2 Discussions on EU migration and asylum policy ahead of the new pact

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2019 was a year of institutional transitions within the EU, as the European Parliament held elections in May and a new European Commission took office in December. On the internal dimension of EU asylum and migration policies, namely the way asylum and mobility are managed within the Union, there was little legislative progress at the EU level. Instead, there was a distinct proliferation of national and bilateral modes of policy making by member states. At the same time, efforts on the external dimension of migration, including cooperation on migration management with non-EU countries, were notably strengthened. This chapter provides an analytical overview of developments in both areas.

The first part of this chapter discusses the growing tendency toward national and bilateral initiatives. It focuses on attempts to reach an agreement on dis-embarkation and relocation for people rescued in the Mediterranean (the discussions around the Malta Declaration), and on a series of national position papers issued in the final months of 2019. These initiatives reveal a growing fragmentation among member states that will be challenging to address. Doing so, however, should be a priority for the new European Commission.

The second part of this chapter outlines the latest developments in the EU's cooperation with non-EU countries on migration, particularly on arrivals and returns. The EU's approach to return and readmission has shifted to place an increasing emphasis on the use of conditionality to secure other countries' cooperation in readmitting non-EU nationals. This chapter provides an overview of these trends.

2.1 An uncertain future for European asylum policy

Stalled progress on the internal dimension

When the new European Commission took office on December 1, 2019, it inherited a gridlocked discussion about the future of the Common European Asylum System (CEAS) and the internal dimension of migration more broadly. The package of seven legislative proposals that together form the CEAS reforms, as first proposed by the Commission in 2016, has still not been adopted.[3] The proposals sought, among others, to increase harmonization by reducing states' discretion regarding asylum standards and procedures, to target the secondary movements of asylum seekers, and to revise the contentious mechanism for attributing responsibility for asylum seekers within the Union.

The package remains deadlocked despite there being agreement on most of these files. Five made it to trilogue negotiations and secured provisional compromises between the European Parliament and the Council. However, since all the proposals were legislatively and politically interlinked (the 'package approach'), a deadlock over two files has blocked the adoption of any of them. The two on which contention has centered, and which have never made it to trilogue negotiations, are the recast of the Dublin III Regulation (Dublin IV) and the proposed asylum procedures regulation (currently a directive).

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[3] The proposals introduced by the European Commission as part of the reform of the CEAS are a recast of the Dublin III Regulation, a recast of the Eurodac Regulation, a regulation establishing a European agency on asylum, an asylum procedures regulation, a qualification regulation, a recast of the Reception Conditions Directive, and the establishment of an EU Framework on Resettlement. See General Secretariat of the Council, "Reform of EU asylum rules," https://www.consilium.europa.eu/en/policies/migratory-pressures/ceas-reform/.

First, the entrenched disagreement over the Dublin IV regulation, and the notion of responsibility sharing for asylum seekers in particular, has been at the core of the deadlock over the package. In essence, the Commission proposal advanced in May 2016 retained the current system for allocating responsibility (namely, the first country of entry), but introduced a 'corrective allocation mechanism' to alleviate the pressure on member states receiving asylum seekers at over 150 percent of their capacity.[4] The European Parliament issued its report in November 2017 calling for far greater responsibility-sharing measures. The Council never issued a position on the regulation, given the significant disagreements between member states.

Several states, primarily those on the southern border, supported a revision of the regulation that entails greater responsibility sharing for asylum seekers within the Union. Meanwhile, the 'Visegrad Four' states (Hungary, the Czech Republic, Poland, and Slovakia) remain irreconcilably opposed to any manda-

border, the potential for using it at locations other than the external border or transit zones, and most importantly whether the procedure should be optional or mandatory. States at the EU external border, whose asylum systems are already under pressure, forcefully reject making border procedures mandatory, claiming that it would be too inflexible and impractical, especially at sea borders. This would require considerable staff and resources for procedures to be completed in time and to cover the entire external border (such as the shores of southern states), create multiple new responsibilities, and entail the potential of large-scale detention. Despite this opposition, discussions in the Council have made modest advancements. A possible compromise would involve making border procedures mandatory only after a transition period and on certain grounds.[5]

In addition, the decision to uphold the package approach even as the difficulty of resolving these deadlocks became apparent has itself been subject to criti-

Table 1 Indications of member states' positions on the future of EU-wide responsibility sharing

