached 1,255,600 and thus doubled in comparison to the previous year<sup>2</sup>. The European Commission has estimated the number of new arrivals for 2016-2017 at 2 million<sup>3</sup>.

The massive migratory influx has put the Common European Asylum System (CEAS) under immense pressure and has called one of its cornerstones, the Dublin III system, into question<sup>4</sup>. This system establishes a set of criteria for the allocation of the responsibility for asylum processing and protection to a single member state<sup>5</sup>. In practice, responsibility has most often been allocated to the country of first irregular entry. The original aim of these criteria was to prevent two phenomena: ‘asylum shopping’ (multiple asylum applications in different member states to seek out the best conditions) and ‘refugees in orbit’ (chain transfers of refugees between member states in the absence of clear responsibility).

However, the massive influx of migrants exposed two fundamental flaws in the design and implementation of the Dublin system:

- First, the system has failed to suppress incentives for asylum shopping. The objective of the CEAS is to ensure that each application for protection receives the same treatment in terms of procedure and status determination across the EU. In practice, member state procedures, standards for status determination as well as reception conditions vary widely. This variation provides strong incentives for asylum-seekers to disregard the Dublin rules and evade registration in the state of first entry in order to move irregularly to a member state providing higher chances of receiving asylum or more favourable conditions.
- Second, the absence of a fair responsibility sharing mechanism has created incentives for member state non-compliance with CEAS rules. In 2015, some of the frontline states such as Greece, Italy or Croatia failed to register migrants in the EU-wide fingerprint database, Eurodac<sup>6</sup>. A large share of unregistered migrants thus moved irregularly to other member states. The result was an unfair distribution of responsibility with regard to asylum processing, reception and longer-term protection. In 2015, two thirds of all first time asylum applications were made in four member states: Hungary, Sweden, Austria and Germany<sup>7</sup>. The latter alone received 35% of all applications.

The EU has attempted to compensate for Dublin’s dysfunctionalities through emergency measures including additional funding for frontline states, the creation of ‘EU hotspots’ to support Greece and Italy with the identification, registration and fingerprinting of migrants<sup>8</sup>, as well as the establishment of two temporary relocation schemes. However, particularly in the latter case, implementation has been dragging. By June 2016, the member states had barely pledged 5% of the 160,000 relocation places and only 2,005 migrants had effectively

1. United Nations High Commissioner for Refugees (UNHCR), “Worldwide displacement hits all-time high as war and persecution increase”, 18 June 2015.

2. Eurostat, *News Release: Asylum in the EU Member States*, 4 March 2016.

3. Zalan, Eszter, “EU expects 3 Mn migrants by 2017”, *EU Observer*, 5 November 2015.

4. The CEAS has five building blocks: the Reception Conditions Directive, the Asylum Procedures Directive, the Qualification Directive, the Eurodac Regulation and the Dublin Regulation.

5. The Dublin Regulation is binding on all EU member States, as well as the Schengen members Iceland, Switzerland, Norway and Liechtenstein. The United Kingdom, Ireland and Denmark have opt-outs from the recast Asylum Procedures, Reception Conditions and Qualification directives.

6. Zalan, Eszter, “EU launches migration cases against Croatia, Greece, Hungary and Italy”, *EU Observer*, 10 December 2015.

7. Eurostat, *News Release*, op. cit.

8. In EU hotspots, the European Asylum Support Office, the Border Agency Frontex, the Policy Cooperation Agency Europol and the Judicial Cooperation Agency Eurojust cooperate to support frontline states with the identification, registration and fingerprinting of incoming migrants.

been relocated. At this pace, it would take the EU over 50 years to implement the relocation schemes compared to the two years originally foreseen.

The dysfunctionalities of the Dublin system and the heightened perception of threat fuelled by a series of terrorist attacks on European soil put the whole Schengen system at risk. A range of countries including Germany, Austria, Slovenia, Hungary, Sweden, Norway, Denmark and Belgium temporarily restored internal border controls in 2015. A long-term restoration of such controls would have significant economic, political and societal costs. Quantitative studies estimate the annual economic costs of a collapse of Schengen at up to €143 billion<sup>9</sup>. A Eurobarometer poll from November 2015 showed that Europe's citizens consider free movement to be one of the EU's two most positive outputs together with peace between the member states<sup>10</sup>. The same poll indicated that two-thirds of European citizens are in favour of a common EU policy on migration. A sustained failure to live up to these expectations would represent a real threat to the European project.

” THE STAKES ARE HIGH WHEN IT COMES TO A FUNCTIONING DUBLIN SYSTEM”

The stakes are high when it comes to a functioning Dublin system, justifying a deep, permanent and comprehensive reform. In May 2016, the European Commission tabled a reform proposal for a “fairer, more efficient and more sustainable system”<sup>11</sup>. This proposal is a good starting point, but it already represents a step down from the more ambitious reform options the Commission had presented earlier. The system of responsibility sharing proposed in May 2016 remains unequitable and emergency-driven. Furthermore, the Commission proposal places a disproportionate focus on negative sanctions to coerce both member states and migrants into compliance with EU rules. Overall, the proposal falls short of the fair, sustainable and comprehensive logic it promises. In addition, there is a real risk that it be further watered down in the course of lengthy negotiations. After all, those leading up to the Dublin III Regulation took a whole five years.

In this policy paper, we present a “first best” solution for a deep and comprehensive overhaul of the Dublin system. Our proposal complements this overhaul with measures in the fields of border management, internal security and foreign policy and links them through an integrated logic based on financial solidarity. The comprehensive logic reflects the inseparable nature of the internal and external dimensions of the EU's migration policy. Furthermore, our proposal is based on the conviction that these unprecedented migratory flows constitute an indivisible European challenge that requires a collective response. The solution proposed in this paper thus aims at fair, permanent and sustainable responsibility sharing in terms of norms, migrants and costs<sup>12</sup>. It is based on five essential building blocks:

- *De jure* and *de facto* norm harmonisation
- Fairer responsibility sharing via relocation
- Upgraded external border control and internal security cooperation
- Smarter global responsibility-sharing
- Tangible financial solidarity via a comprehensive Schengen Fund

The remainder of this paper presents these building blocks in greater detail. We conclude with a tentative roadmap on implementation.

9. Michael Böhmer, Jan Limbers, Ante Pivac, and Heidrun Weinelt, “Departure from the Schengen Agreement”, GED Study, Bertelsmann Stiftung, February 2016. For a good overview see: Auf dem Brinke, Anna “The economic costs of non-Schengen: What the numbers tell us”, Policy Paper No. 162, Jacques Delors Institut – Berlin.

10. European Commission, Standard Eurobarometer 83, Spring 2015.

11. European Commission, *Communication: Towards a sustainable and fair Common European Asylum System*, Brussels, 4 May 2016.

12. This threefold typology of responsibility sharing in the field of migration was introduced by Gregor Noll. ‘Norms’ refers to harmonised asylum standards and rules; ‘people’ corresponds to the physical dispersal of migrants; and ‘money’ designates financial solidarity/compensation mechanisms (Gregor Noll (2000), „Negotiating Asylum”, The EU Acquis, Extraterritorial Protection and the Common Market of Deflection. The Hague, Boston, London).

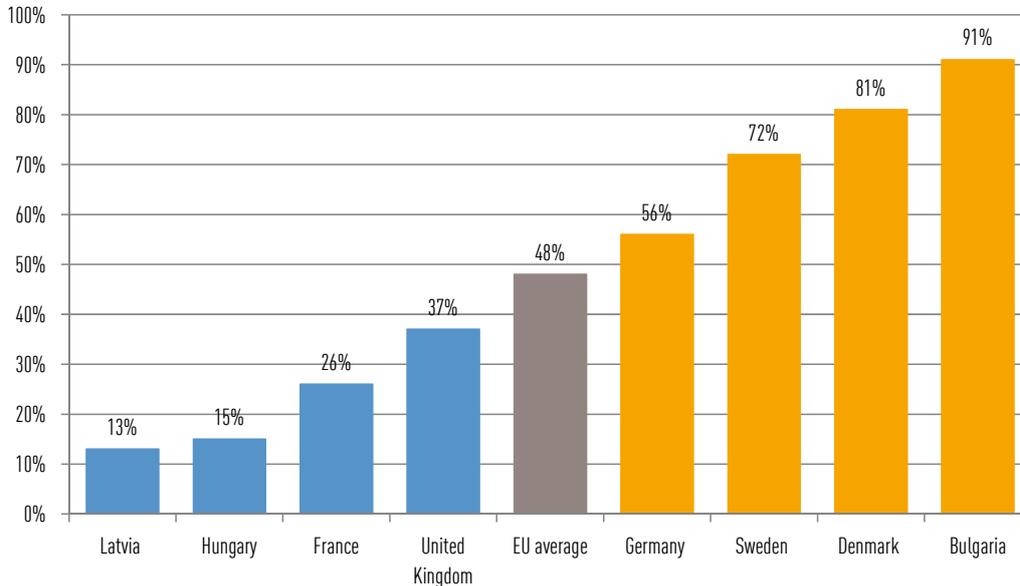
## 1. *De jure* and *de facto* norm harmonisation

The basis for a functioning Dublin system is the existence of comparable standards and norms for asylum-seekers across member states. Though common EU standards and rules exist, there are huge implementation gaps and disparities among the member states. There are at least two reasons for these gaps. The first refers to the choice of legal instrument. These standards and norms are set by EU directives, which grant the member states much leeway in terms of legal transposition. The second reason is the absence of an effective monitoring and sanctioning mechanism to ensure member state compliance.

