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# NEW BEGINNINGS A FRESH START IN EU ASYLUM POLICY

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This series is a cooperation between the Jacques Delors Institutes in Berlin and Paris and makes concrete proposals for the EU's next institutional cycle.

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## 1 ■ Moving out of crisis mode

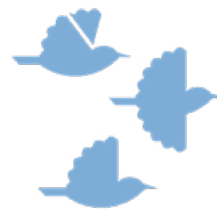
It is time to move EU migration policy out of its prolonged crisis mode. In the first six months of 2019, approximately 31,700 migrants arrived in the EU.<sup>1</sup> Compared to the same period in 2016, this amounts to 87% fewer arrivals. With the number of first-time asylum applications similarly falling – from around 1.2 million (2016) to roughly 157,000 in the first quarter of 2019 – Commission President-elect Ursula von der Leyen has rightly pointed to the need for a “fresh start on migration” in her political guidelines.

As part of this fresh start, EU institutions need to acknowledge that today's challenges are different to those Europe faced at the height of the ‘migration crisis’. The policing of borders on the Aegean Sea and along the Balkan route has reduced arrivals to a minimum. Instead, refugee camps on the Greek islands are increasingly overcrowded, with the Council of Europe's anti-torture committee describing conditions there as “inhumane and degrading”. Moreover, the central Mediterranean route is becoming increasingly deadly: while one person in 30 did not survive this passage in 2017, the rate increased to one in 16 (2018) with a recent shipwreck off the Libyan coast seeing more

than 150 people losing their lives. Changes in migratory routes are accompanied by the growing popularity of far right parties, which have entered national governments in Italy (Lega) and (temporarily) in Austria (FPÖ).

As well as requiring a response to these new challenges, the fallout of the ‘migration crisis’ continues to undermine EU political cohesion. For one thing, the Schengen area has been subject to ‘temporary’ internal border controls for more than three years. Currently, six Schengen states continue to maintain border controls

(Norway, Sweden, Denmark, Germany, Austria, France). The repeated extension of what is intended to be a temporary measure of last resort increasingly defies EU legislation. Member states keep changing the legal bases for reinstating, but de facto prolonging, border checks, attracting serious criticism from the European Parliament. The frequently cited justification that internal border controls constitute a necessary response to secondary movements of asylum seekers does not hold water in light of the current low in arrival numbers. These internal border checks contradict the vision of a “fully functioning Schengen Area” as put forward by von der Leyen. They also



1. The numbers refer to arrivals in Bulgaria, Cyprus, Greece, Italy and Spain.

undermine what more than two thirds of the EU population **perceive** as “one of the EU’s main achievements”.

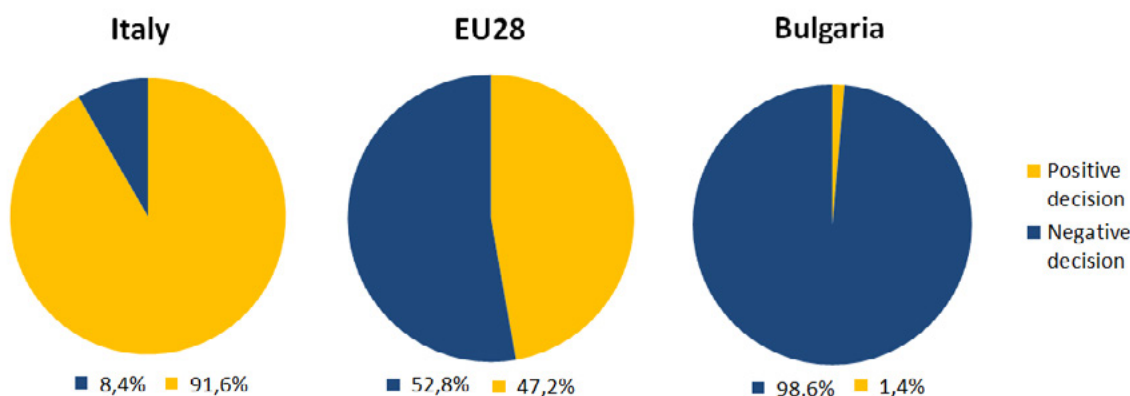
Moreover, efforts to revise the Common European Asylum System (CEAS) have reached an impasse. None of the seven legislative proposals to reform the CEAS has been finalised since they were put forward in 2016. Reforming the Dublin Regulation has proven to be particularly problematic, as member states struggle to agree on a common understanding of solidarity. The stalled negotiations led to a toxic atmosphere among member states and contributed to disputes over the responsibility to transfer asylum seekers rescued in the Mediterranean. While public concern about migration has declined, a recent **Eurobarometer** survey found that 69% of the EU’s population continue to favour a common EU migration policy. EU institutions thus start the next legislative cycle with a clear mandate to deliver a way out of the current solidarity impasse.

