

2. The global governance of refugee protection and challenges to the EU asylum system

The large number of asylum seekers who arrived in the EU irregularly in the second half of 2015 and early 2016 has brought to a head the long-standing, underlying tensions in the EU asylum system. The main destination countries, including Sweden, Germany, and Austria, rapidly reached a point where they considered themselves over-burdened and began to limit the further inflow of asylum seekers by closing their borders. Restrictions affected several borders within the EU Schengen area, along with the Western Balkans migrant route and the EU's external border with Turkey, where Turkey agreed to curb people smuggling on its territory.

The EU now seeks to conclude similar agreements with southern Mediterranean countries to close the central Mediterranean migrant route through Libya and on to Italy as well. The European Commission is also involved in a discussion with member states on how to distribute refugees and the associated financial burden fairly within the European Union. All the while, the countries of first arrival on the EU periphery (especially Greece and Italy) are struggling to host and process even the much lower numbers of asylum seekers who are continuing to land on their shores in early 2017.

In this chapter, we begin by considering the global governance of refugee protection and the EU's proper role in the international sharing of responsibility for hosting refugees. We then ask how this role may be translated into a functional EU asylum system and sharing of responsibilities among the European Union and individual member states. In section 2.1, we discuss the public good nature of refugee protection, how it is only imperfectly reflected in the 1951 Refugee Convention, and how the EU should assume its fair share of responsibility for the hosting of refugees worldwide.

In section 2.2, we take a close look at the multilevel governance of asylum and refugee protection within the European Union. We explain how interdependencies and spillovers among various policy areas – sharing responsibility for the hosting of refugees in non-EU countries, managing external EU border security, ensuring adequate reception of asylum seekers, processing asylum applications, hosting recognized refugees, ensuring the return of unsuccessful applicants to their countries of origin – necessitate a carefully coordinated response at the EU, national, and sub-national levels. Against this background, we discuss salient proposals to reform the EU asylum system in section 2.3.

2.1 The protection of refugees as a global public good and its global governance

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Global governance of refugee protection

The global governance of refugee protection is centered on the 1951 Refugee Convention, which grants protection in signatory states to individuals who are “persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” (Article 1; United Nations High Commissioner for Refugees (UNHCR) 2010). They are not to be penalized for entering the coun-

try of asylum irregularly if they have come there directly from a country where their life or freedom was threatened (Article 31). Also, they may not be expelled or returned to any country where their life or freedom would be at risk (Article 33). The Convention and its associated protocols have been signed by nearly 150 countries (UNHCR 2015). We therefore consider it the benchmark for the global gov-

ernance of refugee protection, even though some important host countries, including in the Middle East, are not signatories.

Together, these rules imply that refugees must seek protection in the first safe country that they reach after leaving their country of origin; they are not free to choose their country of asylum. Thus, following displacement, geography and accident largely determine the allocation of refugees to safe countries. The Convention recognizes that granting asylum under such conditions “*may place unduly heavy burdens on certain countries*” and that the resulting problems need to be resolved through international cooperation (Preamble). However, the Convention fails to establish a framework, or even guidelines, for such cooperation.

Refugee protection as a public good

The main challenge for designing rules for international cooperation is that refugee protection is, in economic terms, a public good. Countries sign the Convention because they value the fact that individuals are entitled to protection if they flee their countries of origin for fear of persecution. However, countries value that fact irrespective of where the refugees are hosted. Since hosting refugees is costly, countries will normally prefer refugees to be hosted elsewhere, rather than hosting refugees themselves (and bearing the associated costs).

Technically speaking, this makes refugee protection a public good characterized by ‘non-rivalry’ and ‘non-excludability’: the benefits – the satisfaction of seeing refugees in need supported and the gain in regional security as refugee movements are properly managed – accrue to all countries, regardless of whether they help to ‘produce the public good’ by hosting refugees or paying for the hosting of refugees elsewhere.

Thus, each country faces numerous temptations to free ride: as long as refugees remain in the first safe country, other countries may drag their feet over providing financial support. Countries that would receive many refugees because of their geography may make themselves less hospitable so that refugees move on irregularly to other potential host countries or persecuted individuals stay in their countries of origin. Thus, without coordination, “too little of the public good of refugee protection will be produced” – or in plain language, potential refugees will not receive the protection that countries have collectively committed to provide by signing the 1951 Refugee Convention.¹

Coordination is relatively easy to achieve if the benefits from a public good arise, say, at the national level – such as secure property rights through internal security and a well-functioning legal system. Competent authorities (such as elected representatives in a democracy) decide on the level of provision (the number of police, courts, judges, etc.) as well as the financing (typically taxes levied according to individuals’ ability to pay).

In the case of refugee protection, there is an additional challenge because it is a global public good. Similar to other global public goods (for example, climate change mitigation), there is no global authority to set and enforce quality standards of refugee protection or taxes to pay for it. Thus, the absence of formal rules for an international sharing of responsibility for refugee protection, with the 1951 Refugee Convention merely calling for cooperation in its Preamble, reflects a fundamental underlying difficulty, rather than an oversight that could easily be corrected.¹

Global responsibility sharing for refugees

In practice, low- and middle-income countries host most international refugees (Figure 2.1). UN organizations, especially the UNHCR and World Food Program, and other donors provide humanitarian assistance (food aid, shelter) to most refugees in developing countries, often on a very long-term basis. Most humanitarian assistance is ultimately paid for by high-income country governments. While these efforts amount to substantial financial burden sharing, we have argued elsewhere in more detail (Lücke and Schneiderheinze 2017) that they fall short of a reasonable standard of global equity for three main reasons.

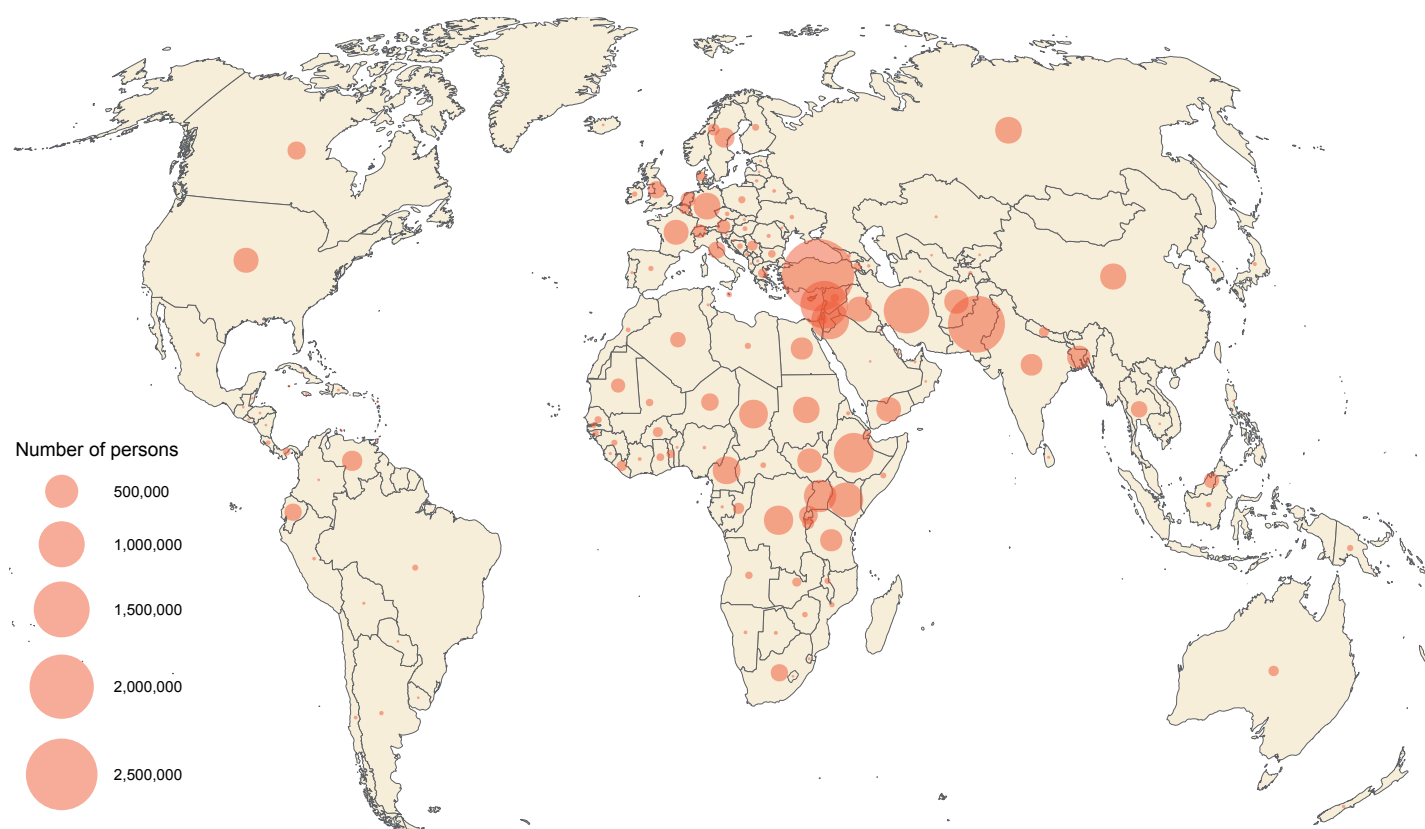
First, UN organizations raise most of their funds for specific, national aid programs. Many such refugee situations are ‘protracted’: nearly half of all refugees under the UNHCR’s mandate are in situations that last longer than a decade (UNHCR 2016, Figure 7). Yet, donors are prone to neglecting long-lasting aid programs, which makes funding unpredictable and has led to significant shortfalls in the recent past. For example, food rations had to be cut for Syrian refugees in the Middle East in late 2015, contributing to such secondary movements as the large irregular inflow of refugees into Europe during the same period (Lattimer, Sparks, and Tichel 2016, Figures 2 and 3).