### 1.1. A single EU asylum status

Human rights advocates have repeatedly criticised the CEAS for being a ‘protection lottery’. An important illustration is the divergence in recognition rates for refugees and beneficiaries of subsidiary protection across member states. In 2015, average recognition rates for first instance decisions ranged from 13% in Latvia to 91% in Bulgaria, the EU average being at 48% (see Figure 1). This variation shows that the member states’ asylum procedures and standards do not guarantee equal treatment. In addition, there are important differences in terms of reception conditions. In its 2015 World Report, Human Rights Watch criticised conditions in Italy, Bulgaria, Greece and Cyprus as “abysmal”<sup>13</sup>. The situation was particularly alarming in Greece where asylum-seekers often had to stay in overcrowded detention centres with limited access to services, support, or information on their status.

FIGURE 1 ► Recognition rates for selected member states (2015)<sup>1</sup>



Source: Eurostat, 2016 (1. First instance decisions for refugees and subsidiary protection)

13. Human Rights Watch, „World Report 2015: European Union – EU Migration and Asylum Policy”.

The Treaty of Lisbon provides a clear legal basis for the harmonisation of these national asylum standards and procedures. Article 78(2) TFEU inter alia foresees the introduction of:

- A uniform status of asylum for nationals of third countries, valid throughout the Union;
- a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection; and
- common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status.

In recent years, the EU has taken significant steps to translate these provisions into secondary law. The Qualifications Directive of 2011 sets out common criteria for the recognition as refugees or beneficiaries or subsidiary protection and defines the rights that should be granted to them. Meanwhile, the Asylum Procedures Directive of 2013 outlines common procedures for granting and withdrawing international protection. In addition, the recast Reception Conditions Directive of 2013 establishes common standards for living conditions of asylum applicants.

In its April 2016 Communication, the Commission went a step further and suggested the creation of a “single common asylum procedure”<sup>14</sup>. Concretely, that means transforming the Asylum Procedures and Qualification Directives into regulations, which would make them directly applicable in national law. The proposed reform would imply reducing discretionary clauses on key aspects of the asylum procedure such as the rules of admissibility, the treatment of subsequent applications and its maximum duration at first instance and appeal stage. In addition, the Commission suggested a revision of the Reception Conditions Directive to ensure a more streamlined approach across member states.

”NEGATIVE NORM  
CONVERGENCE WOULD NOT  
ADDRESS SOME OF THE  
REAL PULL FACTORS”

However, these proposals for more binding norm harmonisation have to be taken with a pinch of salt. The Commission underlined that they should lead to the reduction of “undue pull factors” and “incentives to move to Europe”. There is a risk that these aims will translate into a race to the bottom in terms of reception conditions and migrant rights and lower standards in states where these are currently high. As several human rights organisations pointed out, this would contravene the stated aim of creating a more humane EU asylum policy<sup>15</sup>. Meanwhile, negative norm convergence would not address some of the *real* pull factors such as pre-existing social and family networks or simply a

member state’s general economic prosperity.

Furthermore, the Commission remains rather shy when it comes to the mutual recognition of protection status. In its April 2016 Communication it proposed “more harmonised rules on identity documents for beneficiaries of international protection” and suggested that “further initiatives could be taken in the longer term to develop the mutual recognition of the protection granted in the different Member States”<sup>16</sup>. The combination of “could” and “in the longer term” indicates that the Commission does not plan to take any significant steps in terms of positive mutual recognition any time soon. Yet, a uniform European status of asylum and subsidiary protection represents the basis for the relocation of migrants across member states, which in turn paves the way for fair responsibility sharing in line with article 80 TFEU<sup>17</sup>.

In light of the clear legal basis, the European Commission should complement the creation of a single asylum procedure with a single asylum and subsidiary protection status. The status could thus be granted by any EU member state. If the decision is positive, the beneficiary of protection would receive a European identity document recognised by all member states. These actions would also remedy the current asymmetry, by which negative asylum decisions are mutually recognised across member states while positive ones are not.

14. European Commission, *Communication: Towards a sustainable and fair Common European Asylum System*, op. cit.

15. See for example: Human Rights Watch, “EU: Asylum proposals go in wrong direction”, 8 April 2016.; Pro Asyl, „Neue Blaupausen aus Brüssel: Erste Einschätzungen von Pro Asyl“, 7 April 2016.

16. European Commission, *Communication: Towards a sustainable and fair Common European Asylum System*, op. cit.

17. Council of Europe, Parliamentary Assembly, Committee on Legal Affairs and Human Rights, *After Dublin: the urgent need for a real European asylum system*, 28 September 2015.

To allow for flexible integration through European labour markets and education systems and reduce incentives for irregular secondary movement, the EU should grant conditioned free movement after two years<sup>18</sup>. Currently, the Long Term Residence Directive (2003) only grants free movement after five years of legal and continuous stay in one member state. Yet two years would be sufficiently long to allow refugees or beneficiaries of protection to settle and integrate in the member state initially responsible for them. At the same time, migrants would not have to wait excessively long if they consider their personal or professional integration prospects to be superior in a second member state. The Long Term Residence Directive sets out relatively strict conditions for taking up residence in a second member state, namely the demonstrated aim to undertake economic activity or study, recourse to sufficient resources and medical insurance. These conditions should continue to apply to prevent excessive asymmetries in terms of responsibility and protection costs.

## 1.2. A strong and autonomous EU Asylum Agency

A common European asylum status can only work if the member states also stick to the legally defined EU standards and procedures in practice. To enable “convergence in the assessment of applications for international protection across the Union” the Commission proposed transforming the European Asylum and Support Office (EASO) into a fully-fledged European Asylum Agency (EAA)<sup>19</sup>. So far, EASO has mainly focused on coordination, training, capacity building and data analysis. While these activities should still form part of the agency’s mandate, it should be extended to include the following tasks:

- Monitor compliance with common asylum norms and standards through a dedicated mechanism similar to the Schengen evaluation and monitoring mechanism;
- Provide substantial support to frontline states by engaging decisively in joint processing of asylum applications together with national authorities in situations of massive influx;
- Intervene in support of member states, including on its own initiative, if there are significant deviations from EU standards or rules (e.g. substandard reception conditions or highly divergent recognition rates);
- Operate and supervise a binding relocation mechanism to ensure a fair distribution of recognised beneficiaries of protection (see section 2).

Broadened competences should go hand in hand with a substantial increase in terms of permanent staff and budget. In 2014, EASO had 86 staff, of which only 13 were responsible for operational support. The annual budget for 2015 was less than €16 million<sup>20</sup>. The Commission proposed raising the EAA’s resources to €364 million for the 2017-2020 period and increasing its staff to 500 members including temporary and contractual agent posts<sup>21</sup>. In addition, the agency would be able to draw on an asylum intervention pool including at least 500 seconded member state experts.

18. Guild, Etsbeth; Costello, Cathryn; Garlick, Madeline; Moreno-Lax; Violeta “Enhancing the Common European Asylum System and alternatives to Dublin”, Study for the LIBE Committee of the European Parliament, July 2015., p. 50.

19. European Commission, *Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010*, Brussels, 4 May 2016.

20. European Asylum Support Office, *Work Programme 2015*, September 2014., p. 36.

21. European Commission, *Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010*, Brussels, 4 May 2016.

” THE NUMBER OF  
PERMANENT EUROPEAN  
ASYLUM AGENCY STAFF  
SHOULD BE INCREASED ”

Though this reinforcement could make the agency more effective, it would still depend on seconded national experts, which have not always been forthcoming<sup>22</sup>. A state of play report from June 2016 shows that the member states had only offered 466 of the 720 asylum experts requested by EASO in the framework of the emergency relocation schemes<sup>23</sup>. The number of permanent EAA staff should be increased to match the requirements of a broadened hotspot system and of a permanent relocation mechanism (see section 2). In addition, there should be national EAA branches with liaison officers in the member states to ensure continuous monitoring and timely support.

