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# THE FUTURE OF EUROPEAN MIGRATION AND ASYLUM POLICY POST COVID-19



## Summary

Five years on from the refugee 'crisis' of 2015 and the European Agenda on Migration, the EU is still lacking a common migration and asylum policy. The European Commission has now announced the release of the New Pact on Migration and Asylum for September 2020. Although intended for earlier, Covid-19 has both delayed the New Pact and proved a game changer for migration and asylum policy.

EU member states have sent mixed signals as regards the management of migration amidst the pandemic, with some countries adopting a more flexible approach, and others clamping down further on access to territory and asylum.

As the European Commission prepares the New Pact, the case of Greece stands as an example of a front-line state adopting a hardened stance on migration and asylum policy. The effect of the pandemic has not been fully felt and Covid-19 will likely continue to have an impact on both migrants and states for some time to come.

The New Pact must not only offer mandatory solidarity to front-line states but also rethink Europe's approach to migration and asylum, while guaranteeing and prioritising access to territory and protection for those in need.

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# The Future of European Migration and Asylum Policy post Covid-19

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## 1. INTRODUCTION

On 13 May 2015, (former) President of the European Commission Jean-Claude Juncker unveiled the much-awaited [European Agenda on Migration](#). This had largely been shaped by the repeated tragedies on the Central Mediterranean route since 2011, and by the acknowledged failure of the EU to stand in solidarity with Italy in a period of significantly increased arrivals. The European Commission proposed the relocation of 120,000 asylum seekers among member states; 50,400 asylum seekers from Greece and 15,600 from Italy, with the relocation quota of another 54,000 asylum seekers that was initially proposed to Hungary (the latter in the end opted out of the relocation scheme) being redistributed between Greece and Italy. The proposal passed by qualified majority vote in the European Council, despite objections raised by the Czech Republic, Hungary, Romania, and Slovakia.

In the end, only Slovakia complied with the vote. According to the judgement of the European Court of Justice, Poland, Hungary and the Czech Republic “failed to fulfil their obligations under European Union law”. The Czech Republic accepted only 12 asylum seekers, while Hungary and Poland refused to comply at all. In the [Opinion issued by Advocate General Sharpston in 2019 on the EC vs Poland, Hungary and Czech Republic](#) regarding these countries’ refusal to participate in the relocation scheme, a traditional tale is recounted to explain the consequences.

*"A group of men are travelling together in a boat. Suddenly, one of them takes out an auger and starts to bore a hole in the hull beneath himself. His companions remonstrate with him. 'Why are you doing that?' they cry. 'What are you complaining about?' says he. 'Am I not drilling the hole under my own seat?' 'Yes,' they reply, 'but the water will come in and flood the boat for all of us'".*

The story is a surprisingly fitting analogy for the current migration and asylum policy in the EU. The relocation scheme proved far more divisive than originally envisaged. It also revealed the shortcomings of the value basis of the European Union, including solidarity. The water that will likely submerge the Common European Asylum System (CEAS) is the pandemic. Covid-19 is already having a significant impact on migration and asylum policies, from the unilateral actions of member states to the delay in the announcement of the New Pact on Migration and Asylum.