The required additional funding is not very large when compared, say, with total official development assistance at US\$ 147 billion in 2015:² available resources in 2015 fell short of needs by US\$ 9 billion for all UN-coordinated

¹ Hatton (2015) makes this point formally based on a theoretical model.

² See the OECD website at <https://data.oecd.org/oda/net-oda.htm>. This figure solely relates to member countries of the OECD’s Development Assistance Committee (DAC) and thus excludes China, among other non-traditional donors.

Figure 2.1: Refugees by host country, end-2015
total number of refugees, including persons in a refugee-like situation



Source: Own elaboration based on data from UNHCR Global Trends 2015.

appeals, with total needs budgeted at US\$ 20 billion (Global Humanitarian Assistance 2016, Figure 3.2). Still, more resources are urgently required in a more predictable manner to ensure that the basic needs of refugees are reliably met (High-Level Panel on Humanitarian Financing 2015).

Second, most refugees do not live in confined settlements but are dispersed among host country populations. Therefore, they use public services (education, health care), infrastructure (water, sanitation), and housing that are in limited supply in many low- and middle-income countries. Since public services and infrastructure are typically provided and paid for by host country governments, donors should help to overcome any shortages in funding or administrative capacity that host country governments may face when they expand public services and infrastructure to meet the needs of both refugees and local populations. On the donor side, this will require much closer cooperation between providers of humanitarian and development assistance as well as some additional funds (Bennett 2015).

Third, while more generous financing for humanitarian aid and human development would go a long way towards equitable burden sharing at the global level, it may not go far enough when small countries receive a large number of

refugees in a short time (say, Syrian refugees in Lebanon). In this case, more resettlement of vulnerable refugees to third countries, typically organized through the UNHCR, is necessary to relieve the excess burden that small countries would otherwise face.

In addition to the approximately 16 million international refugees who have moved abroad to seek protection, the UNHCR also protects or assists approximately 37 million internally displaced persons (IDPs), mostly in Africa and the Middle East (UNHCR 2016, Map 1 and Annex Table 1). IDPs have left their homes to escape violence or persecution but remain within their country of residence. In this Assessment Report, we do not further address their situation: although the UNHCR faces similar challenges, compared with international refugees, when raising funds from the international community to support IDPs, there is no question of who is responsible for hosting them because they remain in their own countries. However, when trying to predict future flows of international refugees, IDPs are an important group to watch because they have already been displaced from their homes and may have few roots where they currently live. Therefore, they may be more prone to seek protection across international borders than other groups that face violence or persecution but still live in their own homes.

Implications for the EU

Thus, the EU and its member states in their roles as humanitarian and development donors have a moral obligation to provide more substantial support in a predictable manner to non-EU countries (especially developing countries) that host many refugees. Moreover, this is not only a moral obligation that derives from the commitment made by signing the 1951 Refugee Convention to cooperate and equitably share responsibility for refugee protection at the global level. It also makes economic sense, for several reasons, for the EU and its member states to help ensure that all refugees are guaranteed decent material living conditions, access to essential public services and infrastructure, and the prospect of economic and social integration in their host countries.

For a start, when the basic needs of refugees are not met in the countries of first asylum, this is a push factor that drives refugees to consider moving on to richer countries with better living conditions, be it because of opportunities for employment and entrepreneurship or social transfers. For example, sharply deteriorating living conditions in the EU's southern neighborhood were in part responsible for the large irregular inflow of refugees into the EU in late 2015 and early 2016 (as explained above). Therefore, helping to ensure decent living conditions for refugees in their non-EU host countries should be viewed as part and parcel of a comprehensive EU approach to asylum policy.

In addition, refugees traveled from the Middle East to northern Europe in 2015 and early 2016 under unsafe conditions. Therefore, young men were significantly over-represented among those who made the journey, relative to refugees overall (although those young men who are already married may try to bring family members to the EU later, provided they qualify for family unification). Furthermore, some legs of the journey required assistance from 'intermediaries' (people smugglers), so access to finance was a precondition – sufficiently high savings or the ability to borrow in order to pay smugglers. Thus, many vulnerable refugees never had a chance to move to the EU, even though they might have benefited more than others, say, from access to medical care after suffering trauma or for frail or disabled family members. Overall, it is arguably fairer for the EU and its member states to make a determined effort to help meet the basic needs of all refugees in their host countries, rather than to grant privileged treatment to a self-selected few who travel irregularly to Europe.

Finally, because of the high cost of living in high-income EU member states, it is relatively expensive to host a poorly selected and still limited number of refugees in Sweden or Germany (in the case of Germany, approximately €20 billion in 2016).³ These resources could be used to substantially improve the well-being of a higher number of refugees in low- and middle-income countries, even while resettling some vulnerable refugees to the EU.

Thus, the thrust of the existing EU agreement with Turkey and future planned agreements with other southern neighborhood countries appears to be appropriate: the EU provides considerable financial and logistical support for the hosting of refugees and for their social and economic integration according to verifiable standards (see Section

2.3 for a more detailed discussion). In turn, the partner country tightens border security to prevent people smuggling and curb irregular migration to the EU. Additionally, EU member states resettle a limited number of refugees selected according to vulnerability, possibly under UNHCR auspices.

Concerns and responses

EU asylum procedures outside EU territory?

This approach to how the EU may live up to its responsibility to help protect refugees world-wide is subject to at least three concerns that have surfaced in the wider debate on the EU asylum regime. First, this approach aims to make it more difficult for asylum seekers to access asylum in the EU by preventing irregular travel to the EU. As an alternative, it offers better conditions for refugees in their present host countries, plus limited resettlement. However, this may not be good enough in some situations, for instance when refugees cannot reach a reliably safe country or the countries of first reception are severely overburdened by too many refugees relative to their own populations. In such situations, it has been proposed that individuals should be able to apply for EU asylum while they are still abroad (e.g. Barsbai and Braun 2016).

From a legal perspective, there are doubts about whether asylum procedures can be conducted outside EU territory (for a summary, see Carrera and Guild 2017). Ideally, the EU would set up offices in third countries, conduct asylum procedures there, and transfer successful applicants to the EU under refugee status (or equivalent). Legal concerns, understandably enough, center on whether EU legal standards can be guaranteed in third countries – either as a matter of principle, or because of the special nature of asylum procedures with applicants whose legal status in the transit country may not be secure.

At the same time, critics do not seem to be concerned that asylum in the EU is now mainly accessible to those who are physically strong and rich enough to survive irregular travel to the EU with the help of people smugglers. If the EU and its member states are to focus (as we propose) on hosting the most vulnerable refugees while contributing financially to the protection of all others, refugees must be selected for resettlement in their countries of first asylum. If individuals in need of protection cannot reach a reliably safe country, any opportunity to request protection while still in transit would be an improvement over the present situation. Even if full asylum procedures cannot legally be conducted while applicants are outside EU territory, EU member states need to find a substitute: they might request that the UNHCR select vulnerable refugees for resettlement (a standard procedure) or they may themselves issue humanitarian visas based on prima facie evidence that the applicant has a legitimate claim to protection in the EU, while full asylum procedures would be conducted in the EU later.

Refugee protection vs labor migration

Second, many immigrants currently apply for asylum in the EU but have their applications rejected because they cannot demonstrate that they have been persecuted

³ See Zeit online, September 22, 2016 (<http://www.zeit.de/wirtschaft/2016-09/fluechtlinge-haushalt-kosten>).

or require subsidiary protection. This is not surprising because many would-be labor migrants from non-EU countries have no legal access to employment in EU countries. Nonetheless, if they manage to travel to the EU irregularly (at present, many use the central Mediterranean migrant route through Libya, at considerable monetary cost and risk to their lives), they will normally be admitted in an EU member state for as long as it takes to process their asylum application. When that is turned down, they may still hope to file administrative or legal appeals, obtain temporary leave to stay in the EU because deportation would amount to undue hardship, receive social transfers in the meantime, find employment that may later lead to an amnesty and a residence permit, or simply stay in the country irregularly.