Support mandatory relocations	Hold flexible or varying positions on the form of solidarity	Support voluntary relocations
Belgium, the Netherlands, Sweden, Bulgaria, Cyprus, Greece, Italy, Malta	Germany, France, Spain, Portugal, Slovenia, Lithuania, Poland, Finland, Croatia, Latvia	Denmark, Austria, Romania, the Czech Republic, Hungary, Slovakia, Ireland, Estonia, Latvia

Source: Own compilation, based on EU and national documents, as well as media comments, as of early 2020.

tory relocation. The positions of other countries that receive large numbers of asylum applications, such as France and Germany, have changed over time, becoming relatively open to incorporating a degree of flexibility in solidarity models (Maushagen 2018; see also table 1). Other disagreements in the context of the Dublin IV regulation concern the duration of responsibility, the scope of pre-Dublin checks, and the inclusion of beneficiaries of international protection in the Dublin rules.

Second, the proposal for an asylum procedures regulation was also stuck in the Council. Member states have been especially divided on the Commission's proposed inclusion of accelerated procedures at border posts, which involve faster processing with reduced safeguards for asylum seekers. Sticking points have included the deadline for keeping people at the

cism (MEDAM 2019). The Parliament and the Council insisted on treating the reform proposals as a package, rather than moving forward on at least those proposals on which there was agreement: nothing is agreed until everything is agreed. Both sides feared that 'unpacking' them would entail losing leverage with respect to the more sensitive Dublin discussions. The Parliament sought to press for a more systematic and equitable system of responsibility sharing, whereas within the Council, several states were insistent on opposing any system based on mandatory relocations. The European Council Conclusions of June 2018, for example, stressed states' insistence on "a speedy solution to the whole package."[6] Under President Jean-Claude Juncker, the Commission made efforts to separate the proposals: in December 2018, Home Affairs Commissioner Dimitris Avramopoulos called on the Council

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[4] Capacity would be based on a reference key, calculated through a member state's total population size and GDP in equal weighting.

[5] Council of the European Union, "Note from the Presidency to the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA): Border Procedures," Brussels (2018), https://www.statewatch.org/news/2018/oct/eu-council-ceas-asylum-border-procedure-13376-18.pdf.

[6] European Council, European Council Conclusions of 28 June, Brussels (2018), https://www.consilium.europa.eu/en/press/press-releases/2018/06/29/20180628-euco-conclusions-final/.

and the Parliament to be "realistic and pragmatic" and adopt five of the seven proposals.[7] Still, this turned out to be too little too late to influence the discussions.

Because of these entrenched divisions between member states, and the lack of procedural decisions to proceed despite them, no significant progress was made on the seven CEAS proposals prior to the European Parliament elections in May 2019 or the change of the European Commission in late 2019. The new Commission announced in February 2020 that it planned to drop its proposals on both Dublin and asylum procedures. By contrast, the proposals that had made the most progress dealt with the external dimension (such as the revised European Border and Coast Guard Regulation, the revised Visa Code, and the recast Return Directive), as discussed in a later section.

Proliferation of national and bilateral policy making

In the absence of progress at the EU level, policy making has shifted decisively to national and bilateral modes. Throughout 2018 and 2019, ad hoc initiatives addressing the internal dimension of asylum policy multiplied, led by either individual member states or 'coalitions of the willing.'

At the June 2018 European Council summit, expectations were high for breaking the deadlock on several proposals, but no agreements or serious commitments were reached. On the sidelines of the summit, however, Germany began negotiating bilateral agreements with several member states to address secondary movements by securing quick transfers of asylum seekers who had been registered elsewhere. Administrative arrangements with Spain, Greece, and Portugal entered into force later that year.[8]

These arrangements were presented as an interim solution in the context of stalled negotiations, but faced substantial criticism for attempting to bypass the existing legal framework (ECRE 2018, 7). First, while replicating commitments that already existed under the Dublin III Regulation, the agreements provided fewer procedural safeguards and fundamental rights protections for asylum seekers before and after the transfer than those afforded by the regulation. In doing so, the agreements violated the applicable EU law, and should not have been applied (Hruschka 2019), as was later confirmed by a German administrative court.[9] Second, experts stressed that they undermined the credibility of the current and any prospective asylum package, as they opened up the possibility of member states openly violating the asylum standards therein (ECRE 2018, 7). Third, concerns were raised about negotiations that would have an impact on EU policies being conducted without the parliamentary and public scrutiny that EU-level procedures normally receive (Refugee Support Aegean 2018).