## 2. THE YEAR 2020 SO FAR

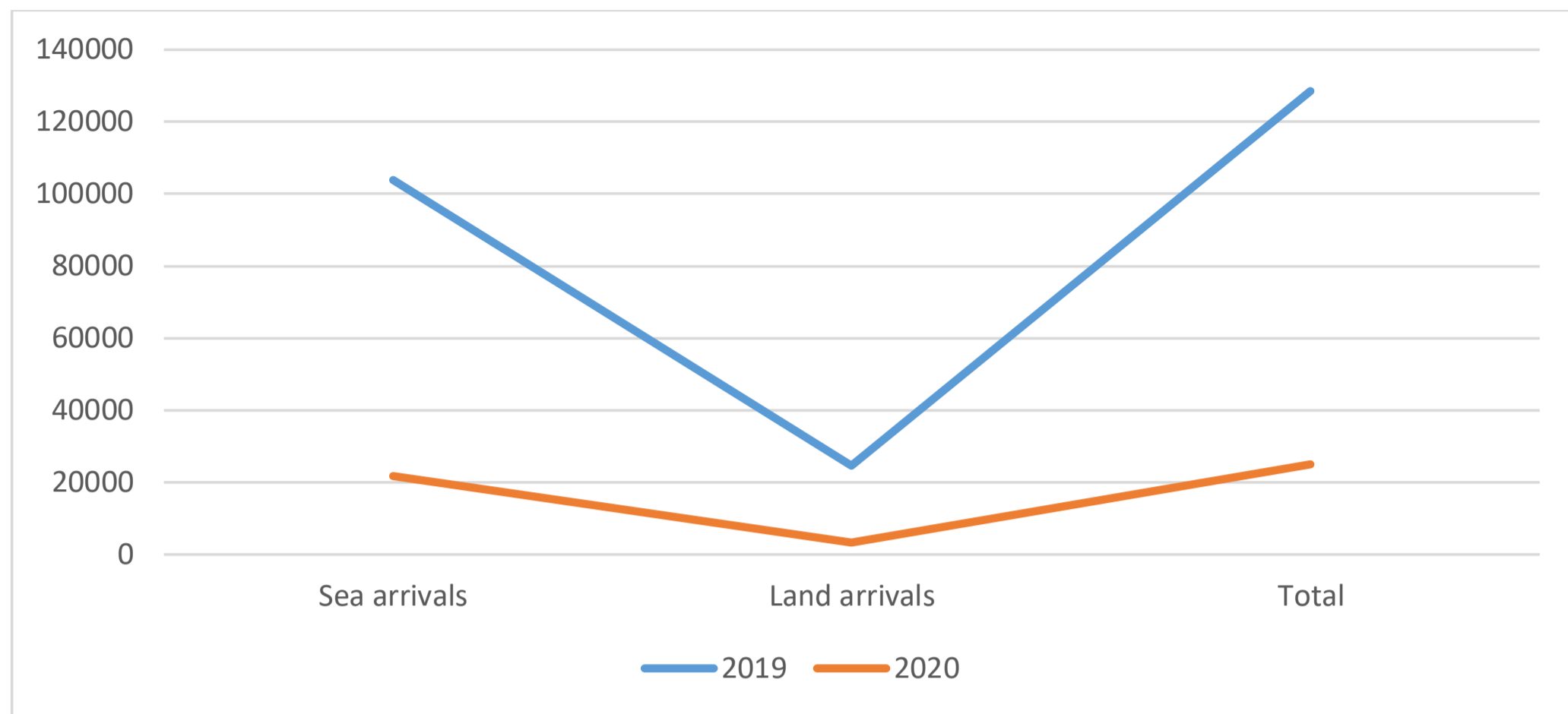
On 29 January 2020, the European Commission published its new work programme. Under the fifth priority – ['Promoting our European Way of Life'](#) – the Commission announced its intention to launch a New Pact on Migration and Asylum. The year 2020 has proven different from the past regarding migration and asylum. From the unprecedented numbers of 2015, the EU 27 now appear to be moving towards a certain normality regarding migrant arrivals (see Figure 1 on the next page).

Most migrants have arrived in the EU from Greece, followed by Spain, Italy, Malta and Bulgaria. However, the numbers are now significantly lower in comparison with previous years. Greece remains a critical entry point as can be seen not only from the numbers but also from the events on its land border with Turkey. On 28 February 2020, Turkey announced that it would [“no longer stop Syrian refugees from reaching Europe”](#).

In a clear instrumentalisation of migration, the Turkish government proceeded to declare through written messages sent via social media and mobiles that its land border with Greece was open. This land border is not part of the EU-Turkey Statement of March 2016 – which means that the EU-Turkey Statement is not applicable, and that any returns should take place under the bilateral readmission agreement between Turkey and Greece.