This situation poses several challenges. Most fundamentally, the distinction between refugee protection and labor migration becomes blurred. Individuals who face persecution at home have a right under the 1951 Refugee Convention to be protected in the first safe country that they reach, but they have no right to choose their country of asylum. By contrast, labor migrants have the right to leave their country of origin, but need permission from their intended destination country to move there – and the intended destination country is free to grant or not grant permission, according to whatever criteria it chooses to apply.

Curbing irregular immigration into the EU by individuals without a legitimate claim to protection is challenging because these immigrants are not driven by a single ‘push’ factor (such as refugees who face war or persecution at home). Rather, their migration decision is based on a complex calculus that involves conditions at home and in the desired destination country as well as the cost of migrating (see section 4.1 for a detailed discussion). Changing the underlying incentives thoroughly enough to make irregular migration to the EU appreciably less attractive will probably require a combination of measures: providing reliable and credible information to potential migrants about the risks of irregular travel;

improving border management and enforcement along migrant routes and at the external EU border (starting in West Africa in the case of the central Mediterranean route); along migrant routes, establishing migrant support centers that provide information and assist with return and reintegration, if requested; and for those who manage to reach EU territory, ensuring a speedy decision on any asylum application and, if rejected, a quick return to the country of origin.⁴

Even if most asylum applications from certain countries are rejected, there are a non-negligible number of positive decisions (for countries of origin that are prominent on the central Mediterranean migrant route, see Figure 2.2). To avoid excluding those individuals from asylum in the EU (or obliging them to travel irregularly), it should be explored whether migrant support centers could also provide information and advice on humanitarian visas (once these are reintroduced by EU member states) and receive applications.

More effective management of the external EU border as well as national borders in the course of major migrant routes will have to be part of any strategy to curb irregular migration to the EU. This will require active support from a number of governments throughout Africa (Hatton 2016a, 24). Yet these political leaders will hardly become more popular with their voters if they are perceived as helping the EU to shut off irregular migration, which many of their voters value highly. So far, the EU’s New Migration Partnership Framework offers additional assistance in the areas of migration management and migrant return and reintegration, along with financial instruments.⁵ Even so, there are few positive incentives that might generate popular support.

In similar circumstances in eastern neighborhood countries, the prospect of visa liberalization with the EU has helped to promote significant, potentially unpopular reforms in border management and human rights (Ademmer 2017). While visa liberalization is not a short-term option for most African countries, enhanced opportunities for legal employment in EU member states could play an important role in sustaining cooperation. The economic impact in the destination countries should be limited because the economic effects of immigration into the labor market (rather than the welfare state) are usually small on aggregate, with manageable side effects on income distribution. EU member states, especially those with a favorable labor market situation, should therefore create more opportunities for labor migration from non-EU countries. Migration may be made conditional on a minimum education level, vocational and language skills, a job offer from the destination country, a waiting period before one can claim social benefits, etc. Furthermore, such opportunities could also be targeted at refugees in non-EU host countries.

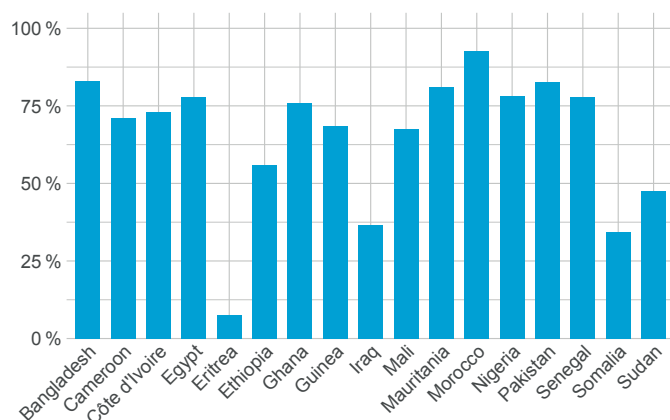
Does the EU seek to externalize a problem that is properly its own?

Third, proposals such as ours have been accused of ‘externalizing’ an EU problem (refugees would like to live in the EU) to neighborhood countries. By contrast, we have argued that refugees are the responsibility of

⁴ The EU Trust Fund for Africa and International Organization for Migration initiative for Protection and Reintegration of returnees along the Central Mediterranean migration routes (December 2016) include many of these elements (http://europa.eu/rapid/press-release_MEMO-16-4422_en.htm).

⁵ See European Commission, ‘Commission announces New Migration Partnership Framework: Reinforced cooperation with third countries to better manage migration.’ Press Release IP/16/2072, Strasbourg, June 7, 2016 (http://europa.eu/rapid/press-release_IP-16-2072_en.htm).

Figure 2.2 First-instance rejections of asylum applications by citizenship, EU-28, 2016
percent of applications; countries of origin prominent on the central Mediterranean migrant route



Source: Own elaboration based on data from UNHCR Global Trends 2015.

the international community, irrespective of where they live. We have also pointed out how the EU may live up to its international responsibility more fully by supporting host countries more effectively and resettling some vulnerable refugees. We have explained why this approach makes economic sense, too.

Therefore, we consider it wrong-headed to argue that refugees are somehow the EU's problem (merely because they would like to live in the EU) and that by supporting them in their host countries, the EU improperly externalizes its own problem. Rather, the protection of refugees who flee crises in non-EU countries and are hosted by other non-EU countries, in line with existing good practice in the global governance of refugee protection, is a global responsibility that (we argue) the EU and its member states should do more to live up to.

More reflection needed: Sharing fiscal and administrative burdens within the EU

More reflection is needed, first, on how the EU budget versus the member states should contribute to the cost of hosting refugees in non-EU countries and whether EU member states should be supported from the EU budget when they resettle refugees from third countries. Arguably, organizing this humanitarian and development assistance is a task that may usefully be undertaken by a single actor – the European Commission – on behalf of all 28 (in the future, 27) member states. If funding came from the EU budget, member states would contribute in line with their contributions to the budget, which amount to approximately 1 percent of their GDP. Article 80 TFEU also constitutes a legal basis for solidarity and responsibility sharing among EU member states in the

field of asylum policy, which is intricately linked with EU support for the protection of refugees outside the EU (Vanheule et al. 2011).

However, humanitarian spending by the EU is currently in the order of only €1 billion per year⁶ while funding shortfalls on the part of UN organizations alone amounted to US\$ 9 billion in 2015 (see above). The EU's multiannual financial framework is set several years in advance (it currently runs from 2014 through 2020) and any change, now or in the future, requires a consensus among EU member states. Therefore, additional funding from national budgets may be required to close funding gaps for humanitarian aid. Since many member states are already important humanitarian and development donors, it would be logical to combine additional funding from both the EU budget, to the extent possible, and member states.

EU member states should find it relatively easy, politically and capacity-wise, to offer more places for the resettlement of refugees in the EU or to accept some *prima facie* refugees through humanitarian visas. The number of asylum seekers entering the EU is now much smaller than in late 2015 and early 2016, which has freed up reception capacities. That said, it would not appear promising to attempt to set fixed quotas for refugees to be received by each member state. A similar quota scheme has already failed to be fully implemented for the secondary distribution of refugees within the EU from EU member states of first arrival (see section 2.3). A voluntary approach may be sufficient, given that the emphasis would be on sharing financial responsibility for the hosting of refugees with non-EU low- and middle-income countries.

⁶ Funding for European Civil Protection and Humanitarian Aid Operations (ECHO); see the European Commission website at http://ec.europa.eu/echo/funding-evaluations/funding-humanitarian-aid_en.

2.2 EU asylum and refugee policy

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The number of people who arrive in the EU to seek asylum depends on multiple, interdependent policy parameters: for example, *ceteris paribus*, the higher the humanitarian aid to refugees outside the EU and the lower the income support for asylum seekers within the EU, the less likely it is that displaced people will embark on the long, expensive, and dangerous journey to the EU.

Besides the necessity of supporting refugees in third countries (see section 2.1), there are both moral and economic reasons to support refugees within the EU through a well-functioning asylum system. At the same time, favorable conditions for refugees may act as a pull factor for asylum seekers: the more assistance – directly, through income support or indirectly, through integration measures – recognized refugees receive, the more attractive the EU becomes as a destination. If the EU were a homogenous territory with closely aligned popular preferences for how asylum should be provided, the system could be

designed to attract an acceptable number of refugees. Yet, refugee support systems are highly heterogeneous across EU member states, reflecting differences in capability and attitudes toward hosting refugees. The Schengen agreement exacerbates this problem: once asylum seekers enter EU territory, the lack of internal border controls makes it difficult to prevent asylum seekers from freely moving among member states.