Two proposals advanced by the Austrian Council Presidency in the second half of 2018 also reflect the tendency toward national action. In September 2018, Austria and Italy issued a proposal to process asylum seekers on ships (*Deutsche Welle* 2018). The following month, Austria and Denmark released a joint vision paper.[10] In it, they called for providing protection only to those individuals who cannot find asylum closer to their home country. All others would be denied asylum and would, instead, get European economic assistance in their region. Both ideas were quickly dismissed as incompatible with international law (Dastyari and Ghezelbash 2018; Ruhs and Barslund 2018).

In 2019, unilateral or coalition-of-the-willing approaches gained further prominence, with two particularly relevant initiatives. One is a temporary disembarkation and relocation mechanism established for individuals rescued in the Mediterranean (the 'Malta Declaration'). Another is a series of non-papers by member states in late 2019 in the context of the upcoming New Pact on Migration and Asylum. Both initiatives reveal the growing polarization of member states, and the urgency of addressing it.

The Malta Declaration

A long series of high-profile cases of search and rescue operations in the Mediterranean took place in the summer of 2019. In several of the cases, Italy and

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[7] European Commission, "Remarks by Commissioner Avramopoulos on Progress Made under the European Agenda on Migration," Brussels (2018), https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_18_6660.

[8] Hellenic Republic and Federal Republic of Germany, "Administrative Arrangement on Cooperation when Refusing Entry to Persons Seeking Protection in the Context of Temporary Checks at the Internal German-Austrian Border," Federal Ministry of the Interior, Building and Community, Berlin (2018); Kingdom of Spain and Federal Republic of Germany, "Administrative Arrangement on Cooperation between Germany and Spain when Refusing Entry to Persons Seeking Protection in the Context of Temporary Checks at the Internal German-Austrian Border," Federal Ministry of the Interior, Building and Community, Berlin (2018); and Federal Ministry of the Interior, Building and Community, "Federal Minister of the Interior Seehofer Welcomes his Portuguese Counterpart," Berlin (2018), https://www.bmi.bund.de/SharedDocs/pressemitteilungen/EN/2018/portugiuese-counterpart.html.

[9] Administrative Court of Munich, Case M 18 E 19.32238, Amygdaleza Detention Center v. Bundesrepublik Deutschland, August 9, 2019, https://www.proasyl.de/wp-content/uploads/Eilbeschluss-VG-M%C3%BCnchen_8.8.2019-2.pdf.

[10] Federal Ministry of the Interior, Republic of Austria and Ministry of Immigration and Integration, Denmark, "Vision for a Better Protection System in a Globalized World" (2018), https://uim.dk/filer/nyheder-2018/vision-for-a-better-protection-system-in-a-globalized-world.pdf.

Malta did not allow the people rescued at sea to disembark in their ports for up to 19 days, until other member states had agreed to relocate them. In this context, and under Franco-German impetus, several informal discussions were held on a predictable mechanism to manage future cases. A meeting in Malta on September 23, 2019 sought to formalize the agreement (the Malta Declaration), which was signed by France, Germany, Italy, and Malta.

According to the leaked Joint Declaration of Intent, the participating states would allow people rescued by private vessels to have access to a safe port, which could be rotated on a voluntary basis.[11] Following disembarkation, participating states would relocate the individuals rescued based on predeclared pledges and within a period of four weeks. Rescued migrants would be subject to fast-tracked asylum and return procedures (if applicable). The mechanism would act as a pilot for six months, yet could be suspended in the event of disproportionate migratory pressure. The agreement therefore envisions solidarity with a very limited scope, namely when it is least urgent and for a small percentage of arrivals. Only 9 percent of the migrants who entered Italy irregularly in the 14 months before the Malta Declaration had been rescued by nongovernmental organizations (NGOs); all the others had arrived autonomously and were excluded from relocations (Villa and Corradi 2019).

Similar to other ad hoc initiatives, the informal, opaque, and extra-Treaty nature of the agreement also raises some legitimate concerns. These include questions over whether the streamlined asylum and return procedures would comply with the minimum safeguards expected in the EU asylum acquis. Notably, there is a lack of transparency or systematic oversight of the relocation process, including whether existing family ties would be considered (Neidhardt et al. 2019, 4). Leaked guidelines on the disembarkation and relocation process reference the possibility for states to indicate migrant "profiles" that they are willing to accept, which could give way to discriminatory practices.[12] Relevant questions about the agreement's exact terms remain unanswered, limiting judicial and democratic scrutiny.