**Figure 1 – Arrivals at EU External Borders, 2019 and 2020**



Source: IOM data (<https://migration.iom.int/europe?type=arrivals>) compiled by author; 2020 data until 18 June.

Although the initial numbers of those reaching the Greek land border were small (around 300 people), within a few days of Turkey's February 2020 announcement the Greek government was reporting that approximately [13,000 people were waiting on the Turkish side of the river Evros](#). Among them, organised groups sought to create chaos and tension. In response, Greece closed its borders, boosted border patrols and sought to prevent entries. Reports emerged of escalated practices of pushbacks, teargassing and arrests of new arrivals.

On 3 March, the Evros border was visited by Greece's prime minister along with the leaders of the EU institutions. A few weeks later the Vice-President of the European Commission, Margaritis Schinas, stated that the Evros events would have an impact on the New Pact on Migration and Asylum.

In addition to Greece, Spain and Italy also continue to be on the receiving end of irregular migrant arrivals. The Canary Islands, an old route for African migrants seeking to reach Spain, has seen a resurgence in irregular arrivals since May 2020, while Italy is on the receiving end of irregular entries from Libya.

However, the numbers are today far below those registered over the past five years. In fact, across the Mediterranean the impression is of a return to average annual figures as recorded prior to 2015.

Covid-19 is a crucial factor in the reduction of migrant arrivals as it has an impact both on journeys to the external borders and on the secondary movement of migrants within the EU, due to different border closures within the Schengen area. Alongside this, EU member states have sent mixed signals as regards the management of migration amidst the pandemic – with some countries adopting a more flexible approach, and others clamping down further on access to territory and asylum.

### 3. THE IMPACT OF COVID-19 ON MIGRANTS IN EUROPE

The pandemic has produced divergent reactions from member states. Returns have stopped and until recently resettlement also stopped.

Portugal has become the [only country to grant citizenship rights to all migrants and asylum seekers whose residency applications are underway](#). The aim is to guarantee access to

social security and health care during the pandemic.

Highly dependent on migrant labour in the agricultural sector, the Italian government has now approved pathways for the regularisation of status for agricultural and domestic care workers. The 'Emergence of Employment Relationships' was included in the Decree approved by the Italian government on 13 May 2020. This regularisation is a [positive step forward, though it has been criticised as insufficient in addressing the needs of all undocumented workers](#). Migrants are required to prove through official documents that they have worked in one of the sectors of the Decree – specifically, agricultural livestock, animal husbandry, fisheries, aquaculture and related activities, or care and domestic work. In practice, regularisation excludes all those who have worked undeclared in these sectors. It also excludes those currently working in sectors traditionally employing undeclared work, like construction and tourism. However, it is worth keeping in mind that for a country that in the past few years has grappled with a hard-line stance towards immigrants, the regularisation proposed is a positive step forward.

Spain has undertaken a series of measures to assist asylum seekers. It has temporarily suspended the obligation to have valid documents in order to receive aid that covers basic needs, and it provides interviews over the phone with simultaneous interpretation. It has also [released migrants from administrative detention](#), recognising that poor sanitary conditions and the inability to socially distance make the detention facilities a potential hotspot for Covid-19. Similar initiatives, although to a lesser degree, can be seen around the world. In Europe, the Netherlands, for example, has taken similar steps).

Amidst these positive reforms, Greece remains the exception.

#### 4. RECEPTION IN GREECE AMIDST THE PANDEMIC

Prior to 2010, there were few institutional and procedural mechanisms in place in Greece to receive migrant arrivals, especially those of asylum seekers. The decision by the European Court of Human Rights on *M.S.S v Belgium and Greece* initiated a period of change. The Court's decision resulted in the temporary suspension of returns to Greece under the Dublin Regulation and this suspension remained in place until 2018. The aim was to allow Greece space to develop a reception system in line with the standards of the Common European Asylum System (CEAS). Greece developed a National Action Plan on Migration and Asylum, resulting in a new asylum law and a new asylum service and, for the first time, a First Reception Service responsible for managing and addressing the needs of first arrivals (i.e. on disembarkation or after border crossing). Despite the positive reforms, progress was slow due to the financial crisis. When the Syrian refugees arrived in Greece in the spring of 2015, the country had a crippled economy and zero capacity to deal with arrivals.