Successive Dublin regulations, the first introduced in 1997, have guided member states' handling of refugees arriving at their borders. The basic principle is that the member states of first entry are responsible for registering and hosting the refugee, processing the asylum claim, integrating that person into society or ensuring his or her return to the country of origin (depending on the outcome of the asylum application). For most asylum seekers entering EU territory, this means external border countries are responsible for them *de jure*. However, a clear misalignment of incentives between these external border

Table 2.1 Main irregular migrant routes to the EU

Route	2008-2010 (total)	2011-2013 (total)	2014	2015	2016
Central Mediterranean Destination: Italy, Malta Origin: Eritrea, Guinea, Nigeria, Somalia	55,300	120,200	170,760	153,946	181,126
Eastern Mediterranean Destination: Greece Origin: Afghanistan, Iran, Iraq, Somalia, Syria	148,000	119,000	50,830	885,386	182,534
Western Mediterranean Destination: Spain Origin: sub-Saharan and West Africa	18,150	21,650	7,840	7,164	10,231
Western Balkan Destination: Hungary (Germany, Austria...) Origin: Albania, Kosovo, plus arrivals from the eastern Mediterranean route	5,460	30,990	43,360	764,038	122,779

Sources: Own elaboration based on Frontex data.

countries, asylum seekers themselves, the EU, and other member states has de facto led to a disregard of the Dublin regulations. Once asylum seekers have entered the EU, external border countries have a strong cost incentive to let them pass through their territory into other member states; in addition, asylum seekers often prefer to lodge their asylum application in the supposedly more favorable Western European countries. As they are aware of this nexus a priori, EU member states located on the EU external border could have an incentive to allocate fewer resources to managing the external border than member states together would desire.

The key question therefore becomes how the tasks related to the asylum regime should be allocated among EU member states, and between member states and EU authorities, in order to achieve a desirable level of cooperation. We argue that this implies the alignment of incentives in several areas to avoid costly negative spillovers across member states. In the long run, there is a strong case for a substantial expansion of the responsibilities of EU institutions in external border management while incentivizing member states on the external border to comply with their obligations to register and host refugees.

In this section, we discuss the allocation of decision-making, implementation, and funding related to asylum policies within the EU. We seek to identify the conflicting incentives associated with the asymmetric responsibility sharing between the EU and its member states as well as among the EU member states. In section 2.3 below we refer to these shortcomings as we evaluate the recent proposals for reforming the EU asylum system.

Task allocation in asylum-related policies within the EU

The Treaty of Maastricht that entered into force in 1993 granted the EU institutions modest competences in the field of asylum and migration. These were later extended in the Treaty of Amsterdam of 1999 and the Lisbon Treaty of 2009. At the Tampere European Council of 1999, an ambition toward a Common European Asylum Sys-

tem (CEAS), which ought to have increased cooperation among the EU member states, was first announced (Kaunert and Leonard 2012). Yet, in 2015, asylum policies remained effectively decentralized, with the individual member states responsible for the core decisions, implementation, and most of the funding. The role of the EU was limited to i) assigning responsibilities for registering and hosting asylum seekers who arrived in the EU, ii) setting minimum standards for asylum policies and harmonizing national asylum legislation, iii) assisting member states during the implementation of policies, and iv) ensuring some degree of financial burden sharing through joint EU funds. Importantly, the EU institutions lacked an effective mechanism to enforce the implementation of EU rules and decisions and had to rely on voluntary compliance by the member states.

Protecting external borders

Over the past years, high irregular immigration flows have put pressure on the EU's external borders. Most asylum seekers entered the EU irregularly by following one of the major migrant routes: the central Mediterranean (from North Africa to Italy), the eastern Mediterranean (from Turkey to Greece), the western Mediterranean (from Morocco to Spain), and since 2012, the Western Balkans. Thus, even prior to 2015, the EU countries at the 'exit' of these routes – Italy, Greece, Hungary, and to a lesser degree, Spain – had been under considerable pressure from irregular immigration (Table 2.1).

The Dublin system places the main responsibility for EU external border security on these frontier states in terms of border surveillance, smuggler detection, and search and rescue operations. To curb migrant flows, EU member states on the external border implemented several bilateral agreements with their counterparts at the 'exit' points of migrant routes, such as Spain's ongoing cooperation with Morocco, Senegal, and Mauritania as well as Italy's agreement with Libya.

The EU's role in border management has mainly been to provide financial support to member states on the external border. For example, since the surge in irregular immigration in 2015, Greece has received €1 billion from EU funds, Italy has received €655 million, and Bulgaria €269 million (Bučar et al. 2017).⁷ Figure 2.4 below suggests that Greece in particular received large funds in comparison with its own expenditures; Italy, on the other hand, projects spending of €3 billion on the migration situation in 2017 alone.⁸ EU support, if not increased substantially, will only cover a fraction of these expenditures.

EU member states further receive technical expertise from Frontex, which was set up in 2005 to improve the coordination of European border management. Its mission comprises monitoring the EU external borders, coordinating joint operations to prevent illegal entries, and responding to emergencies, as well as assisting individual member states in border management. Yet, relative to the scope of national operations and resources, the direct involvement of Frontex has remained low. In

⁷ These numbers, while coming from official references, are not without controversy. For example, Refugees Deeply has calculated the actual EU support to Greece at €803 million. See D. Howden and A. Fotiadis. "Where did the money go? How Greece fumbled the refugee crisis," *The Guardian*, March 9, 2017, <https://www.theguardian.com/world/2017-mar/09/how-greece-fumbled-refugee-crisis> (accessed May 3, 2017).

⁸ J. Politi, "Italy's Renzi unveils spending plans in 2017 budget," *Financial Times*, October 16, 2016, <https://www.ft.com/content/473a99b0-9336-11e6-a80e-bcd69f323a8b> (accessed 3 May 2017).

January 2015, the agency deployed a permanent staff of 309, while its total funding for 2008–14 constituted €575 million. In response to calls for a stronger EU role in external border management, Frontex was transformed in October 2016 into the European Border and Coast Guard, with a rapid reserve pool of 1,500 border guards and more technical equipment provided to external border countries. The sea border-security operations Triton and Poseidon launched in 2014 have also been expanded recently.

Thus, the EU has become much more involved in external border management over the past few years, both on the ground and financially. While the EU does not cover refugee-related expenditures to the same extent in all affected member states, it helps overstretched member states on the external border to abide by the common rules. Within the grander vision of a functioning Common European Asylum System (CEAS), these changes constitute a necessary shift of responsibilities toward the center to align incentives and address externalities among member states.

Hosting refugees within the EU: De jure

The Dublin Convention of 1997, followed by its amendments Dublin II (2003) and Dublin III (2013), assigns responsibility for registering and hosting refugees who arrive in the EU. Originally, the main aim of this regulation was to prevent asylum shopping. This practice of applying for asylum in several EU countries or applying in the country of choice after transiting other EU member states was made possi-

ble by the abolition of border controls within the Schengen area. To prevent asylum shopping and avoid a race to the bottom among member states in terms of their asylum-related efforts, the Dublin system established detailed rules and implementation mechanisms to determine the country that would be responsible for a particular asylum seeker.

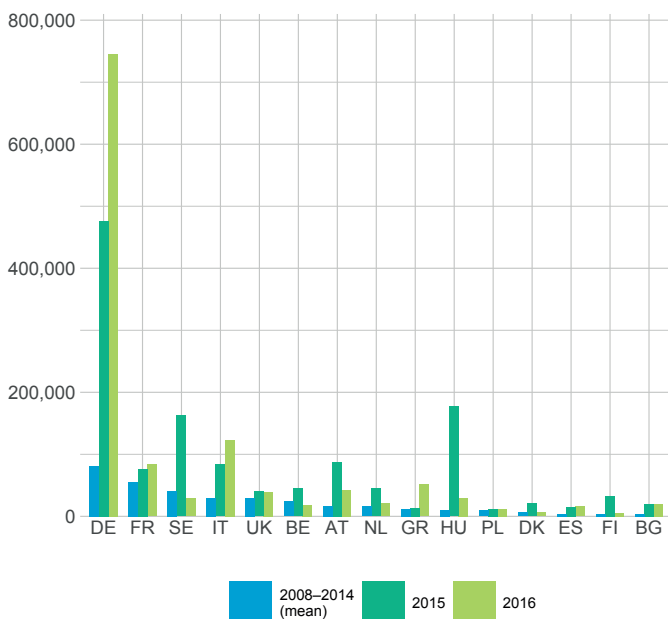
Fundamentally, the Dublin regulations place the responsibility for registering and processing asylum claims as well as for hosting refugees on the country of first entry into the EU, with a few exceptions for family reasons or other personal ties on a case-by-case basis. In practice, the regulation is enforced through the readmission mechanism: if an individual applies for asylum in a member state that is not responsible for him or her, that member state may return the asylum seeker to the member state of first entry. Technically, this process depends on all immigrants being fingerprinted upon entering the EU and their data being entered into EURODAC, the integrated fingerprint database.

Thus, together with the responsibility for securing the external borders, the main burden related to registering asylum seekers and hosting refugees falls on the EU member states on the external border. Other EU member states are expected to participate financially by contributing to joint EU funds. Recently, an internal EU relocation of asylum seekers from Greece and Italy was launched but this emergency scheme remains bedeviled by efficiency and compliance issues.⁹ Further proposals to redistribute asylum seekers across the EU have found no consensus among member states yet.¹⁰ Therefore, financial burden sharing is the main channel of asylum-related support among member states.