The Malta Declaration has likewise received a cold reception from other member states. It was presented at the Justice and Home Affairs Council meeting on October 8, 2019 with a view to securing relocation commitments from additional member states. As was made clear from the outset by the original signatory states, success would depend on widespread endorsement. However, only three more countries confirmed their support—Ireland, Luxembourg, and Portugal—with at best a lukewarm response from some others. States that have traditionally rejected responsibility-sharing mechanisms, including the Visegrad group, Austria, and Denmark, remained opposed (Bault 2019). At the same time, the discussions revealed the growing divisions between member states on the external border: all other states of first arrival also rejected the Malta Declaration. Cyprus, Greece, and Bulgaria submitted a paper on the Eastern Mediterranean Migration Route Initiative, calling for greater focus on and resources for the region (Barigazzi 2019). Spain refused to participate in relocations, and reiterated that solutions must apply to the entire Mediterranean, and not only to Italy and Malta (Abellán 2019).

The Malta agreement has remained instrumental in coordinating disembarkations and relocations since then. The Commission stated that in 2019, it had coordinated the relocation of 1,000 people rescued at sea from Italy and Malta in the context of the Malta Declaration and earlier ad hoc arrangements (Schieffer 2020). Although as many as 10 member states have participated at one point, most of the relocations appear to have been to France and Germany. Many had hoped that the Malta Declaration would be a gesture of solidarity that could serve as a litmus test for states' willingness to redistribute asylum seekers on a limited scale, perhaps gradually unlocking compromise on Dublin. Instead, it has confirmed the difficulty of reaching an agreement even on responsibility-sharing schemes that are ad hoc, temporary, and voluntary.

Member states' policy positions

As a second development, the autumn of 2019 was marked by a series of position papers on European

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[11] See the "Joint Declaration of Intent on a Controlled Emergency Procedure—Voluntary Commitments by Member States for a Predictable Temporary Solidarity Mechanism," Valletta, September 23, 2019 (published by Statewatch), http://www.statewatch.org/news/2019/sep/eu-temporary-voluntary-relocation-mechanism-declaration.pdf.

[12] Council of the European Union, General Secretariat, "Guidelines on Temporary Arrangements for Disembarkation," Brussels (2019), http://statewatch.org/news/2019/jun/eu-council-wk-guidelines-on-temporary-arrangement-disembarkation.pdf.

migration policies released by several member states. These sought to inform the Commission's New Pact on Migration and Asylum—a new proposal for reforming the European asylum system expected to be published in the late spring of 2020.

One of the most impactful proposals came from Germany in November 2019 and advocated a "reorientation" of the CEAS.[13] It proposed, to begin with, screening asylum applications at the EU's external border in a quick "initial assessment." The EU asylum agency (EUAA, currently the European Asylum Support Office, EASO) would play a strong role in these assessments. Asylum seekers with manifestly unfounded or inadmissible applications—potentially including individuals traveling from a safe non-EU country—would be denied entry into the EU and swiftly returned with the support of Frontex.

For applicants who were allowed to enter the EU, the EUAA would determine which member state should be responsible for examining their asylum applications and making final decisions. Each state's predefined responsibilities, or 'fair share,' would be calculated based on population size and GDP. Individuals would be transferred to the responsible state, which would be permanently responsible for that person's asylum application and, if applicable, return procedures. Applicants would only receive accommodation and social assistance in the member state responsible.

France's non-paper addressed similar issues.[14] It called, first, for mandatory accelerated asylum procedures in 'controlled' centers at the external border, followed by swift returns by Frontex of those rejected, which echoed the German proposal. Second, it called for a mandatory solidarity mechanism among EU member states for those in need of protection in 'crisis periods.' There would be additional, systematic solidarity measures for individuals rescued at sea, not just in crisis periods, so as to secure southern states' cooperation on disembarkation. Solidarity would primarily involve relocations, but states that refused to accommodate asylum seekers could also make substantial financial, material, or personnel contributions to relevant EU agencies. A suspension of EU funds could apply for states that contributed in neither way.