In its April 2016 Communication, the Commission also presented a more far-reaching option that would transform the EAA into the central EU decision-making body for asylum backed by an EU-level appeal structure (EU Asylum Court)<sup>24</sup>. In this model, asylum decisions would be taken centrally by the EAA while national authorities would remain responsible for reception and integration. This solution could ensure *de facto* norm harmonisation and could lead to significant economies of scale<sup>25</sup>.

However, it would also entail important institutional, legal and political changes. In institutional terms, it would imply a much more substantial increase in staff and resources. There would be a controversial shift of legal competences to the EU level. This shift would also be problematic from an international public law perspective as the EU is not party to the Geneva Convention whereas the member states are. Politically speaking, it would allow the member states to shove their responsibility for refugees to the EU level and to blame the latter in case of dysfunctionalities. To preserve the integrity of the CEAS and ensure the accountability of asylum processing, *de jure* and *de facto* norm harmonization across the EU should still be coupled with national ownership.

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**BOX 1** ► Summary of recommendations for *de jure* and *de facto* norm harmonisation

- Introduction of a single asylum procedure
  - Introduction of a single asylum and subsidiary protection status
  - Introduction of common asylum identity documents
  - Conditioned free movement after two years of continuous and legal residence
  - A reinforced EU Asylum Agency to ensure norm convergence and compliance
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22. European Commission, *Communication: Towards a sustainable and fair Common European Asylum System*, Brussels, 4 May 2016.

23. European Commission, *State of Play: Member States' support to Emergency Relocation Mechanism*, 2 June 2016.

24. European Commission, *Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe*, Brussels, 6 April 2016.

25. Berger, Melissa and Heinemann, Friedrich, "Why and How There Should Be More Europe in Asylum Policies" ZEW Policy Brief, No 1, January 2016.

## 2. Fair responsibility-sharing via relocation

In May 2016, the Commission suggested complementing the Dublin system with a “corrective fairness mechanism”<sup>26</sup>. Asylum seekers should be relocated once a member state passes a fixed reference amount of asylum claims by more than 150%. If a member state refuses to participate in relocation, it would have to pay a “solidarity contribution” of €250,000 per asylum-seeker to the member state that takes over the processing responsibility. This proposal remains emergency-driven and falls short of equitable responsibility sharing. Instead, we suggest establishing a post-recognition relocation mechanism that builds on relevant lessons from the EU’s emergency relocation schemes as well as the pilot project for intra-EU relocation from Malta (EUREMA)<sup>27</sup>.

### 2.1. Greater EU support for asylum processing

A fundamental question concerning the design of relocation mechanisms is whether they should operate prior to or after initial asylum processing. Pre-recognition relocation corresponds to the EU’s emergency relocation schemes. The advantage is that responsibility sharing takes place at the earliest stage and that asylum-seekers can already start integrating in the member state ultimately responsible for them during the initial asylum procedure. However, pre-recognition relocation has important negative aspects in practice. The immediate relocation of large numbers of asylum-seekers is costly, logistically difficult and lengthy due to the associated bureaucratic procedures. These challenges partly explain the massive implementation delays in the EU’s emergency relocation schemes.

A post-recognition relocation mechanism comparable to that of the EUREMA pilot project might be more feasible. This would suggest maintaining the current Dublin criteria for the allocation of processing responsibility, including the first country of entry principle. The relocation mechanism would only apply to recognised refugees or beneficiaries of subsidiary protection. Of course, the disadvantage is that the responsibility for asylum processing as well as the associated costs would remain on the shoulders of a few frontline states.

To alleviate the burden, the EU should provide additional operational support and financial compensation. It should reinforce and broaden the hotspot approach to enhance the frontline states’ capacity to identify, register and process migrants swiftly and in line with their legal obligations and human rights standards. The reinforced EAA could provide support to the national authorities through joint processing operations. In addition, frontline states should be financially compensated according to the number of processed asylum applications (see section 5).

### 2.2. Relocation and preference-matching

The responsibility for the longer-term protection and integration of migrants should be shared through a binding relocation mechanism operated and monitored by the EAA. The mechanism should be based on a distribution key reflecting objective and quantifiable indicators for the member states’ absorption and integration capacity. Many such keys exist, but as a study by the International Centre for Migration Policy Development showed, they do not differ significantly in terms of the resulting distribution of migrants<sup>28</sup>. The one used for the EU’s emergency relocation schemes represents a good model. It is based on the following criteria:

- Population size (40%)
- Total GDP (40%)
- Average number of received asylum applications and number of resettled refugees for the past four years (10%)
- Unemployment rate (10%)

26. European Commission, *Proposal establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)*, Brussels, 4 May 2016.

27. The EUREMA pilot project (2010-2011) aimed at the relocation of 225 individuals and participation was voluntary. Twelve member states participated regularly while eight member states and associated countries made bilateral arrangements with Malta.

28. International Centre for Migration Policy Development, “An Effective Asylum Responsibility-Sharing Mechanism”, October 2014.

” A COERCIVE APPROACH  
TO RELOCATION CREATES  
INTEGRATION PROBLEMS  
AND INCENTIVES FOR  
IRREGULAR SECONDARY  
MOVEMENT”

A core lesson from the EUREMA pilot project is that a coercive approach to relocation creates integration problems and incentives for irregular secondary movement<sup>29</sup>. A permanent relocation mechanism should thus be complemented with a flexible preference-matching tool. In initial interviews, asylum seekers should be asked to indicate three preference options in terms of member states based on criteria that are relevant for successful integration such as family ties, language skills, cultural ties or previous stays. The possibility to indicate preferences could foster more strategic behaviour among migrants in light of the probabilities of being relocated to specific EU member states. The member states should also indicate preferences regarding the characteristics of the beneficiaries or protection (e.g. family status, language skills or vocational training). However, experience with EUREMA pilot project and the EU's emergency relocation schemes suggests that preference criteria should not be too restrictive (e.g. strict faith, nationality or minority criteria) and limited in number to avoid an overly long and complicated matching process<sup>30</sup>.

A flexible preference-matching mechanism would allow for more co-ownership and could accommodate some of the observed preference diversity among migrants and member states<sup>31</sup>. However, experience has also shown that perfect matching is impossible<sup>32</sup>. The matching phase should thus be followed by a second phase based on a lottery system, which allocates the rest of the migrants in line with the distribution key. The EAA should be the central coordinating authority during the preference-matching and lottery stages, supported by a pan-European database and an electronic matching tool. If the beneficiaries of protection reject relocation, they would have to remain in the country of first entry, which would be financially compensated accordingly.

### 2.3. Positive incentives for relocation

A central problem with the EU's existing relocation schemes is non-compliance. Migrants often reject relocation decisions, abscond or decide to return to the country of first registration after relocation. Meanwhile, many member states are reluctant to relocate. By June 2016, 24 member states only pledged 7,920 relocation places, or roughly 5% of those foreseen under the EU's emergency relocation schemes<sup>33</sup>. The European Commission proposed to tackle these compliance problems through negative sanctions for both member states and migrants. We would suggest rebalancing such 'sticks' with 'carrots' and providing migrants with thorough information.

Experience with the EUREMA project has shown that cultural orientation and information sessions are crucial to shape realistic expectations about the assigned member state of relocation. International organisations such as the UNHCR and IOM could support the EU with information provision. This is of particular importance if the migrants' first choices in terms of member states cannot be met.

The EU should also provide migrants with immediate positive incentives for relocation. The issuance of an EU refugee or subsidiary protection document should go hand in hand with the provision of a temporary residence and work permit valid only in the relocating member state. The ability to work freely and immediately in the relocating country would reduce the incentives for irregular secondary migration. A January 2016 study by the International Monetary Fund estimates that the refugee surge is likely to translate into a moderate increase in GDP growth in Europe due to fiscal expansion and the expansion in labour supply<sup>34</sup>. The longer-term economic impact will crucially depend on the migrants' integration in the labour market. The member states should thus eliminate existing restrictions on labour market access to allow those willing and able to integrate

29. European Asylum Support Office, *Fact Finding Report on intra-EU relocation activities from Malta*, July 2012.

30. European Asylum Support Office, *Fact Finding Report*, op. cit.

31. Fernández-Huertas Moraga, Jesús and Rapoport, Hillel, „Tradable Refugee-Admission Quotas and EU Asylum Policy”, Institute for the Study of Labor, Discussion Paper No. 8683, November 2014.

32. European Asylum Support Office, *Fact Finding Report*, op. cit.

33. Eurostat, *News Release*, op. cit.

34. Aiyar, Shekhar; Barkbu, Bergljot; Batini, Nicoletta; Berger, Helge; Detragiache, Enrica; Dizioli, Allan; Ebeke, Christian; Huidan, Lin Huidan; Kaltani, Linda; Sosa, Sebastian; Spilimbergo, Antonio; Topalova, Petia „The Refugee Surge in Europe: Economic Challenges”, International Monetary Fund, Staff Discussion Notes 16/2, 2016.

in the labour market and alleviate the social and welfare systems. Current restrictions include work bans on self-employment in Sweden and the UK or labour market tests in member states such as Germany<sup>35</sup>, Greece or Hungary, which make labour market access conditional on the proof that no domestic worker or EU-migrant could have filled the position<sup>36</sup>.