⁹ European Commission, "Relocation and Resettlement – State of Play," DG Migration and Home Affairs, Brussels, February 8, 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170208_factsheet_on_relocation_and_resettlement_en.pdf (accessed 3 May 2017).

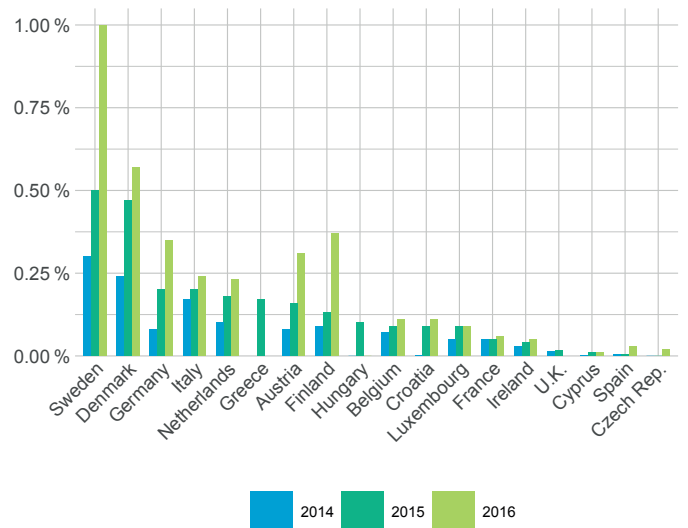
¹⁰ We discuss these further in section 2.3.

Figure 2.3 Asylum applications in the selected EU countries, 2008–16



Source: Own elaboration based on Eurostat data.
 Note: Other EU member states accepted fewer than 3,000 asylum applications per year.

Figure 2.4 Estimated short-term fiscal costs of caring for asylum seekers as a percentage of GDP



Source: Own elaboration based on Aiyar et al. 2016 (p. 12).

The EU itself manages some aspects of the financial burden sharing while providing technical assistance to the member states and verifying that the minimum standards of refugee protection are met. To facilitate cooperation among member states, to assist them in protecting refugees, and to provide technical support to the Commission, the European Asylum Support Office (EASO) was established in 2011 with an annual budget of €10 million for the 2012–15 period. Since May 2016, the role of EASO has been strengthened to support both the implementation and the functionality of the CEAS (Bučar et al. 2017).

Hosting refugees within the EU: De facto

According to the Dublin rules, most of the burden of dealing with illegal entry into the EU and subsequent asylum applications falls onto the member states on the external border. However, this uneven distribution of responsibility may overburden the member states of first entry to the extent that they can neither ensure effective asylum procedures nor basic living standards for the refugees. Beyond these immediate challenges, granting recognized refugees access to education and employment may be a challenge. Given poor conditions in the countries of first entry to the EU, asylum seekers themselves have every reason to try to apply for asylum elsewhere and refuse cooperation with the member state authorities that try to implement the existing rules. The above may explain why data on first-time asylum applications show a starkly different geographical distribution from expectations under the current legislation: although the external border countries Italy, Hungary, and Greece did receive a substantial number of asylum applications (particularly when measured against the size of their economies), Germany, France, Sweden, the UK, Belgium, and the Netherlands registered the majority of first-time asylum applications even between 2008 and 2014 on average (Figure 2.3).

The collapse of the Dublin system arguably further increased the attractiveness of embarking on a journey to the EU from various parts of the world. The existing weaknesses in the system may have motivated more asylum seekers to set off for Northern and Central European countries, while a functioning Dublin system would have kept them in the member states of first entry and possibly made the whole journey unattractive.

Once asylum seekers move on from their countries of first entry without being properly registered in EURODAC, the most attractive destination countries within the EU become de facto responsible for them. In 2015, this often occurred voluntarily when some EU member states applied the Dublin sovereignty clause to assume responsibility for large numbers of refugees and take pressure off the countries of first arrival. Still, even when asylum seekers are registered upon entry to the EU and then continue to other member states, transfers under the Dublin Regulation cannot always be enforced. In 2011, the European Court of Human Rights ruled in the case of *M.S.S. v. Belgium and Greece* that the implementation of the transfer violated several articles of the European Convention on Human Rights due to the poor living conditions of asylum

seekers in Greece, the risk of detention, and deficiencies in the Greek asylum procedure.¹¹ Thereafter, EU member states practically stopped returning asylum seekers to Greece. De facto, the tasks of registering and processing asylum claims as well as hosting refugees were thus performed by countries of the first-time asylum application in line with national legislation.

The short-term fiscal cost incurred by the individual member states from caring for asylum seekers as estimated by Aiyar et al. (2016) is shown in Figure 2.4 above. The distribution of costs among EU member states was uneven already in 2014 and shows the same pattern as the number of lodged asylum applications (see Figure 2.3 above).¹²

Aligning incentives – What should be done?

The analysis above reveals that the large influx of asylum seekers in 2015 and 2016 into the EU did not ‘break’ a Dublin system that had previously worked well; rather, it brought existing inconsistencies to the surface. A system that allows countries at the external border to ‘wave through’ asylum seekers to other member states due to the lack of internal borders and in the absence of an effective enforcement of the Dublin regulations is clearly suboptimal. Incentives to invest in border controls, to register arriving asylum seekers properly, and to ensure acceptable reception conditions are misaligned and incompatible with an effective asylum system at the EU level.

Member states on the external border therefore must be incentivized to comply with existing agreements, especially in meeting their responsibility to register asylum seekers. Increased EU personnel on the ground is necessary to ensure efficiency and compliance by monitoring asylum procedures and ensuring humane reception conditions. By strengthening Frontex and EASO, the EU is currently moving in this direction but will have to increase its efforts further. The compliance of national authorities could further be reinforced by the credible threat of adjacent member states closing their borders. The examples of Macedonia shutting its border with Greece and Austria’s measures at its border with Italy show that closing popular migration routes unilaterally can exert pressure on external border countries to meet their obligations, or at least limit negative spillovers, even within the Schengen area.

In exchange, the EU should provide substantial logistical and financial help to those member states on the external border that are most heavily affected by irregular immigration. Here, solidarity among EU member states is of utmost importance to make the system sustainable. Alternative approaches to reducing the pressure on member states of first arrival, such as a scheme to relocate asylum seekers from countries of first arrival to other member states, have not found a consensus among member states so far. To make such a scheme feasible and operational, participation in the relocation of recognized refugees or asylum seekers who passed an initial admissibility check in the member state of first entry could be left to a ‘coalition of the willing’ until a permanent relocation scheme is implemented. We discuss this idea further in section 2.3.

¹¹ See, in the European Database of Asylum Law, ECtHR – *M.S.S. v. Belgium and Greece* [GC], Application No. 30696/09, January 21, 2011, <http://www.asylumlawdatabase.eu/en/content/ecthr-mss-v-belgium-and-greece-gc-application-no-3069609> (accessed May 3, 2017).

¹² The estimations are from January 2016. In some countries, such as Germany, annual expenditures in 2016 exceeded earlier estimations from Figure 2.4 and amounted to €21.7 billion or 0.7 percent of GDP, see Bundesministerium der Finanzen, *Analysen und Berichte - Asyl- und Flüchtlingspolitik aus Sicht des Bundeshaushalts*, January 2017, <http://www.bundesfinanzministerium.de/Monatsberichte/2017/01/Inhalte/Kapitel-3-Analysen/3-1-Asyl-Fluechtlingspolitik-aus-Sicht-des-Bundeshaushalts.html> (accessed May 3, 2017). The figure should therefore be interpreted as an illustration of the uneven cost distribution among member states.

A clear distribution of tasks would also benefit asylum seekers. If all countries are incentivized to assume their assigned responsibilities, neither the member states on the external border nor the most economically attractive destinations in the EU would have an incentive to race to the bottom in reception conditions.

While there is a clear need for the EU to put its own house in order, the unprecedented inflows of late 2015 and early 2016 have revealed that, in exceptional situations, the member states on the external border may have to care for very large numbers of asylum seekers under the current regime. Even if all parties fully discharge their duties, these member states may become overburdened. This issue clearly requires a long-term solution. Humanitar-

ian assistance to refugees outside the EU (see section 2.1) combined with third country agreements to curb irregular migration provide a viable solution for both humanitarian and economic reasons. At the same time, more participation by EU member states in international resettlement schemes – or other types of active resettlement from third countries to the EU – could offer protection to the most vulnerable refugees.

In section 2.3 below we turn to some of the nuances of the EU's response to the refugee crisis. We identify additional problems arising from i) the timing of implementing new policies in the different areas and ii) the political feasibility of all policies related to relocation to the EU from third countries.

2.3 Building blocks for reforming the EU asylum and migration regime: Closing the back door while opening the front door

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In section 2.2 we have identified missing elements of a sustainable EU asylum system: i) more responsibility for external border management – rules and implementation – at the EU level; ii) a larger EU budget to compensate external border countries for processing and hosting asylum seekers; iii) a 'coalition of the willing' approach to an intra-EU refugee relocation scheme; iv) financial support for third countries to curb irregular migration at its source and enable more efficient readmission; and v) resettling the most vulnerable refugees coming from third countries to the EU.