The closure of the Western Balkan route and the agreement set out in the EU-Turkey Statement of March 2016 drastically changed the landscape in Greece. Both measures served to 'seal' the borders of Greece and to make both entry and exit difficult for migrants, including asylum seekers. The transformation of Greece, from a transit country to one of strandedness, has strained an already fragile reception system. Since 2016, the number of those in the country either awaiting a decision on their asylum application and/or waiting to submit an asylum request (having expressed intent), as well as the number of those recognised as recipients of international protection, has swung from as low as 50,000 (2016) to as high as 100,000 (2020).

#### 4.1 THE IMPACT OF COVID-19

From the hotspots to the mainland, the conditions of migrant 'reception' in Greece have been extensively documented. However, the pandemic has provided an additional challenge. When the Greek government proceeded to implement a countrywide lockdown, its key message was 'stay home' to stay safe. For the hotspots, there is a certain irony in asking someone to 'stay in the camp', when the latter expands beyond a specific structure into fields of olive groves, and when home is a tent. It is particularly problematic to recommend regular handwashing and social distancing when queues for bathrooms, food and water provisions are extremely long in the small contained spaces of the camps. At the start of the lockdown, the restriction of movement was imposed, and this has since been repeatedly extended (currently until mid-July 2020). Limitations on movement are particularly difficult for people living in refugee camps, and they lead to longer queues for access to basic services.

In March 2020, the European Commission [called for the evacuation](#) of the most vulnerable to the mainland. Covid-19 has delayed the process. However, according to Greece's minister of migration, a total of 17,764 people were transferred to the mainland between 1 January 2020 and 30 June 2020. Transfers include the beneficiaries of international protection, as well as those whose geographical restriction has been lifted due to vulnerability but who had not been transferred prior to the pandemic. In addition, individuals with international protection are also eligible to leave on their own. The number of those in hotspots reduced to 29,412<sup>1</sup> in June 2020. The reduction was made possible partly by the increase in transfers to the mainland but predominantly by the absence of arrivals, with only 245 people entering the Greek land and

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<sup>1</sup> Data were compiled by the author based on the June 2020 update by the Ministry for Migration

sea border for the month of June. Despite the positive step in reducing migrant numbers in hotspots, conditions remain dire for the thousands of migrants who are trapped on the islands.

The pandemic has also had an impact on the relocation from Greece of unaccompanied minors. This scheme was proposed by the European Commission in March and has resulted in [1,600 pledged places for unaccompanied minors across different EU member states](#). The process of relocation has been slow, requiring a period of quarantine before organising and undertaking the relocation process. According to UNICEF, an estimated [5,463 unaccompanied and separated children are in Greece](#) and are in urgent need of durable solutions, including registration, family reunification and relocation. Of these, 1,600 are estimated to be in critical need. Ten EU member states have pledged places in the scheme: Belgium, Bulgaria, Croatia, Finland, France, Germany, Ireland, Portugal, Lithuania and Luxembourg, as well as Switzerland which is also part of the initiative. The limited number of countries indicates the limits of solidarity, but it also poses a challenge for the future as thousands remain trapped in Greece in sub-standard conditions.

#### 4.2 DETERRENCE

Covid-19 has thus affected transfers within and beyond Greece, as well as returns. Yet Greece was already shifting its migration and asylum policy before the pandemic. As early as the summer of 2019, following the national elections, [Greece began to implement a policy of deterrence](#), first and foremost by altering the legislative framework on asylum. Two legislative changes have now been approved – one in late 2019 and another in June 2020. These bills introduce procedures and deadlines