Positive incentives are also necessary to increase the member states' willingness to participate in the relocation mechanism. A key problem of the existing schemes is that the financial compensation provided by the EU does not match the costs incurred by the member states. Under the emergency relocation scheme, the member states receive a lump sum of €6,000 per relocated migrant. The European Commission itself previously estimated the average cost per relocated refugee at €8,000<sup>37</sup>. But rather than raising the bar in terms of financial solidarity, it suggested introducing financial sanctions.

”RE-BALANCING  
SANCTIONS WITH POSITIVE  
INCENTIVES VIA A NEW  
SCHENGEN FUND”

We would suggest re-balancing sanctions with positive incentives via a new Schengen Fund. A member state that receives the number of beneficiaries of protection assigned to it by the relocation key little would change. If a member state agrees to welcome more migrants than the figure assigned to it by the relocation key, it would be financially compensated in line with the above-the-key figure. However, if a member state does not fulfil its share under the key, it would pay more into the Fund than it would receive. The Schengen Fund would thus provide automatic negative and positive incentives for compliance while reflecting the member states' individual integration capacity (for more

details see section 5).

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**BOX 2** ► Summary of recommendations for fairer responsibility-sharing

- Allocation of processing responsibility according to the current Dublin criteria
  - EU support to frontline states reinforced hotspot system and EAA
  - Post-recognition relocation based on a binding key and two phases:
  - Preference-matching between member states and migrants
  - Residual matching through lottery system
  - Positive incentives for relocation for migrants and member states
- 

35. In Germany, provisions concerning obligatory labour market tests have been relaxed in recent years. According to a new integration law from 2016, labour market tests for asylum-seekers should be suspended for three years in regions where the employment situation allows it.

36. Konle-Seidl, Regina and Bolits, Georg, "Labour Market Integration of Refugees: Strategies and good practices", Study for the EMPL Committee of the European Parliament, March 2016., p. 33.

37. European Commission, Directorate General of Home Affairs, "Study on the Feasibility of Establishing a Mechanism for the Relocation of Beneficiaries of International Protection". Copenhagen, 2010.

### 3. Addressing shared security risks

The coincidence of the massive migratory influx and the series of terrorist attacks on European soil fuelled important security-related concerns. Though these two challenges are fundamentally different, they have often been meshed in the political debate. The restoration of internal border controls can be seen as manifestation of these concerns, which have been reinforced by clear deficits in the control of the EU’s external border. Another illustration was the refusal of the Polish government to participate in the EU’s emergency relocation scheme out of security concerns one day after the terrorist attacks in Paris of 13 November 2015. A revised Dublin system can only work if these concerns are addressed through more effective external border control and stronger internal security cooperation.

#### 3.1. Frontex reloaded

In 2015, only 23% of the migrants that irregularly crossed the Schengen border were fingerprinted according to the Eurodac Regulation, with huge discrepancies among member states<sup>38</sup>. The situation was particularly dramatic in Greece where more than 868,000 persons entered irregularly via the Aegean Sea, of which only 8% were fingerprinted as of September 2015<sup>39</sup>. These gaps prevent authorities from conducting the necessary security checks against relevant European or national databases. An additional problem is the EU’s limited capacity to return irregular migrants not eligible for international protection. In 2014, the EU’s average return rate was at 40% and as low as 16% for migrants from certain African countries<sup>40</sup>.

The EU took a range of steps to remedy these shortcomings. The implementation of the hotspot approach in Greece and Italy significantly enhanced compliance with the Eurodac Regulation. The proportion of fingerprinted migrants rose from 8% to 78% in Greece and from 36% to 87% in Italy between September 2015 and January 2016. Furthermore, the Commission issued an EU Action Plan on Return as well as a Common Return Handbook in September 2015 comprising a range of short to medium-term measures to be taken by the member states for more effective and standardised return<sup>41</sup>.

TABLE 1 ► The European Border and Coast Guard

MAIN CHANGES V/S FRONTEX	CONTENT OF THE CHANGES		
MONITORING AND SUPERVISORY ROLE	Monitoring and risk analysis centre to monitor migratory flows	Liaison officers seconded to Member States where the borders are at risk.	Require Member States to take measures to address the situation in case of vulnerabilities.
A STRONGER ROLE IN RETURNS	A European Return Office established within the Agency	Deployment of European Return Intervention Teams	A standard European travel document for return
MORE HUMAN AND TECHNICAL MEANS	At least 1,500 experts to be deployed in under 3 days : „Reserve pool of border guards”	Ability to acquire equipment itself and to draw on a pool of technical equipment	Human resources more than double that of Frontex to reach 1,000 permanent staff by 2020
EASIER INTERVENTIONS ON THE GROUND	Member States can request joint operations and rapid border interventions	EU ability to adopt an implementing decision if Member State unable or unwilling to take the necessary measures	No need for unanimity voting / decision maker body proposed at this stage : Commission under comitology procedure

Source: Bertoincini and Vitorino (2016), data EU Commission.

38. Ibid.

39. European Commission, *Back to Schengen – A Roadmap*, Brussels, 4 March 2016, p. 4.

40. European Commission, *State of Play of Implementation of the Priority Actions under the European Agenda on Migration*, Brussels, 10 February 2016., p.18

41. European Commission, “Refugee Crisis: European Commission takes decisive action”, press release, Brussels, 9 September 2015.

However, the most substantial step was the Commission's proposal to transform the EU's border management agency Frontex into a fully-fledged European Border and Coast Guard (EBCG). The draft regulation from December 2015 foresaw a stronger mandate, a budget twice as high, and an increase of permanent staff from 400 to 1,000 by 2020 (for an overview of the December 2015 proposal see Table 1)<sup>42</sup>. The draft went relatively swiftly through the ordinary legislative procedure and an informal agreement on the text was reached on 21 June 2016<sup>43</sup>. However, three controversial issues should be rethought if the EBCG is to become a truly effective, autonomous and European actor.

The first is the right to intervene. The draft regulation from December 2015 foresaw that the EBCG could intervene in a member state without its permission and on the basis of a Commission implementing act if the situation at the border puts the functioning of the Schengen area at risk. Due to national sovereignty concerns, this provision was watered down. According to the compromise of June 2016, the decision to intervene can only be triggered by a qualified majority vote in the Council and the concerned member state has to agree to the operational plan before the EBCG can be deployed<sup>44</sup>. If the member state refuses to comply with the Council Decision, the others can temporarily restore internal border controls.

This amendment limits the EBCG's effectiveness in remedying national shortcomings. A relevant example in this context was Greece's refusal to accept EU support to fill the gaps in external border control in 2015. It was only after intense pressure and a threat of being barred from Schengen for up to two years that the government agreed to EU assistance with registration<sup>45</sup>. To address such deficits in a timely fashion, the EBCG should be able to deploy without prior consent of the member state in question.

The second issue that caused controversy was the EBCG's role in search and rescue activities. The draft regulation identified the "absence of an explicit role to conduct search and rescue operations" as one of Frontex' key shortcomings and announced a more autonomous role for the EBCG. However, this role was downgraded to one of technical and operational assistance to the member states' activities<sup>46</sup>. To live up its commitment to saving lives in the Mediterranean, the EU should give the EBCG a clear mandate to launch joint operations and border interventions in support of search and rescue activities and provide it with the necessary technical equipment<sup>47</sup>.

The third issue concerns the EBCG's staff. The Commission suggested raising the number of permanent staff to 1,000 until 2020. However, the EBCG will not have its own European border guards, but will have to rely on a reserve pool of 1,500 national border guards. Its influence on border management will thus remain dependent on national contributions, which have often been lacking in the past. For example, a Commission report from June 2016 notes that only 416 out of 1,412 requested national border guards for joint Frontex operations had been offered<sup>48</sup>. In the medium-term, permanent border management staff would allow the EBCG to assist the member states in a timely and effective manner.

### 3.2. Upgraded internal security cooperation

In April 2016, the European Commission declared that "the internal security of one Member State is the internal security of all Member States"<sup>49</sup>. The links between the terrorist attacks of November 2015 in Paris and a terrorist cell based in Brussels tragically illustrate that this sentence is more than a meaningless slogan. The restoration of internal border controls might provide the temporary illusion of enhanced national security, but it cannot effectively stop transnational terrorism or crime as recent terrorist attacks in the United States have

42. European Commission, *Proposal for a Regulation on the European Border and Coast Guard*, Strasbourg, 15 December 2015.