Although far fewer asylum seekers arrived in Europe in 2016 than in 2015, the situation remains fragile. In response, the European Commission has tabled several proposals. Long-term efforts have focused on four key areas of asylum policies: i) strengthening external border management; ii) an allocation mechanism to distribute asylum seekers across EU member states; iii) migration partnerships with third countries to prevent irregular flows; and iv) the introduction of pathways into the EU through resettlement. Thus, in general, we believe that EU authorities are gradually moving toward our suggested approach of opening the front door while closing the back door.

However, proposals that focus on deterrence (closing the 'back door') have progressed faster than those that assume responsibility for refugees outside the EU (and share this responsibility equitably across EU member states) and open up legal pathways for labor migration to the EU (opening the 'front door'). We therefore urge European

decision makers not to succumb to an 'out of sight, out of mind' approach. The remainder of this section assesses the (proposed) EU actions in the light of our advocated approach of closing the back door while opening the front door and the shortcomings identified in section 2.2.

Closing the back door...

The way toward more EU involvement in external border management

Of all the policy options to improve the Common European Asylum System (CEAS), strengthening the EU's external borders has found the most support among EU member states. Progress has been made in two areas in particular. First, the European Border and Coast Guard (EBCG) was launched in October 2016 to establish an operational strategy for border management and coordinate EU assistance for member states.¹³ In essence, the extended EBCG sets an operational and technical strategy that will then have to be implemented by the member states. Member states on the external border are legally obliged to cooperate, particularly in emergencies. The permanent staff of the EBCG will be increased to 1,000 by 2020 from 402 at the beginning of 2016, the budget has been more than doubled (from €143.3 million in 2015 to €322 million in 2020), and the agency can draw on a rapid-reaction pool of 1,500 European border guards if needed. Yet, non-compliance, i.e. the refusal to deploy EBCG staff or abide by its strategy, will have few consequences for member states. The only lever the agency possesses is to urge adjacent

¹³ Council of the European Union, "European Border and Coast Guard: Final approval," September 14, 2016, <http://www.consilium.europa.eu/en/press/press-releases/2016/09/14-european-border-coast-guard/> (accessed May 3, 2017).

member states to close their internal borders and thereby potentially exacerbate an emergency in the country.¹⁴

Another fundamental issue is the linkage between search and rescue (SAR) operations carried out by the agency and the responsibility of the EU member state of first arrival for the asylum process of those rescued. Cooperation between the EBCG and member states is not fully incentive-compatible because the latter are expected to bear the additional financial and administrative burdens of receiving even more asylum seekers.

Carrera et al. (2017) propose to resolve this problem by making all asylum seekers rescued through SAR a joint EU responsibility and redistributing them according to the Commission's redistribution key suggested in its 2016 proposal to recast the Dublin system.¹⁵ While this is a preferred, equitable, first-best solution, there is currently fierce political resistance against any mandatory redistribution scheme by some member states. Hence, whether the proposal and the proposed recast of the Dublin system can be adopted any time soon, or at all, is currently uncertain.

In addition, the new EBCG needs to address a difficult trade-off: on the one hand, it saves lives in the Mediterranean; on the other hand, more extensive SAR operations could create an incentive for people smugglers to put more irregular migrants (many, if not most of whom will not qualify for asylum) on unseaworthy boats, leading to more people embarking on the dangerous trip across the Mediterranean. SAR operations close to the Libyan shore could therefore create undesirable incentives on the part of smugglers and migrants; however, the existence of such a 'pull' factor is disputed (Carrera et al. 2017). We argue below that, in light of the current situation in Libya, EU authorities should aim at preventing irregular migration before it reaches Libyan territory.

With the above in mind, one possible solution to curb irregular migration flows from (and eventually, to) Libya may involve reception centers in the EU region of arrival where asylum seekers remain until their status has been decided and they are either obliged to return to their home countries (probably the majority of immigrants on the central Mediterranean route – see section 2.1, Figure 2.2) or they are allowed to settle in the country of arrival (or elsewhere in the EU, based on (voluntary) redistribution – see section 2.2). EU institutions – mainly the European Asylum Support Office, Frontex, and Europol – are already assisting Greece and Italy in such reception centers, the so-called hotspots. This approach may need scaling up.

Second, the EU is moving toward more rigorous checks at the Schengen area's external borders through the introduction of new technology.¹⁶ On March 2, 2017, the Council agreed to start negotiations with the Parliament on a Commission proposal for a new entry-exit system.¹⁷ While these may improve the functionality of the CEAS, they will not decrease pressure from immigration significantly.

Cooperation with third countries

On March 18, 2016, the EU and Turkey agreed on a controversial deal to curb irregular migration to Greece.¹⁸ Starting on March 20, 2016, it stipulates that every irregular

migrant arriving in Greece from Turkey via the Mediterranean is to be returned to Turkey. For every Syrian returned, a one-for-one mechanism selects a Syrian citizen, based on UN vulnerability criteria, from the refugee camps in Turkey for resettlement in the EU. As of March 2017, 3,565 Syrians had been resettled from Turkey under the one-for-one scheme.¹⁹

In the broader picture, this deal helped to regain control over irregular immigration into the EU. However, for it not to violate the 1951 refugee convention and its 1967 protocol critically hinges on the status of Turkey as a safe country, in particular related to the issue of non-refoulement. The Commission's view that domestic legislation in Turkey guarantees safety and fundamental rights is disputed.²⁰ Furthermore, the recent ruling of the Court of Justice of the European Union indicates that the EU-Turkey deal has weaknesses when it comes to political accountability and judicial oversight (Carrera et al. 2017). Future agreements with third countries will therefore have to be embedded in a democratically legitimized and clearly defined humanitarian and judicial framework.

While the EU-Turkey statement in its current form is therefore not an ideal template for future EU action, preventing irregular migration into the EU at its source and ensuring readmission of migrants not eligible for asylum should be the way ahead for both humanitarian and political reasons. The Migration Partnership Framework with third countries from June 9, 2016 is a step in this direction and lays out the future approach formally.²¹ Within so-called country-specific 'compacts,' EU authorities initially target Jordan, Lebanon, Niger, Nigeria, Mali, Senegal, and Ethiopia in order to curb irregular migration to the EU. The compacts' short-term objectives are to both assure an effective readmission procedure and stop migrants in source and transit countries from embarking on the dangerous trip to the EU. The new Cooperation Agreement on Partnership and Development with Afghanistan, while still at the fledgling stage, may further ease migratory pressure from one of the main source countries in the long term.²²

As these compacts inevitably increase the burden of handling readmission procedures and improved border management for developing countries, the EU has increased the budget of the European Development Fund by €0.5 billion for their support. The funds can be channeled into tailor-made development projects in the partner countries to tackle the root causes of irregular migration and thus create an incentive for partner countries to comply in particular with the readmission agreements. In addition, there is an EU external investment plan financed by €3.35 billion from EU funds through 2020 (with the European Fund for Sustainable Development as the main funding device) that aims to raise further funds from member states. This program may generate additional private sector investment and could further foster economic opportunities in the partner countries.²³

Apart from the Eastern Mediterranean migrant route from Turkey to Greece, the second major route is the one across the central Mediterranean with Libya as the main point of departure (see section 2.2). The Malta Declaration of the European Council on the external aspects of migration addressed this migratory route and includes Libya in the list of partners (February 2, 2017).²⁴ EU

¹⁴ See Carrera et al. (2017) for a detailed critical assessment of the European Border and Coast Guard.

¹⁵ European Commission, Proposal for a Regulation of the European Parliament and of the Council 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, May 4, 2016, <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-270-EN-F1-1.PDF> (accessed May 3, 2017).

¹⁶ Council of the European Union, "Strengthening the EU's external borders," <http://www.consilium.europa.eu/en/policies/migratory-pressures/strengthening-external-borders/> (accessed May 3, 2017).

¹⁷ Council of the European Union, "Entry-exit system: Council agrees on its negotiating mandate," March 2, 2017, <http://www.consilium.europa.eu/en/press/press-releases/2017/03/02-entry-exit-system/> (accessed May 3, 2017).

¹⁸ European Council, "EU-Turkey statement," March 18, 2016, http://www.consilium.europa.eu/press-releases-pdf/2016/3/40802210113_en.pdf (accessed May 3, 2017).

¹⁹ European Commission, Tenth report on relocation and resettlement, Report from the Commission to the European Parliament, the European Council and the Council, COM(2017) 202 final, Brussels, March 2, 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_tenth_report_on_relocation_and_resettlement_en.pdf (accessed May 4, 2017).

authorities will train the Libyan national coast guard to combat smuggling networks, run information campaigns geared toward irregular migrants, and help the Libyan authorities with capacity building at their external borders. EU authorities also endorsed the bilateral Memorandum of Understanding between Italy and the UN-backed Libyan government, which contains similar objectives.²⁵

In Libya, the situation remains characterized by political instability and severe human rights violations against migrants and segments of the local population.²⁶ It therefore remains to be seen if the envisaged EU and Italian measures can be implemented effectively in Libya. Given the situation there, the priority of EU-conducted measures should clearly be on preventing migration flows into Libya from other African source and transit countries.