Policy. For a weekly summary of arrivals and departures from the islands see [infocrisis.gov.gr](http://infocrisis.gov.gr)

that are impossible to meet and that focus on punitive measures for asylum applicants. Access to legal assistance is limited and the law facilitates the detention of asylum seekers in ‘controlled’ centres, making access to asylum more restricted. The UNHCR notes that the amended legislation “[reduces safeguards for people seeking international protection and will create additional pressure on the overstretched capacity of administrative and judicial authorities.](#)” . In parallel, a policy of enhanced surveillance is taking place at sea, with a focus on banning, where possible, vessels approaching Greek maritime waters. Beyond the law, the country has also undertaken an aggressive ‘surveillance’ policy at sea, implementing bans on entry for incoming vessels. The Greek government has additionally been accused of [undertaking pushbacks](#), in violation of European law at both land and sea borders.

Alongside this, the government has announced the eviction of those who have received international protection and reside in formal accommodation include the ESTIA scheme – the housing programme funded by the European Commission through the UNHCR. In place since 2016, [ESTIA](#) has offered urban accommodation and cash assistance specifically for those deemed vulnerable, as well as for asylum applicants. In theory, ESTIA offers both accommodation and the opportunity for the Greek state to develop a national integration system, allowing those who have received protection to leave their ESTIA apartments and to access employment, housing and health care on their own. In practice, the absence of a national integration strategy means that those evicted are required to fend for themselves. Their cash assistance is cut off, and they need to find housing and employment on their own. The new legislative change (April 2020) requires those who receive international protection to leave their accommodation within 20 days. An [IOM sponsored programme – HELIOS](#) – of 10,000

places is being touted as the solution. Although a very positive step, it falls short of meeting needs on the ground. The programme includes training and assistance in finding employment, and subsidises the cost of renting an apartment. However, hundreds are faced with an absence of accommodation, especially those reaching the Greek mainland on their own. In reality, those who are transferred end up in camps across the mainland with few prospects. Employment is extremely difficult due to their lack of skills, and vocational skill training takes time. The lack of integration, and the lack of willingness to discuss integration, compounded by the economic impact of Covid-19, means the future remains uncertain for refugees in Greece. Despite the very significant cost these policies have on refugees, it is worth noting that they appear to be more in line than ever before with the overall EU migration and asylum policy, which is increasingly oriented towards deterrence. This is also the challenge of the forthcoming New Pact on Migration and Asylum; to balance the priority of member states for fewer arrivals and asylum applications with the need to guarantee access to protection for migrants.

## **5. THE EU RESPONSE: NEW PACT ON MIGRATION AND ASYLUM**

Although no official information has been released, various non-papers and leaked documents give an indication of the direction of the New Pact.

Border controls are a priority for all member states, and this is the one area where developments are already underway. It is likely that the accelerated border procedure will become the norm, as it is already considered by front-line states, and also Germany, as a quick and efficient way of processing asylum claims. The [Frontex budget increases to €9.4 billion](#) in total in the coming multiannual EU financial framework (2021–2027). The agency’s role is

strengthened, and Frontex is supported in extending its operations to neighbouring EU countries and also beyond. The European Border Surveillance System will also be upgraded, and is already being used to monitor the coastal regions off Libya and Tunisia through satellite and aerial services. A positive development as regards Frontex is the additional oversight it is to be given, particularly in relation to the application of the Charter on Fundamental Rights. This is especially crucial in the forced returns undertaken by the agency.

Returns to third countries will likely be a priority, with the foreign policy of migration spearheading the efforts. Cooperation with third countries seems to be an area of convergence for member states, leveraging trade and development, and instruments available in the Global Approach to Migration and Mobility, to reach readmission agreements particularly with countries in Africa. This is reflected in the proposal submitted by the front-line countries, which is in fact divided in focus between the internal and external dimension. As regards the latter, the [non-paper of the front-line states](#) (Cyprus, Greece, Spain, Italy and Malta) calls for strengthening “cooperation with African and Asian countries of origin and transit of migration flows with a view to fight irregular migration, also by preserving successful bilateral relations between EUMS and those countries” (CY-EL-ES-IT-MA non paper on New Pact on Migration and Asylum, 2020). The front-line countries ask for a “stimulus” for the assisted voluntary returns projects from countries such as Algeria, Libya, Morocco, Niger and Turkey to the countries of origin, and they request that this be combined with financial support for the host communities receiving returnees. The new Multiannual Financial Framework (MFF) is critical of the proposal tabled, since the countries ask for more funding to be provided in order to fund both voluntary returns and

also projects in the countries of origin and transit.