43. European Commission, "European Border and Coast Guard agreed", press release, Brussels, 22 June 2016.

44. European Parliament, "Civil Liberties Committee backs new European Border and Coast Guard", 30 May 2016.

45. Zalan, Eszter, "Greece accepts EU border help under Schengen threat", *EU Observer*, 4 December 2015.

46. Peers, Steve, "The EU Border Guard takes shape", *Statewatch*, 13 March 2016.

47. UNHCR, "Comments on the Commission proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard", April 2016.

48. European Commission, *State of Play: Member States' support to Emergency Relocation Mechanism*, 2 June 2016.

49. European Commission, "European Agenda on Security: Paving the way towards a Security Union", press release, Brussels, 20 April 2016.

shown. Instead, the member states should fill the concept of a “genuine Security Union” with substance by strengthening judicial, police and intelligence cooperation<sup>50</sup>. Three priorities stand out.

The first is systematic information sharing across European databases. The importance thereof was seen in the context of the terror attacks in London in July 2005. One of the perpetrators was arrested by the Italian authorities in Rome a few days after the attack<sup>51</sup>. This was only possible because his name had been entered into the Schengen Information System. However, the EU’s architecture for data management for border control and security is still too complex and fragmented<sup>52</sup>. The EU should fill gaps in the existing information systems and work towards their full interoperability. An important measure in this regard is the establishment of a single search interface for the various databases. In the medium term, these different systems should be brought together within a Single European Identity Management system for border and security<sup>53</sup>.

The second priority is effective operational cooperation<sup>54</sup>. In January 2016, the EU reinforced the role of EUROPOL by integrating the European Counter Terrorism Centre, which is supposed to become a law enforcement and intelligence hub for the analysis and assessment of terrorist threats. However, this hub only includes 39 permanent staff and 5 seconded national experts<sup>55</sup>. To effectively address the challenge of cross-border terrorism it should be upgraded in terms of permanent staff and resources. Additional EUROPOL officers should also be deployed to the EU’s external border to ensure that systematic security checks against relevant databases are carried out<sup>56</sup>. Moreover, the EU’s Intelligence Centre should strengthen its role as hub linking information on external and internal security coming from different players such as the EU delegations, national intelligence services and internal security networks such as the Club de Berne. The reinforcement of these EU-level platforms should not lead to the duplication of national structures, but provide for timely provision of security and intelligence products directly informing EU-level decision-making.

” ENSURING A HIGH LEVEL OF INTERNAL SECURITY FOR EUROPEAN CITIZENS IS A COMMON EUROPEAN RESPONSIBILITY”

In his Political Guidelines of 2015, Commission President Jean-Claude Juncker stated that ensuring a high level of internal security for European citizens is “a common European responsibility”<sup>57</sup>. If this is the case, then the third priority should be to raise the level of collective funding and to extend its scope. Roughly €1 billion has been allocated to the EU’s Internal Security Fund - Police for 2014-2020. This amount seems rather symbolic when compared to the member states’ budgetary increases for 2016 in response to the recent terrorist attacks: Germany raised its budget for internal security by €1.8 billion<sup>58</sup>, France by €815 million and Belgium by €400 million<sup>59</sup>. In the latter case, the additional budgetary impact is estimated at 0.12% of GDP<sup>60</sup>. The scope of EU funding for internal security should be expanded and its allocation should be flexibly adapted in light of common threat or risk indicators. A revised Internal Security Fund could also be integrated within the comprehensive Schengen Fund described in section 5.

### BOX 3 Summary of recommendations for more internal security

- A reloaded Frontex with an effective right to intervene, a stronger role in search and rescue and additional permanent staff
- Increased interoperability and gradual integration of EU information databases
- Focused operational cooperation linking internal, border and external security
- More collective resources for internal security and more flexible allocation

50. European Commission, *Delivering on the European Agenda on Security to fight against terrorism and pave the way towards an effective and genuine Security Union*, Brussels, 20 April 2016.

51. Menghi, Martina and Pascouau, Yves, „The Schengen Area under Threat: problem or solution?“, Synthesis, Jacques Delors Institute, 2 September 2015.

52. [https://www.google.de/url?sa=t&rc=j&q=&esrc=s&source=web&cd=2&ved=0ahUKewik4qamr-HMAhUCbxQKKhUp8lgQFggpMAE&url=http%3A%2F%2Fec.europa.eu%2Fdocs%2Fhome-affairs%2Fwhat-we-do%2Fpolicies%2Fsecuring-eu-borders%2Flegal-documents%2Fdocs%2F20160406%2Fcommunication\\_on\\_stronger\\_and\\_smart\\_borders\\_20160406\\_en.pdf&usq=AFQjCNG6QvKddjXaTmtP3z1kp8A\\_k6D7NVQ&sig2=xFz97HbJH8ilbDQ2BtcjSw&bvm=bv.122129774,d.d24&cad=rja](https://www.google.de/url?sa=t&rc=j&q=&esrc=s&source=web&cd=2&ved=0ahUKewik4qamr-HMAhUCbxQKKhUp8lgQFggpMAE&url=http%3A%2F%2Fec.europa.eu%2Fdocs%2Fhome-affairs%2Fwhat-we-do%2Fpolicies%2Fsecuring-eu-borders%2Flegal-documents%2Fdocs%2F20160406%2Fcommunication_on_stronger_and_smart_borders_20160406_en.pdf&usq=AFQjCNG6QvKddjXaTmtP3z1kp8A_k6D7NVQ&sig2=xFz97HbJH8ilbDQ2BtcjSw&bvm=bv.122129774,d.d24&cad=rja)

53. European Political Strategy Centre, “Towards a ‘Security Union’: Bolstering the EU’s Counter-Terrorism Response”, Strategic Note, issue 12, 20 April 2016.

54. For a good overview, see: Fägersten, Björn, “For EU eyes only? Intelligence and European security”, *European Union Institute for Security Studies*, Brief no. 8, 2016.

55. European Political Strategy Centre, “Towards a ‘Security Union’: Bolstering the EU’s Counter-Terrorism Response”, Strategic Note, issue 12, 20 April 2016.

56. See: Europol, „Europol setting up team of 200 investigators to deploy to migration hotspots“, 12 May 2016.

57. Jean-Claude Juncker, “Political Guidelines: A new Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change”, Strasbourg, 15 July 2014.

58. Bundesministerium der Finanzen, “Bundesregierung beschließt Eckwerte zum Bundeshaushalt 2016 und Finanzplan 2015-2019”, Berlin, 18 March 2015.

59. Le Monde and AFP, „Après les attentats, le budget 2016 prévoit 815 millions d’euros pour les mesures de sécurité“, *Le Monde.fr*, 30 November 2015; La Tribune, “Terrorisme : la Belgique reprend sa sécurité en main”, *latribune.fr*, 20 November 2015.

60. European Commission, *Report from the Commission – Belgium*, Brussels, 18 May 2016., p. 12.

## 4. Global responsibility-sharing

A reformed Dublin system is more likely to function and to be politically acceptable if the number of irregular migrants becomes more manageable. This can only be achieved in cooperation with origin and transit countries. In June 2016, the European Commission published a Communication proposing the establishment a new “Partnership Framework” which aims at agreeing tailor-made compacts with priority origin and transit countries to foster more effective cooperation on migration management<sup>61</sup>. The declared aim of the new Framework is threefold: save lives in the Mediterranean, increase the rate of return to origin and transit countries and enable refugees and migrants to stay close to home. Though a more targeted and comprehensive external migration policy is necessary, the proposed Framework might face some implementation challenges.

### 4.1. Forward-looking financial support

Surveys have shown that refugees have tended to stay in the region close to their origin country for significant periods of time and that key reasons for moving onwards to Europe were poor reception conditions and a lack of opportunities in the region<sup>62</sup>. In June 2015, the UNHCR was facing a funding gap of US\$3.47 billion and warned that it would not be able to “meet even the most basic survival needs of millions of people” in the EU’s Southern neighbourhood<sup>63</sup>. While the EU’s collective response to the humanitarian crisis in the region has been substantial, the member states’ contributions have been imbalanced. According to OXFAM’s ‘Syria Crisis Fair Share Analysis’ for 2015 some such as Belgium, Denmark and the UK made contributions going well beyond their fair share (based on GNI) while others including France, Poland and Spain pledged less than half of their fair share<sup>64</sup>. The bottom line is that the ‘refugee crisis’ in Europe could have been attenuated if the EU had provided earlier, more substantial and more unified support to countries such as Turkey, Lebanon and Jordan.