## 2 ■ Structural problems: Diverging asylum standards & solidarity impasse

The retreat to internal border controls and the endless quarrel over who is responsible for receiving migrants rescued in the Mediterranean are symptoms of two structural problems that must be addressed by EU institutions.

The first structural problem lies in the fact that existing CEAS rules are unable to deliver the required harmonisation of national asylum standards. With too much flexibility and too few incentives for compliance, national asylum systems differ significantly in the degree to which they have been institutionalised. This is reflected in the varying quality of reception conditions – which has led to the **temporary suspension** of Dublin transfers to Greece – and asylum processes. Although the Qualification Directive lays down legal provisions for a common understanding of who **should** benefit from international protection, in reality decisions on who **does** receive protection diverge substantially among member states. In 2017, an asylum seeker from Afghanistan had a 91.6% chance of receiving international protection in Italy, while his or her chance was only 1.4% in Bulgaria (see chart 1).

**CHART 1 ■ Asylum recognition rate for Afghan nationals (2017)**



*Note: The chart refers to ‘first instance positive decisions’, not to ‘all positive decisions’.*

*Source: Migration Policy Institute (MPI)*

**TABLE 1 ■ Allocation of asylum decisions across EU member states (2015-2017)**

	Number of asylum decisions	Share of asylum decisions
European Union	2,664,120	100%
Germany	1,404,550	53%
France	276,340	10%
Italy	239,455	9%
Sweden	205,405	8%
Other EU member states	538,370	20%

Note: Table refers to first instance decisions.

Source: Eurostat

Such **discrepancies** between recognition rates result from the Qualification Directive’s vague terminology, which gives member states substantial discretion in interpreting its legal provisions. As a result, some member states are more attractive than others when it comes to applying for international protection. Together with other important factors, such as existing family links, language barriers or the receiving country’s GDP, the differing implementation of CEAS rules has contributed to a disproportionate allocation of responsibilities for registering and processing asylum claims to a handful of EU member states. The number of asylum decisions taken by individual member states illustrates this: Between 2015 and 2017, more than half of all asylum decisions in the EU were taken by the German authorities (53%). As table 1 shows, 27% of the remaining decisions were taken by France, Italy and Sweden while the other 24 member states processed merely 20% of all such decisions.

In the absence of a truly *common* European asylum system, reinstating border controls is therefore used to convey the message that governments are ‘in control’ of migratory movements. As pointed out **elsewhere**, all six member states currently upholding internal border controls are governed by centre-right governments that face severe pressure from far right parties with strong anti-immigration positions. While **Denmark** is a special case in that regard, this dynamic is particularly evident in Germany, where the *Alternative für Deutschland (AfD)* is spurring fears over

immigration, as well as in France, where the *Rassemblement National* secured the first place in the 2019 European Parliament elections.

The second obstacle to be tackled resides in the struggle to agree on a common understanding of solidarity, which by itself undermines any progress in reforming the Dublin Regulation. Given that von der Leyen explicitly mentioned her ambition to “relaunch the Dublin reform”, it will be crucial for EU institutions to find common ground on two main points of contention regarding the relocation of asylum seekers. Thus far, the proposals tabled by the Commission, the European Parliament and the Bulgarian and the Austrian Council Presidencies have **failed to create agreement** on whether the revised Dublin rules should include a *temporary or permanent* relocation mechanism and whether contributions to that mechanism should be *voluntary or mandatory*.

Forging a compromise in the Council has proven particularly difficult. While some member states – among them France and Germany – favour a binding relocation scheme, the Visegrad countries remain vehemently opposed to any idea of a mandatory quota. The group already undermined previous relocation efforts by not, or barely, contributing to the implementation of the 2015 emergency scheme for the relocation of asylum seekers from so-called ‘hotspots’ in Italy and Greece. Slovakia and Hungary, which joined the

Czech Republic and Romania in voting against the mechanism in the Council, even tried to annul the decision by turning to the European Court of Justice. Despite their case being [dismissed](#), these experiences render overruling the Visegrad countries in the Council through a renewed use of qualified majority voting an increasingly divisive and, in the end, ineffective tool.