Where member states will clash is the internal dimension of migration. The [German non-paper](#) proposes that the front-line states process and screen at the external borders, and that they redistribute only those who are granted international protection. In other words, the Dublin II Regulation remains the foundation of the system. The front-line countries have requested solidarity and a permanent redistribution system that includes irregular arrivals as well as those disembarked after search and rescue operations. They thus seek to bridge the needs of countries like Greece and Spain with those of Italy and Malta. A permanent redistribution mechanism is unlikely to come about. However, what seems likely is some form of flexible solidarity, whereby some member states undertake relocation while others contribute financially. This is ineffective particularly in a scenario where a crisis takes place at the external borders. Only ten member states participate in the current voluntary relocation of unaccompanied minors from Greece, which indicates the current level of willingness in the EU for redistribution.

The Visegrad Four (the Czech Republic, Hungary, Poland and Slovakia) continue to reject the redistribution of refugees, and instead support border controls. They have also come out in favour of [Greece’s proposal for a derogation rule](#) activated in times of crisis by the member state experiencing large numbers of arrivals. However, what constitutes a case of ‘crisis’ remains undefined, and there is little information on what flexible handling would involve or how it would affect the rights of asylum applicants. The derogation rule is a result of the events on the Evros border in February/March 2020. At the time, Greece proceeded to suspend asylum for one month for all new arrivals. Despite the country’s domestic criticism of the suspension of asylum,



the European Commission commended Greece for 'shielding' Europe from irregular migrants at the border. Whether the proposal will be included in the New Pact remains to be seen.

While member states tend to agree on the external dimension, the division is too large internally. Success will also hinge on the new MFF and the funding allocated to migration, not only for border management but primarily for supporting returnees, for boosting capacity for reintegration to countries of origin, and for creating legal pathways for migration (also in the proposal of the front-line countries). The Commission will be asked to bridge the divide, which will likely result in a middle-of-the-road approach. However, this would fall short of what is needed.

## **6. WHAT SHOULD BE THE EU'S RESPONSE?**

It is too soon to know the full impact of Covid-19. However, reports that have so far emerged from the World Bank and the IMF predict a significant reduction in remittances to poor and developing countries, with migrants facing unemployment and/or a reduction in wages. A loss of remittances affects families and communities that rely on them for access to health care and education, but also for basic income. At home also, production has been reduced or halted in the garment industry and agriculture, affecting the lives of thousands. The economic impact of the pandemic will likely force some to move. Conflicts, poverty and climate change are all issues that remain and that will likely become worse in the years to come.

The human rights dimension needs to be at the heart of European policy on migration and asylum, particularly in a post Covid-19 world. Access to asylum and also to fair asylum processing must be prioritised and guaranteed, starting with access to territory, which is becoming increasingly difficult (for example, in Italy, Malta and Greece).

In light of this, various reforms are needed – first and foremost regarding the Common European Asylum System. A system of solidarity and redistribution is required that is permanent and obligatory rather than contingent on the goodwill of member states and/or on crises at the EU's external borders.

Solidarity in the new migration and asylum policy must be mandatory for all. A redistribution mechanism must be compulsory, requiring all member states to take in at least 50% of their allocated quota, with the remaining 50% covered through funding. For those that are willing to receive more refugees, a percentage of the funding should be redistributed accordingly to cover the costs of reception and integration.

Acknowledging that not all member states are desirable destinations and acknowledging the importance of networks, family ties, education and employment options should be factored into the redistribution mechanism to create a 'best match' between a member state and asylum applicants. The processing of asylum should take place in the country selected, with the European Asylum Support Office (EASO) undertaking a pre-screening at the external borders to determine a migrant's admissibility status. This status should not be linked to the migrant's nationality but to the actual circumstances resulting in an asylum application.