In February 2016, the EU and its member states raised their contribution and pledged €7.15 billion, which was equivalent to 70% of all pledges<sup>65</sup>. In addition, the EU has created three innovative financial instruments in 2014-2016 to counter fragmentation in the support to origin and transit countries:

- the Regional Trust Fund in response to the Syrian crisis – Madad Fund (€1 billion until 2019)
- the Emergency Trust Fund for Africa (€3.6 billion until 2020)
- the Facility for Refugees in Turkey (€3 billion until 2017, possibly another €3 billion until 2018)

But though these instruments helped pool funds from different sections of the EU budget, the aim that national contributions should match EU financing has often not been met. In June 2016, the member states had contributed less than half of their share for the Madad Fund and roughly 5% of their share for the Emergency Trust Fund for Africa<sup>66</sup>. Contributions have been more forthcoming in the case of the Facility for Refugees in Turkey, but it took months of controversial negotiations to agree on them. In its Communication on the Partnership Framework, the Commission reiterated its call on the member states to “match its contributions as swiftly as possible”<sup>67</sup>.

To ensure more forward-looking and predictable support to the most affected third countries, the EU’s financial contributions would have to be more institutionalised. This could be achieved through a dedicated “Instrument for external action in the field of migration” within the EU budget as suggested by the Italian

61. European Commission, *Communication on establishing a new Partnership Framework with third countries under the European Agenda on Migration*, Brussels, 7 June 2016.

62. Dullien, Sebastian, “Paying the price: the cost of Europe’s refugee crisis”, European Council on Foreign Relations, Policy Brief, April 2016.

63. Dobbs, Leo and Clayton, Jonathan, “Funding shortage leaves Syrian refugees in danger of missing vital support”, 25 June 2015.

64. Saieh, Alexandra; Baldoumas, Abigael; Bassoul, Joelle and Gorevan, Daniel, “Syria Crisis – Fair Share Analysis 2016”, OXFAM Briefing, 1 February 2016.

65. European Commission, „Communication on establishing a New Partnership Framework with third countries under the European Agenda on Migration”, Brussels, 7 June 2016.

66. *Ibid.*, p. 10.

67. *Ibid.*

government in an April 2016 non-paper<sup>68</sup>. An alternative would be pooling member state resources for cooperation with third countries on migration within a comprehensive Schengen Fund (see section 5).

## 4.2. Targeted and balanced compacts

The comprehensive compacts proposed within the Partnership Framework would combine a whole range of measures from the EU's external action toolbox including diplomacy, development cooperation, the European Neighbourhood Policy, trade, the Common Security and Defence Policy and foreign investment. The Commission announced that these compacts would represent "the key components of the overall relationships between the EU and third countries of origin or transit of migrants"<sup>69</sup>. The first test cases are the EU compacts with Jordan and Lebanon for which negotiations were launched in early 2016.

Adding a stronger bilateral component to the EU's external migration policy could intensify the implementation of existing High-Level Dialogues on Migration such as the Rabat and Khartoum Processes. These processes aim at fostering mutual understanding of the pull and push factors for migration and developing concrete governance and capacity-building projects on that basis. These multilateral dialogues should be backed by regular bilateral exchanges. To bolster migration-related capacity and expertise on the ground, the member states should deploy European Migration Liaison Officers the respective EU delegations. The delegations could thereby play a stronger role in early warning regarding reception conditions in third countries and prospective migratory flows towards Europe.

In addition, the EU should develop the CSDP's growing focus on migration to promote rights-based integrated border management, build local capacity, save lives in the Mediterranean and disrupt human smuggling or trafficking networks. A pertinent example is operation EUNAVFOR Sophia with the aim of combating human trafficking and smuggling and preventing further loss of life in the Southern Central Mediterranean. With over 230,000 migrants and 400,000 internally displaced persons as well as severe governance and security problems, Libya has to remain an important CSDP priority, including additional efforts in terms of civilian capacity-building and security sector reform.

### ”USE TRADE MEASURES TO OPEN UP OPPORTUNITIES FOR BENEFICIARIES OF INTERNATIONAL PROTECTION IN THIRD COUNTRIES”

The EU should also use trade measures to open up opportunities for beneficiaries of international protection in third countries. Useful lessons could be drawn from the EU Compact for Jordan. In exchange for better access to the Single Market through simplified rules of origin, Jordan promised to grant up to 200,000 Syrian refugees (and thus about one third of its refugee population) access to its labour market. This large-scale job creation scheme is to be backed by significant international grants. If implemented well, the deal could allow Syrians to integrate better in a country close to home, boost Jordan's economy and thereby lower the local population's resentment towards refugees. An External Investment Fund proposed by the Commission, which should mobilise public and private investment of up to €62 billion until 2020 could support similar programmes in the EU's broader neighbourhood<sup>70</sup>.

Overall, the Partnership Framework proposed by the Commission can be interpreted in terms of a shift from 'policy coherence for development' to 'policy coherence for migration control'. The Communication states that "the overall relationship between the EU and [the third country] will be guided in particular by the ability and willingness of the country to cooperate on migration management"<sup>71</sup>. Positive and negative conditionality in aid and trade is tied to the partners' willingness to cooperate in prevention of irregular migration and readmission. The Communication also emphasises that half of the funding available under the European

68. Italian Government, "Migration Compact", 5 May 2016.

69. European Commission, „Communication on establishing a New Partnership Framework”, op. cit., p. 6.

70. Ibid.

71. Ibid.

Neighbourhood Policy is now devoted to migration-related issues. There is a risk that the EU's focus on the short-term objective of regaining control over migration goes to the detriment of important longer-term goals such as poverty eradication or good governance<sup>72</sup>. Regaining control is certainly an important priority, but it should not become the single, predominant motive in the EU's relations with its neighbours.

### 4.3. More accessible legal pathways

Legal migration and mobility is a central priority of the EU's Global Approach to Migration and Mobility, the European Agenda on Migration and the Action Plan agreed with African partners at the Valletta Summit on Migration of November 2015. Yet it is the least developed aspect in practice and tends to be subordinate to the securitised fight against irregular migration<sup>73</sup>. To reduce reasons for irregular migration and create positive incentives for third countries to cooperate on readmission and return, the EU should enhance its efforts to ensure safe humanitarian access and allow for more controlled labour migration.

To prevent migrants from taking hazardous journeys to Europe, the EU should upgrade its resettlement policy and work towards swifter and more unified implementation. In July 2015, the Council committed to resettling 22,504 people within two years. One year later only 6,321 people (28%) had been resettled. Some member states such as Austria (1,443 resettled persons) made substantial contributions, but a total of 15 member states made none<sup>74</sup>. As advocated by the UNHCR, the EU should raise the number of annual resettlement places to 20,000. Resettlement could function according to the same logic as the relocation mechanism: the process should be centrally coordinated by the EAA, the number of resettled persons should feed into the relocation key, and member states should be compensated via the Schengen Fund (see section 5). The High-Level Meeting on Refugees and Migrants taking place at the margins of the UN General Assembly in September 2016 could be a good opportunity to upgrade the EU's resettlement efforts and to persuade other international partners to follow suit.

”THE EU SHOULD UPGRADE ITS RESETTLEMENT POLICY AND WORK TOWARDS SWIFTER AND MORE UNIFIED IMPLEMENTATION”

In parallel, the EU should broaden and streamline the practice of issuing humanitarian visa to vulnerable migrants to grant them access to a regular asylum procedure in Europe. While the EU Visa Code Regulation foresees the issuance of visa with limited territorial validity on humanitarian grounds, there is no EU-wide scheme and member state practice remains disparate. A 2014 study for the EP showed that only 16 EU member states have or have had schemes for issuing humanitarian visas<sup>75</sup>. The provisions in the Visa Code concerning the lodging and processing of applications for humanitarian Schengen visas should be clarified and the EU should issue guidelines to streamline member state practice<sup>76</sup>.

In the longer-term, offers for humanitarian visas could be pooled at the EU level and migrants should be able to apply for them at any member state consulate or embassy. This corresponds to the position that the European Parliament's LIBE Committee put forward in a report amending the recast Visa Code tabled for plenary in April 2016<sup>77</sup>. It might thus be up to the European Parliament to push for a more unified practice on humanitarian visa in trilogue talks with the Commission and the Council<sup>78</sup>. To make such a scheme more attractive to the member states, they could be compensated via the Schengen Fund according to the number of humanitarian visa applications processed and granted (see section 5).

Finally, the EU should address the weakest link when it comes to opening legal avenues: access for economic migrants. The EU has several measures for selected groups (highly skilled migrants, researchers, students)

72. See also: "Joint NGO statement ahead of the European Council of 28-29 June 2016: NGOs strongly condemn new EU policies to contain migration", 27 June 2016.

73. Garcia Andrade, Paula and Martin, Iván, „EU Cooperation with third countries in the field of migration”, Study for the European Parliament, LIBE Committee, October 2015.