The recent decision by eight member states (France, Germany, Portugal, Luxembourg, Ireland, Lithuania, Finland and Croatia) to relocate among themselves migrants rescued in the Mediterranean is hence a necessary step to overcome the persisting solidarity impasse. The continuous ship-by-ship approach not only threatens political cohesion among EU countries but is also proving [ineffective](#). Out of the roughly 16,600 people who have been rescued and brought to either Italy or Malta since June 2018, other EU countries have promised to relocate around 1,900 in response to the pair's decision to close their ports to NGO vessels. Yet, merely 840 people have thus far been relocated or less than 50% of pledged relocations.

### 3 ■ Putting the New Pact for Asylum & Migration into practice

Moving out of 'crisis mode' should be the EU's main objective with regard to migration policy in the forthcoming legislative cycle. To do so requires strategically rethinking how to tackle both structural problems and the ad hoc approach for migrants rescued in the Mediterranean. Three objectives should guide the "New Pact for Asylum and Migration" proposed in von der Leyen's political guidelines to this end.

#### 3.1 A credible narrative

The idea that national governments and the EU had 'lost control' over immigration has been a frequent talking point in the public debate and has since guided policy responses. With right-wing populists [warning](#) that Europe was facing "an exodus of biblical proportions", the EU and its member states put strengthening external border controls at the centre of their communication strategies. However, a one-sided focus on this control narrative faces a simple problem: it implicitly makes 'zero immigration' or 'closing the Mediterranean route' its ultimate objective. Eventually, such unrealistic promises undermine the EU's credibility in delivering policy solutions and will further strengthen right-wing populist parties. Stepping out of the perpetual crisis-referencing would therefore require a credible narrative which moves well beyond the excessive focus on border controls<sup>2</sup>. Instead, EU actors should employ an evidence-based communications strategy that is built on two parameters:

First, protecting human rights should be at the centre of this new narrative. According to [Eurobarometer](#), the majority of Europeans feel their governments should help refugees. This response has been stable over the years and even rose a jot between 2015 and 2017. Every EU country subscribes to the Geneva Convention and to the Union acquis, which are basic to EU membership and should thus constitute the focal point of a strong counter-argument against the exclusionary language of right-wing populists.

Second, a credible migration narrative should endorse the simple truth that migration reflects human reality and will likely increase over time. Instead of focussing on reducing it to a minimum, questions as to how to shape human mobility in a way that reaps its benefits and diminishes its negative side effects should underpin the EU's communications strategy.

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2. Jérôme Vignon, *For a European Policy on Asylum, Migration and Mobility*, Report, Paris: Jacques Delors Institute, November 2019, p.10-14.

### 3.2 Mutual recognition of positive asylum decisions

With the aim of revoking disparities between national asylum systems and reducing secondary movements, the Commission has already proposed turning the Qualification Directive into a regulation, which would have direct effect in national law. Further harmonising the criteria establishing who receives international protection is certainly helpful. However, one must prevent lowering asylum and subsidiary protection standards for the sake of harmonisation. In this regard, there must be a guarantee that the [proposal](#) to establish a European Union Agency for Asylum (EUAA) does equip the agency with a mandate to “ensure greater convergence and address disparities in the assessment of applications for international protection”.

Revising the Qualification Directive should further be complemented by a legal instrument that allows for the mutual recognition of positive asylum decisions among EU member states. Article 78(2) TFEU calls on the European Parliament and the Council to provide the CEAS with “a uniform status for asylum for nationals of third countries, valid throughout the Union”. However, only negative asylum decisions taken in one member state are currently recognised by other EU countries. Establishing a truly uniform asylum status, valid across the EU, thus requires member states to attach the same legal effect to all (negative and positive) asylum decisions taken in another EU country. This should also imply that refugees and beneficiaries of subsidiary protection receive the same rights and entitlements attached to their status in every member state. Currently, asylum seekers face the dilemma that their application is either rejected and this then applies across the entire EU or is accepted but confined to within the boundaries of a single member state. To incentivise integration mutual recognition and the transfer of rights could be granted after [two years](#) of legal and continuous stay in the member states that

issued the asylum decision (as opposed to the current period of five years under the Long Term Residence Directive). This would render irregularly moving to a second member state and making a subsequent application there less appealing.