In conclusion, the new readmission agreements with African countries and, importantly, potentially with Afghanistan, may lead to a faster repatriation of rejected asylum seekers and may also discourage potential emigrants from embarking on the journey to Europe. At the same time, the increased financial development assistance may further reduce emigration, even if its direct effectiveness on the root causes is heavily contested and the impact on irregular migration may solely stem from the lever EU authorities gain over the governments of third countries.²⁷ Overall, deterrent EU policies to curb irregular migration at their source have made progress over the past two years.

... while putting the EU's house in order ...

Alleviating migratory pressure in the member states on the external border

The solution most often advocated to ensure an equitable sharing of responsibility for humanitarian migrants in the EU is to relocate refugees across member states and thereby ease the strain that the current regime puts on member states on the external border. A relocation mechanism would be fair to refugees: despite the undeniable differences in labor market opportunities and welfare generosity across the EU, even the least developed European countries offer protection from persecution and a higher standard of living to refugees on average than in the most common source countries (Carrera and Gros 2015). Refugees would be discouraged from simply moving on to more attractive destinations because they would lose social assistance and the right to legal employment. If the threat of these penalties turns out to be insufficient to prevent intra-EU refugee flows, additional sanctions – up to the withdrawal of the refugee status or the outright rejection of an ongoing asylum request – would have to be considered.

The physical relocation of refugees is without a doubt a potentially useful tool to correct for the burden put on member states on the external border by the Dublin Regulation. In theory, an external border managed by EU authorities in combination with a functioning, centrally managed scheme for relocation would allow for a welfare-maximizing, first-best solution to offering protection to humanitarian migrants. It could account for member states' preferences while correcting for the public good characteristics of the protection of refugees in the EU (see

section 2.1 and Hatton 2015). The price of opting out could potentially be determined on a market through tradable refugee-admission quotas, following an initial quota assignment to member states by EU authorities (Fernández-Huertas Moraga and Rapoport 2014). A matching mechanism whereby member states list their preferences for refugees and refugees list their preferences for member states could enhance efficiency and incentivize participation in the relocation scheme.

In response to the high migratory pressure on Greece, Italy, and other member states, European home affairs ministers decided to relocate a total of 160,000 refugees across the EU.²⁸ Financed by €1 billion from the EU budget (around €6,000 per relocated refugee – which is less than the estimated annual cost of a refugee in most EU member states), the distribution among countries follows a sensible key: i) 40 percent is based on the size of the population, ii) 40 percent on the member state's GDP, iii) 10 percent on the average number of past asylum applications to the member state and iv) 10 percent on the member state's current unemployment rate.²⁹ Only asylum seekers whose nationalities have an average EU-wide asylum recognition rate equal to or higher than 75 percent are eligible for relocation.

This list is updated quarterly based on Eurostat numbers and, as of April 1, 2017, does not include Afghanistan, Nigeria, or Somalia, three main source countries of asylum seekers arriving in Italy and Greece.³⁰

The relocation mechanism relies on a hotspot approach. Hotspots are external border areas exposed to a high existing or potential number of arriving migrants (see Neville et al. 2016). Upon request by a member state, EU agencies provide support related mainly to i) the registration and screening of immigrants (Frontex), ii) the asylum process and relocation of immigrants identified as in need of international protection (EASO), and iii) voluntary or forced return (Frontex). The current hotspot approach leaves member states responsible for reception facilities. We argue below that this approach is a step in the right direction but is incomplete in its current form for humanitarian and practical reasons.

The relocation mechanism was decided by the Council through a qualified majority, a situation considered unusual in matters of asylum and immigration policy. The Czech Republic, Slovakia, Romania, and Hungary voted against it, while Finland abstained.³¹ On October 25, 2015, only a few months after the scheme had been launched, a change of government in Poland made that country reluctant to take in its allocated share. It is therefore not surprising that compliance and operational issues have severely impeded the relocation scheme. In addition to the unwillingness to cooperate in various Central and Eastern European countries, a number of additional issues have cropped up. Hotspots not being fully functional in Greece and Italy, insufficient means for transfers, member states not providing the necessary reception facilities, and a lack of enthusiasm on the part of refugees to participate in the scheme (“Why risk being stuck in Romania if your feet can take you to Germany?”) are the main difficulties that still slow down relocation (Maiani 2016). As of April 21, 2017, only 16,998 people had been resettled from Italy and Greece.³²

²⁰ European Commission, Letter from the European Commission to Greek Secretary-General for Population and Social Cohesion Mr. Vasilios Papadopoulos, Brussels, May 5, 2016, <http://statewatch.org/news/2016/may/eu-com-greece-turkey-asylum-letter-5-5-16.pdf> (accessed May 4, 2017).

²¹ European Commission, “Commission announces New Migration Partnership Framework: Reinforced cooperation with third countries to better manage migration,” Strasbourg, June 7, 2016, http://europa.eu/rapid/press-release_IP-16-2072_en.htm (accessed May 4, 2017).

²² European External Action Service, “European Union and Afghanistan sign Cooperation Agreement on Partnership and Development,” Munich, February 18, 2017, https://eeas.europa.eu/headquarters/headquarters-homepage/20834/european-union-and-afghanistan-sign-cooperation-agreement-partnership-and-development_en (accessed May 4, 2017).

²³ European Commission, “State of the Union 2016: European External Investment Plan: Questions and Answers,” Strasbourg, http://europa.eu/rapid/press-release_MEMO-16-3006_en.htm (accessed May 4, 2017); we discuss the effect of development aid on migration further in section 4.2 of this report.

²⁴ European Council, Malta Declaration by the members of the European Council on the external aspects of migration: Addressing the Central Mediterranean route, February 3, 2017, <http://www.consilium.europa.eu/en/press/press-releases/2017/02/03-malta-declaration/> (accessed May 4, 2017).

²⁵ Government of Italy, Memorandum d'intesa sulla cooperazione nel campo dello sviluppo, del contrasto all'immigrazione illegale, al traffico di esseri umani, al contrabbando e sul rafforzamento della sicurezza delle frontiere tra lo Stato della Libia e la Repubblica Italiana, February 2, 2017, <http://www.statewatch.org/news/2017/feb/it-libya-memo-immigration-border-security-2-2-17.pdf> (accessed May 4, 2017).

²⁶ UN Security Council, "February 2017 Monthly Forecast," Security Council Report, New York, NY, January 31, 2017, http://www.securitycouncilreport.org/monthly-forecast/2017-02/libya_29.php (accessed May 4, 2017).

²⁷ See section 4.2 of this report.

²⁸ The total of 160,000 is a result of two separate decisions from July 22, 2015 (40,000) and from September 22, 2015 (a further 120,000).

²⁹ European Commission, "Refugee Crisis: European Commission takes decisive action – Questions and answers," Strasbourg, September 9, 2015, http://europa.eu/rapid/press-release_MEMO-15-5597_en.htm (accessed May 4, 2017). We will abstain from a detailed discussion on the calculation of the relocation key here but note that, if the probability of successful integration of resettled refugees into the labour market is an objective, the labour market conditions should feature more prominently (see Barslund et al. 2016).

³⁰ Frontex – European Border and Coast Guard Agency, Migratory Routes Map, <http://frontex.europa.eu/trends-and-routes/migratory-routes-map/> (accessed May 4, 2017).

³¹ N. Nielsen and E. Zalan, "EU forces 'voluntary' migrant relocation on eastern states," EU Observer, September 22, 2015, <https://euobserver.com/migration/130374> (accessed May 4, 2017).

Despite this slow pace of implementation, the Commission aims to introduce a new permanent fairness mechanism within its proposed reform of the Dublin system of May 4, 2016.³³ In the proposal, relocation is triggered if asylum applications to an EU member state exceed 150 percent of the number assigned to the country under a reference key based on population and wealth. The proposed EU burden-sharing scheme includes a temporary opt-out option – a "solidarity contribution" of €250,000 that can be paid by member states for each applicant rejected who had been assigned to it by the burden-sharing quota. Although the calculations on which the amount is based are not transparent – preferably, it would be based on actual costs in an accountable manner – the proposal begins to address the lack of enforcement in the existing redistribution scheme for refugees.

Two other elements are important in this proposal: First, asylum applications still have to be lodged in the country of first irregular entry and the responsible country has to carry out an admissibility check prior to relocation. The admissibility check is necessary to minimize adverse incentives on the part of asylum seekers by deterring migrants with purely economic motives who must still expect to be rejected at the border. The concern remains that in conducting the admissibility check, the EU member states of first entry continue to have an incentive to formally admit and send on inadmissible asylum seekers to avoid repatriation costs. The issue can only be overcome by a more rigorous, albeit time-consuming, administrative procedure in which the receiving country confirms the admissibility check and only then accepts the allocated asylum seeker to start the full asylum procedure. Ideally, an EU-financed and assembled body is put in charge of controlling admissibility, beyond the current hotspot approach. Such a body could form part of a European border and asylum service as suggested by Carrera et al. (2017). It could further improve the current poor living conditions of asylum seekers in reception centers in hotspot areas (Guild et al. 2017).