74. European Commission, "Relocation and Resettlement – State of Play", Brussels, 13 May 2016.

75. Iben Jensen, Ulla, "Humanitarian visas: option or obligation", Study for the European Parliament, LIBE Committee, September 2014.

76. Ibid.

77. European Parliament - LIBE Committee, *Report on the proposal for a regulation of the European Parliament and the Council on the Union Code on Visas (Visa Code) (recast)*, 22 April 2016.

78. Neville, Darren and Rigon, Amalia, „Towards an EU humanitarian visa scheme?", Briefing, European Parliament Think Tank, 13 June 2016.

in place. However, they are scattered and often ineffective due to parallel national schemes. A more targeted immigration policy could help fill the EU's broadening skills and demographic gaps. As part of the new migration compacts, the EU could offer tailor-made measures providing conditioned access to economic migrants from selected third countries. As suggested by Yves Pascouau, the EU could create a job-seeker's visa that would grant access to the EU for a limited period of time with a view to seeking employment<sup>79</sup>. The granting of residence would be dependent on securing employment. In the contrary case, the third country national would have to return to the country of origin before visa expiry. Though procedural details would have to be specified, such targeted and visible mobility measures could represent powerful incentives for third country cooperation on readmission and return.

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**BOX 4: Summary of recommendations for global responsibility-sharing**

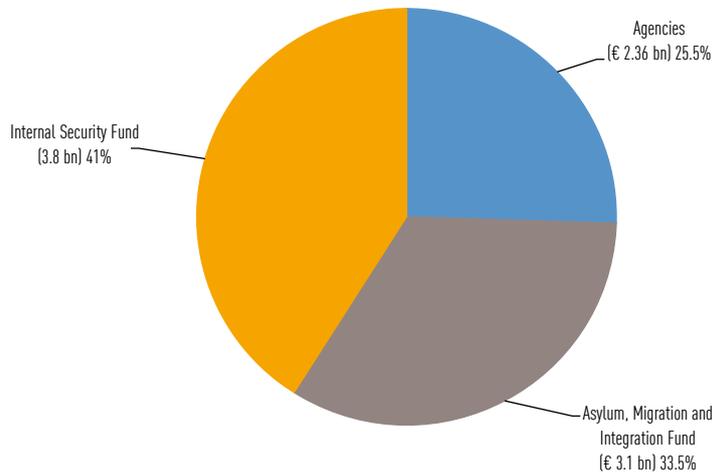
- Institutionalised and forward-looking financial support through Schengen Fund
  - Systematic security-development-migration nexus in CFSP
  - Trade-related incentives for better living conditions in third countries
  - Safe access to protection via upgraded EU resettlement and humanitarian visa schemes
  - More accessible legal pathways for economic migrants
- 

79. Pascouau, Yves, „A job-seeker's visa: towards a new mobility policy for third-country nationals”, Jacques Delors Institute, Policy Paper No. 163, 28 April 2016.

## 5. Tangible financial burden-sharing

Common European challenges require collective responses backed by the necessary resources. The EU's existing financial solidarity mechanisms in the fields of asylum, migration, borders and internal security only represent a small share of the effective costs. With a combined volume of €9.26 billion for 2014-2020, the Asylum, Migration and Integration Fund (AMIF) and the Internal Security Fund (ISF) represent less than 1% of the EU budget (see Figure 2). The member states' contribution to financial solidarity in Home Affairs can thus be roughly estimated at 0.01% of their GNI. By way of comparison, a study by the International Monetary Fund estimated the average GDP-weighted budgetary expenses for asylum seekers in the EU member states at 0.19% of GDP for 2016<sup>80</sup>. This estimate excludes additional costs related to external border management, internal security or the cooperation with third countries.

**FIGURE 2** ▶ Distribution of EU Home Affairs funding (2014-2020)



Source: data from the [European Commission](#), 2016

### 5.1. A comprehensive Schengen Fund

To provide tangible solidarity in tackling the unprecedented migratory influx, the EU should establish a comprehensive Schengen Fund with four thematic programmes.

1. Asylum and Integration
2. External Borders
3. Internal Security
4. External Cooperation

The Schengen Fund would (a) co-finance member state action in these fields and (b) contribute to joint European initiatives. While there should be multiannual planning for joint European initiatives as well as for cooperation with third countries, the distribution among member states would not be fixed. The money would be allocated *ex post* on an annual basis and according to the action undertaken within each programme. All initiatives would be assessed with regard to their effectiveness. Decisions to grant support would be evaluated on the basis of priorities and the contribution of proposed actions to explicitly stated common goals. Such flexible allocation would ensure adaptability to changing circumstances on the ground. Overall, the Schengen

80. Shekhar et al. "The Refugee Surge in Europe: Economic Challenges", op. cit.

Fund would allow for tangible risk- and responsibility-sharing in different domains and thus benefit all member states in one way or another.

” THE SCHENGEN  
FUND WOULD ALLOW  
FOR TANGIBLE RISK- AND  
RESPONSIBILITY-SHARING”

The *Asylum and Integration Programme* would compensate member states that receive a disproportionate number of asylum applications. It would mainly benefit frontline states such as Hungary, Sweden, Austria and Germany. All member states would be compensated for granting humanitarian visa as well resettling migrants. The Programme would also support member states with reception and integration for the duration of two years, which corresponds to the period during which virtually all newcomers depend on public support because language barriers prevent them from participating in the labour market. Member states should receive per capita lump sums covering expenses related to health care, accommodation, administration, training, etc. The average cost of hosting a refugee in the EU is currently estimated at €10,000 per year<sup>81</sup>. If the Commission's forecast holds, the average annual cost for 2016 and 2017 would amount to €10 billion. Funds from the *Asylum and Integration Programme* should also be used to support joint processing operations led by the EAA.

The *External Borders Programme* would help countries such as Italy and Greece that are overwhelmed by the inflow of irregular migrants to cope with the challenges of border control, as well as those of search and rescue, assistance, registration and short-term shelter. The cost of external border protection is significant: in the US, the budgetary request for customs and border protection amounted to \$13.6 billion (€12.2 billion) for the financial year 2016<sup>82</sup>. The *External Borders Programme* should also support joint Schengen-area projects including:

- the establishment and reinforcement of EU hotspots;
- search and rescue operations; and
- joint return operations.

The *Internal Security Programme* would co-finance action by national governments to address immediate internal or transnational security threats. It could support dedicated investment in intelligence, judicial investigations, equipment and technology for domestic security forces. It would benefit member states such as France and Belgium that have substantially enhanced their budgets and personnel for internal security following major terrorist attacks. The *Internal Security Programme* should also cover measures to ensure interoperability of European databases and strengthen cooperation platforms such as the EU Counter Terrorism Centre.

Finally, the *External Cooperation Programme* would provide forward-looking support to the most affected host countries outside the EU such as Turkey, Lebanon and Jordan as well as international organisations such as IOM and UNHCR.

## 5.2. Financing options

When it comes to financial solidarity, the central question is where the money comes from. The first and preferred option would be to raise the share allocated to Home Affairs in the EU budget. In May 2016, the German Development Minister Gerd Müller proposed raising this share from 1% to 10% by diverting funds from other budget headings and with a view to a more joined-up response to the massive refugee influx<sup>83</sup>. Based on current figures, a tenfold increase would leave the EU's Home Affairs budget at €92.6 billion for seven years, or roughly €13.2 billion per year. The proposed increase is substantial enough to cause long and controversial discussions among the member states and EU institutions, which are already facing an overstretched EU budget. However, it is still not substantial enough to act as a real responsibility- and risk-sharing mechanism for the member states.

81. Dullien, "Paying the price: the cost of Europe's refugee crisis", op. cit.

82. US Department of Homeland Security, *Budget-in-Brief Fiscal Year 2016*, Washington D.C., 2015.

83. Kingsley, Patrick, "Divert 10% of EU funds to deal with refugee crisis, says Germany", *The Guardian*, 24 May 2016.

A second option would be the creation of an EU-wide tax, such as that on petrol proposed by the German Finance Minister in January 2016. The proposal was relatively well received at the level of the ECOFIN Council and welcomed by the European Commission, but it was rapidly withdrawn due to a domestic backlash in Germany fuelled by approaching regional elections<sup>84</sup>. At first sight, an EU-wide ‘solidarity tax’ for refugees seems to be a fair and equitable solution that could theoretically be implemented in the short-term. However, such a tax risks directly reinforcing public resentment towards refugees on the one hand, and the EU on the other. In light of the approaching general elections in France and Germany in 2017, the political costs associated with such a short-term option might simply be too high.