An agreement on disembarkation must be reached and enforced that redistributes those who have disembarked at the external borders, across the EU. Disembarkation is currently considered problematic due to the Dublin Regulation, which requires the first country of registration to be also the country responsible for asylum processing. The two must be distinct to ensure member states at the external borders are incentivised to save lives at sea.

Access means reducing the risk involved in the journeys, as well as reducing incentives to seek

smugglers. It also means creating legal pathways for entry. This is already acknowledged by some member states, but the focus still remains on the highly skilled rather than on those in need of protection. An EU-wide humanitarian visa scheme should be reconsidered, with mobile visa units deployed in key locations in countries of origin and transit. Funding could be covered by the EU budget, and an annual quota established to bring those most in need into the EU. This would send the signal that the EU offers alternative pathways for protection that are legal and safe, thereby reducing the inducement for smuggling.

Private sponsorship schemes should also be boosted, with smaller schemes covered by the EU budget for select countries at the EU's external borders. Private sponsorship serves a dual purpose. Firstly, an asylum seeker reaches safety in an organised manner; and secondly, the involvement of citizens and civil society in the process facilitates the asylum seeker's integration into the local society, which has time to prepare and become informed.

Safe and legal migration also allows for remittances to be generated. These are critical for individuals, their family members and also for local economies. Priority should not be given to the highly skilled, who are the regular target group of the European Commission, but rather to those with medium- or low-level skills. Where possible, the highly skilled should be supported to remain in their countries of origin in order to prevent a brain drain. Indeed, funding from the private sector should be used to provide employment opportunities for those who remain and also for those who are returned.

Return and reintegration will be the biggest challenges of the years ahead. There is still a lack of solid data on the success of returns, particularly forced returns (deportations), as regards reintegration and remigration. These data are crucial, particularly for countries like

Afghanistan that have 'safe areas' designated for returns. Access to education, employment opportunities and socio-economic conditions are all key in the reintegration process. More research and also external monitoring is needed in order to understand the EU's role and effective contribution, as well as the gaps that exist and how they can be addressed. This should be a priority in the new Asylum Migration and Integration Fund. Synergies between countries of origin and destination should be encouraged to produce research on the ground that can be beneficial in shaping policy.

Beyond top down responses, the European Commission and member states need to reflect on out-of-the-box approaches to the challenge posed by irregular migration and also by integration. Research on this can help. In the period 2015-2020, an unprecedented level of research took place across Europe on the drivers of migration (including forced movement), the decision-making process, the role of networks, and also the impact of the absence of legal routes. However, current policy deliberations indicate that the European Commission and the member states are still not taking evidence-based policy recommendations into consideration, particularly as regards the reform of the Common European Asylum System as well as irregular migration policy.

Integration will be a critical challenge for the whole of Europe in the years ahead. This is partly acknowledged in the proposal tabled by the front-line states that ask for integration to be a key component of EU migration policy. However, a top down approach is not necessarily the best way forward. Evidence from the 2015-2019 period shows that even when the national policy is restrictive, progressive forces in favour of redistribution, integration and legal pathways of entry existed in cities and municipalities across Europe. Cities are asked to address the immediate needs of

all residents, irrespective of their status. Cities are also the front-line ‘respondents’ to the needs arising from the reception and integration of asylum seekers. It is perhaps time to consider giving more funding and more decision-making power to cities across Europe as regards migration and asylum policy. The networks developed over the past five years have allowed cities to learn from each other and exchange knowledge and best practice. They may very well turn out to be better than

the national level at creating a hospitable environment for asylum seekers that would benefit both residents and newcomers alike. The forthcoming EU budget should strengthen the role of cities, providing them with the financial capacity to innovate and reflect on out-of-the-box solutions – from social housing where this is absent, to spaces that bring together locals and new arrivals in a way that combats racism and xenophobia, to incentives for local businesses to recruit refugees.

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