### 3.3 Complement the CEAS reform with short-term measures to save lives at sea

Reforming the CEAS is a top item on the outgoing Commission’s list of unfinished business.

With regard to breaking the current deadlock on the Dublin file, von der Leyen says that “a new way of burden sharing” is needed. However, in search of more pragmatic solutions that can move negotiations forward, the Commission – and the European Parliament – should continue to insist on mandatory member state contributions to a possible relocation scheme. To incentivise member state participation, a new system of responsibility sharing could, for example, provide additional funding to municipalities that offer to host relocated asylum seekers.

Almost 20 years after the cornerstone for today’s CEAS was laid in Tampere, establishing a truly common asylum system requires EU member states and institutions to establish a fresh consensus on the way asylum seekers are allocated across the EU. Yet, searching for an EU-28 solution must not become a pretext for standing idly by as more people lose their lives while crossing the Mediterranean. Longer-term reform efforts should therefore be complemented with two short-term measures.

First, the “stable mechanism” for relocating asylum seekers rescued in the Mediterranean, recently agreed upon by eight EU member states, should be solidified. In practice, this would mean finding a legally binding framework that turns the current de facto coalition of some willing EU countries into a de jure alliance. Taking GDP (40%),

population size (40%), previous asylum applications (10%) and unemployment (10%) into account, a fixed share of migrants should be allocated to each participating Member State. Replacing voluntary commitments with a fixed quota ensures that rescued asylum seekers are indeed transferred from their point of disembarkation. The mechanism should also establish clear legal prescriptions on the definition of the “next place of safety” in order to clarify the current grey area in international law and avoid constant bargaining over what constitutes an adequate port of disembarkation.

Second, the EU should establish a search and rescue (SAR) operation in the central Mediterranean under the auspices of the European Border and Coast Guard (EBCG). The responsibility to conduct SAR can no longer be transferred to the Libyan authorities, given their problematic human rights compliance and the horrendous situation in Libyan migrant detention centres. The current proposal to revise the EBCG mandate [includes](#) a substantial increase in its budget, from EUR 2.9 billion (2014-2020) to EUR 11.3 billion (2021-2027), and envisages a standing corps of 10,000 border guards to be established by 2024. As noted in a European Parliament [report](#), enhancing budget and staff should go hand in hand with strengthening the EBCG mandate to conduct search and rescue operations. Von der Leyen herself has said that “we need a more sustainable approach to search and rescue”. Following the quasi suspension of Operation Sophia and the restrictions placed on humanitarian NGOs, there is a pressing need for comprehensive and coordinated efforts to save lives at sea. Thus far, worries that SAR activities would constitute an additional pull factor, attracting ever more migrants to embark on the perilous journey, have been a major reason for reducing the European presence in the Mediterranean. Yet, several [studies](#) comparing periods of high and low SAR activities have shown that the presence of SAR operations has little impact on the number of attempted sea crossings.

Such misleading arguments cannot stand in the way of an urgently required humanitarian response to the deadly situation in the Mediterranean.

## Conclusion

EU institutions are equipped with a strong mandate to move migration policy out of the crisis mode which has paralysed overdue reform efforts and undermined the Union’s political cohesion. The majority of EU citizens supports helping asylum seekers and demands that this be done via a common European approach. To fulfil that mandate, EU institutions need to address the structural problems of EU migration policy and the imminent crisis in the Mediterranean. Three recommendations to underpin von der Leyen’s New Pact for Asylum and Migration are made here in this regard:

- First, a new narrative should guide EU migration policy. Instead of the current emphasis on border controls, the focus should be on protecting human lives and creating solidarity among the member states.
- Second one must further harmonise national asylum standards and complement existing rules with a legal instrument that allows for the mutual recognition of positive asylum decisions. Both provisions would dis-incentivise secondary movements and thereby undermine the justifications for retaining internal border controls.
- Third, it is necessary to complement longer-term efforts to reform the CEAS with two short-term measures for saving lives at sea: solidify the ‘stable mechanism’ for relocating rescued asylum seekers by establishing a fixed quota for participating member states (i) and establish a search and rescue operation, coordinated by the EBCG (ii).

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