” A SCHENGEN FUND  
BASED ON NATIONAL  
CONTRIBUTIONS PRO  
RATA GDP ”

A third option that would complement our above proposals would be the creation of a Schengen Fund based on national contributions pro rata GDP. Contributions would be due over a ten-year period, but spending would be front-loaded. To cover the short-term costs and one-off investments in response to the massive migratory influx, debt-financed solutions could be envisaged<sup>85</sup>. A step in this direction is the exemption of exceptional refugee- and security-related costs from the EU’s deficit rules. As part of a more encompassing solution, the Schengen Fund could issue jointly guaranteed debt. To ensure repayment, participating states would earmark tax revenues for the financing of their contributions. A positive side effect of the Fund would be a much-needed economic stimulus for Europe.

In the medium-term, an integration of the Fund into the EU budget should be envisaged. This initiative should be buttressed by a more fundamental reform of the EU budget in order to align it with current priorities, to make it possible to reallocate money across priorities flexibly, and to break with the poisonous logic of the *juste retour*.

Overall, the Schengen Fund would provide incentives for the member states to comply with EU-level mechanisms for responsibility- and risk sharing such as the relocation mechanism. It would create positive incentives for over-fulfilment and automatic sanctions for those that would refuse to live up to their responsibility. This should not mean that a member state would be able to entirely ‘buy itself’ out of its duty to protect refugees under the Geneva Convention. However, it would mean that responsibility sharing can be differentiated and tailored to the member states’ preferences and comparative advantages while taking into account their individual integration and reception capacity through the contribution key.

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**BOX 5** ► Summary of recommendations for tangible financial burden-sharing

- Creation of a Schengen Fund with four programmes: asylum and integration; external borders; internal security; external cooperation
  - Flexible ex post allocation based on action undertaken
  - National contributions pro rata GDP
  - Integration in the EU budget in the medium-term
- 

84. Barbière, Cécile, “EU considers petrol tax to pay for refugee crisis”, *EurActiv.com*, 19 January 2016.

85. For similar proposals, see for example: Dullien, “Paying the price: the cost of Europe’s refugee crisis”, *op. cit.*; Soros, George, “Europe: A Better Plan for Refugees”, *The New York Review of Books*, 9 April 2016.; Wolff, Guntram B., “European financing for the European refugee crisis”, 11 May 2016.

## CONCLUSION: INCREMENTAL IMPLEMENTATION

The EU's response to the massive inflow of migrants has been characterised by an almost unprecedented divergence of member state preferences and priorities. Yet in this paper, we have not attempted to draw the boundaries of achievable lowest common denominator outcomes. The magnitude of the migration challenge with its tragic humanitarian dimension and centrifugal effect on the EU calls for bold and comprehensive responses. We thus presented a "first best solution" that would address some of the long-standing dysfunctions of the Dublin system and of the CEAS more broadly.

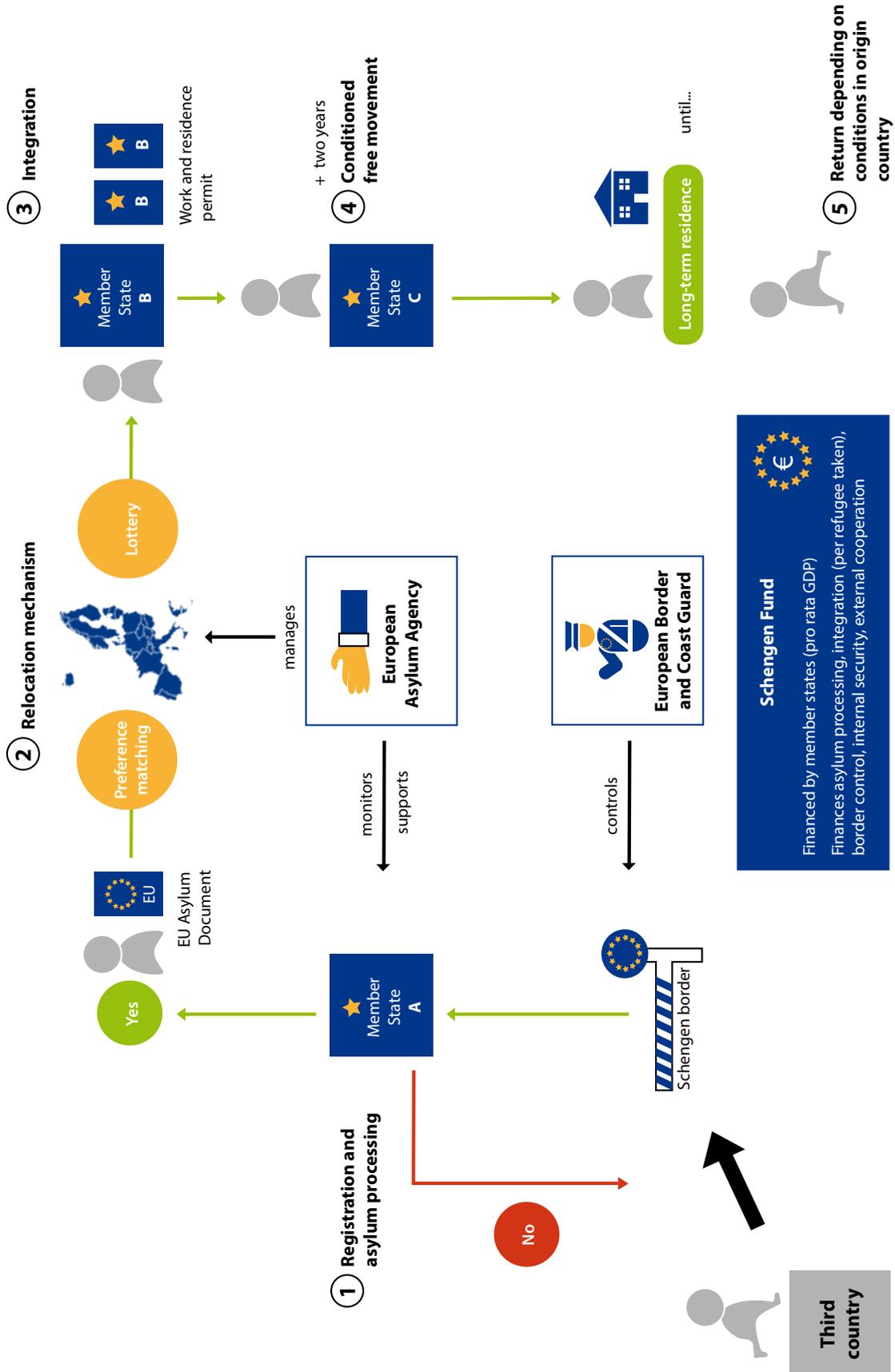
To put an end to the European 'protection lottery', we suggested further harmonisation of asylum norms and procedures coupled with the introduction of a single asylum procedure and status. A bolstered European Asylum Agency could ensure greater member state compliance with these legal norms. Meanwhile, a binding relocation mechanism combined with a flexible preference-matching tool would allow for sustainable responsibility sharing regarding recognised beneficiaries of protection. Relocation would be tied to positive incentives for both migrants and member states. Measures that would complement reforms within the CEAS include the swift implementation of an effective and truly European Border and Coast Guard, stronger internal security cooperation, and a smarter and forward-looking external migration policy. A comprehensive Schengen Fund would link the proposed policy measures and provide tangible financial solidarity across the differing member state priorities. Figure 3 summarises the logic of our proposal.

The implementation of such an encompassing proposal can only be incremental. Most of the proposed changes such as further harmonisation of asylum norms and procedures, the permanent relocation mechanism or the strengthened European Border and Coast Guard can be introduced through amendments in secondary law. Meanwhile, the comprehensive Schengen Fund could be established through an intergovernmental agreement similar to the one on the European Stability Mechanism. A core group of member states that agree with the Fund's objectives could take the lead in driving its initial construction, while leaving the doors open to others to join later. In the medium term, the agreement could be transferred into primary law as the Fund is integrated in the EU budget.

**”USE THE SO-CALLED  
"REFUGEE CRISIS" TO ADDRESS  
SOME OF THE FUNDAMENTAL  
AND LONG-STANDING FLAWS  
IN THE COMMON EUROPEAN  
ASYLUM SYSTEM”**

The EU should use the so-called "refugee crisis" to address some of the fundamental and long-standing flaws in the CEAS. Previous reforms have circumvented them due to political sensitivities. However, Europe finds itself surrounded by open and frozen conflicts and external migratory pressure has become the 'new normal'. Sound mechanisms for the sharing of the responsibility, costs, and risks associated with migration thus represents an insurance policy that could benefit any member state in the future.

FIGURE 3 ▶ Towards and beyond Dublin IV



Source: Enderlein and Koenig (2016): „Towards Dublin IV: sharing norms, responsibility and costs“. Illustration: Cinthya Nataly Haas-Arana © Jacques Delors Institut - Berlin

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Hertie School  
of Governance

Pariser Platz 6, D - 10117 Berlin  
19 rue de Milan, F - 75009 Paris  
office@delorsinstitut.de  
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