Second, the suggested burden-sharing scheme explicitly accounts for asylum seekers resettled from third countries. This means a member state could decide to resettle refugees from third countries in sufficient numbers (i.e. 100 percent of their assigned quota under the reference key) and thereby avoid both participating in the EU fairness mechanism and paying the solidarity contribution.

However, it is uncertain whether the proposal in its current form will be adopted. Several member states appear unwilling to assume their assigned responsibilities. The Visegrad countries in particular oppose any mandatory quota system.³⁴ Despite other member states urging them to propose an alternative relocation mechanism, they reiterated their reluctance to commit to any mandatory quota in January 2017 and have not yet tabled a concrete suggestion.³⁵

Thus, for political reasons, the mechanism remains a theoretical solution at this stage. Formally bringing together a coalition of the willing, which is implicitly allowed for in the Dublin III Regulation through the sovereignty clause, is a feasible way toward a sustainable EU refugee relocation scheme when political feasibility is accepted as a constraint.³⁶ Such a voluntary mechanism

could then either explicitly take the preferences of member states and refugees into account or would have to find a way to legally oblige refugees to participate in relocation.

A coalition of the willing is clearly only a second-best solution to a public good problem. Still, since proposals for intra-EU relocation mechanisms are likely to peter out in the current political environment and the approach would leave the door open to a permanent solution involving all EU member states, it is currently the best option available. As suggested below, an higher EU funding could support those member states that take on responsibility for refugees in a 'money follows the refugee' approach.

Financial burden sharing

Under the current (Dublin) asylum regime as well as any conceivable, future regime, EU member states on the external border bear a disproportionate share of the financial cost and administrative effort. They are responsible for hosting irregular migrants, conducting asylum procedures, repatriating those whose asylum application is rejected, and integrating recognized refugees into their economies and societies. As we have argued with respect to the global governance of refugee protection (section 2.1) and in the absence of a functioning relocation scheme, there is a strong case for financial burden sharing within the EU.

In the long term, it would be desirable for the EU to take over external border management and related costs – including those related to asylum policy – and provide for these costs in the multi-annual budget framework. Until then, member states on the external border ought to be compensated for the verifiable costs of the asylum process up until the final decision on whether asylum will be granted, including repatriation if applicable. For the compensation of costs associated with economic and social integration, these would have to be estimated for all external border countries respectively on a PPP basis.

The current financial burden sharing between EU member states through official EU support is far from a full compensation scheme. A total of €3.9 billion was allocated from the EU budget to member states in 2015 and 2016 in response to the crisis situation.³⁷ Yet recent estimates from the OECD (2017) put the unweighted average cost of processing asylum applications and caring for asylum seekers at €10,000 per asylum seeker for the first year in the main recipient countries. This estimate does not include integration measures during the asylum phase. With 2.46 million first-time asylum applicants in the EU-28 in 2015 and 2016,³⁸ this simple estimate puts the total short-term costs at €24.6 billion.³⁹

While some member states like Greece have received a larger share from the asylum-related EU budget than others, this simple calculation shows that EU funds dedicated to asylum-related tasks within the EU need to be vastly increased. Not only would fuller compensation incentivize the member states on the external border to comply with their duties (a 'money follows the refugee' approach would further encourage member states to participate in an EU relocation mechanism). It would also compensate those member states that have borne the brunt of the recent inflows. To make it equitable, financing could come either directly from EU

funds (which would have to be increased accordingly) or from an additional fund to which member states contribute according to their ability to pay (typically, based on their GDP).

... and opening the front door

Granting legal access to member states' territories for third-country nationals falls squarely within the competences of member states. Hence, policy innovations necessarily rely on member states' willingness to contribute. In practice, the only option absent substantial further integration is to count on a coalition of the willing.

Increasing resettlement from third countries

To enhance legal pathways for humanitarian migrants to the EU, the Commission proposed on July 13, 2016 to create a common EU resettlement framework. This resettlement scheme from third countries should therefore be seen as complementary to the new Migration Partnership Framework. The Commission further suggests that in order "to support Member States' resettlement efforts under the targeted EU schemes, the Commission will provide €10,000 from the EU budget for each person resettled. The funds will be allocated from the EU's Asylum, Migration and Integration Fund. Resettlements outside of the Union resettlement framework will not be supported financially by the Union's budget."⁴⁰ Under the envisaged scheme, each member state commits to a maximum number of resettled persons on an annual basis. Member states remain largely in charge of the practical operations related to identification, assessment of eligibility, and decisions on resettlement. The Commission, for its part, proposes the annual geographical focus of the resettlement scheme. The added value of EU coordination is the potential for a more strategic use of resettlement policy in the overall management of migration to EU countries. Given that member states retain control of the number of individuals resettled in their territory, the proposal effectively amounts to establishing a coalition of the willing.

The EU resettlement framework foresees a procedure in which assessing the fulfilment of refugee status is conducted in the third country prior to resettlement. As pointed out by Carrera and Guild (2017), this is not without its legal challenges. Nevertheless, the procedure is similar to the one used by the United Nations High Commissioner for Refugees (UNHCR), and the proposal explicitly mentions the potential of relying on UNHCR when identifying and assessing eligibility.

The proposed framework moves in the right direction of a fairer migration policy. Yet, it is worth emphasizing that in order to muster a genuine alternative to arriving in the EU through the 'back door,' member states' resettlement policies will need to shift gears. In 2015, which saw the most resettlements of the past 10 years, only 8,155 out of more than 330,000 positive decisions on asylum came through resettlements.⁴¹ We therefore call upon member states to start the process of increasing their national resettlement programs (through UNHCR or other agencies) even before EU legislation is passed. Member states' incentives when it comes to relieving irregular migratory pressure on the EU are broadly aligned. Hence, even without EU coordination, individual member states' programs have an impact.

Opening legal pathways for labor migration

EU countries where labor market conditions and the demographic outlook are favorable to labor immigration should further open up opportunities for legal migration from third countries. The EU Blue Card Directive and its latest proposed revision target highly qualified individuals.⁴² At the same time, some member states may also benefit from immigration by low- and medium-skilled workers. Providing third-country citizens with legal channels of labor migration to the EU could potentially serve as a further instrument to curb irregular migration flows. Governments of source countries may find it easier to cooperate with the EU in curbing irregular migration, e.g. through readmission agreements, if they can offer their citizens the prospect of legal migration. Development assistance from the EU and its member states could promote vocational training to develop skills that are useful in the country of origin and also allow participants to qualify for legal work in the EU. As with resettlement, the more EU countries are able to speak with one voice, e.g. by pooling the numbers of legal migrants accepted, the more leverage they will obtain with source countries.

³² European Commission, "Member States' Support to Emergency Relocation Mechanism," April 27, 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf (accessed May 4, 2017).

³³ European Commission, Proposal for a Regulation of the European Parliament and of the Council 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, May 4, 2016, <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-270-EN-F1-1.PDF> (accessed May 4, 2017).

³⁴ G. Gotev, "Schulz admits mandatory relocation of refugees has failed," EurActiv, September 16, 2016, <https://www.euractiv.com/>

<section/justice-home-affairs/news/schulz-admits-mandatory-relocation-of-refugees-has-failed/> (accessed May 4, 2017).

³⁵ Z. Gabrizova, K. Kokoszczynski, A. Zachová, and E. Zgut, "Visegrad and migration: Few prospects for a change in position," EurActiv, January 16, 2017, <https://www.euractiv.com/section/global-europe/news/visegrad-and-migration-few-prospects-for-a-change-in-position/> (accessed May 4, 2017).

³⁶ Article 3(2) of the Dublin Regulation, the 'sovereignty clause,' states that a member state may take responsibility for an asylum application even if it would not legally be responsible. Note that the Commission proposal on the reform of the Dublin system of May 4, 2016 intends to remove the sovereignty clause from the Dublin Regulation. However, this would not pose a problem if the proposal was adopted in its current form, including the relocation mechanism.

³⁷ European Commission, "EU budget for the refugee crisis," February 10, 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/eu_budget_for_the_refugee_crisis_20160210_en.pdf (accessed May 4, 2017).

³⁸ Eurostat data.

³⁹ This estimation assumes an average time of stay of one year for each asylum seeker over the 2015/2016 horizon. Calculations based on monthly data from Eurostat show that this holds approximately true.

⁴⁰ European Commission, "Enhancing legal channels: Commission proposes to create common EU Resettlement Framework," Brussels, July 13, 2016, http://europa.eu/rapid/press-release_IP-16-2434_en.htm (accessed May 4, 2017).

⁴¹ Eurostat, Eurostat Press Release 75/2016, Brussels, April 20, 2016.