Greece issued two statements. A non-paper in December focused on returns (ANA-MPA 2019). It argued for, among others, a new framework on the mutual recognition of return decisions within the EU—so that return decisions issued by the responsible state take precedence over Dublin transfers—and on a greater use of leverage to secure readmission cooperation with non-EU countries. Greece issued a further position paper in January 2020 (*Ekathimerini* 2020). It stressed the need for a mandatory responsibility-sharing mechanism, not only in terms of financial and humanitarian assistance, but also the hosting of asylum seekers.

A leaked document from the Finnish Presidency of the Council emphasized the need to accelerate readmission cooperation on returns, including through broad use of leverage.[15] Denmark, in turn, issued a non-paper calling for the external processing of asylum seekers in reception centers in North Africa, while withdrawing the possibility to spontaneously apply for asylum in Europe (Thobo-Carlsen 2019). Finally, Italy issued a non-paper, which was not circulated, but which reportedly also focused on returns and on restoring a fully functioning Schengen area (Eder 2019).

A couple of observations can be made about this series of proposals. First, many of these ideas are not new. Rather, they are often proposals that have been previously rejected due to the considerable practical or legal obstacles to their implementation, due to the considerable weakening of safeguards for migrants they entail compared with the existing EU framework, or due to the inability to secure EU-wide commitments on them. Typically, they disproportionately reflect the interests of the member state drafting the proposal, and thus will not necessarily be compatible with others. As such, these modes of policy making are more likely to further polarize and impede discussions on a common asylum system than they are to produce a new way forward.

External processing, which is advocated by Denmark, was discussed extensively in EU-wide debates in 2018, and subsequently in the Austrian-Danish proposal of that same year. Although the European Commission was tasked with examining the feasibility of this approach, it was later abandoned.[16] This was, in part, due to the legal and practical hurdles to its implementation, including non-EU countries' unwillingness to host processing centers (McNamara 2018; Carrera and Guild 2017). The screenings at the border proposed by Germany incorporate accelerated border procedures, which have already proven contentious in both the Council and the European Parliament to the point of blocking any progress on the proposed asylum procedures regulation. If they are to be carried

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[13] See "Food for Thought: Outline for Reorienting the Common European Asylum System", Berlin, November 13, 2019 (published by Statewatch), http://www.statewatch.org/news/2019/dec/eu-asylum-FoodForThought-GermanNoPaper.pdf.

[14] Derived from the document "Refondation de l'espace Schengen," to which the author had access through electronic correspondence on a confidential basis at the time of writing, in January 2020. For further details, contact the author at o.sundberg@epc.eu.

[15] Council of the European Union, "Policies and Tools to Enhance Readmission Cooperation—Presidency Discussion Paper," Brussels (2019), http://www.statewatch.org/news/2019/nov/eu-council-readmission-cooperation-13190-19.pdf.

[16] European Commission, "Managing Migration: Commission Expands on Disembarkation and Controlled Centre Concepts," Brussels (2018), https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4629.

forward, they will need to incorporate an innovative way of addressing earlier concerns. Certain significant obstacles, such as the compatibility of accelerated procedures with minimum safeguards for people seeking asylum, how large-scale detention can be avoided, and whether they are feasible in practice, have not yet been overcome.

Second, the proposals reflect growing differences among member states' positions, even though there are some areas of agreement. For example, states share an interest in the external aspects of migration management, most notably return and the use of leverage to increase readmission cooperation. Several proposals also emphasize the need for an emergency mechanism to respond to future surges in arrivals (*Ekathimerini* 2020), and reflect a consensus that "Dublin has failed" and will need substantial reform.[17] Crucially, however, they continue to disagree on what should replace Dublin and on the principles that should guide the allocation of responsibility in the future, whether during a 'crisis' or not.

Germany advocates a mandatory relocation system, to which the Visegrad states immediately expressed their opposition (*Hungary Journal* 2019). As noted above, long-standing divisions over responsibility sharing remain entrenched, even when it concerns only temporary, limited, and voluntary commitments, such as under the Malta Declaration. At the same time, Greece has stressed that any system without compulsory relocations, even if it entails financial or other forms of solidarity as in the French proposal, would be "unfair," "inadequate," and "against our fundamental values" (*Ekathimerini* 2020). Moreover, Greece has asserted that responsibility should not be permanently allocated to one state; yet this is a core tenet of the German proposal, so as to avoid secondary movements and duplicating assessments of an asylum application.

These divisions risk continuing to block progress on the future of European asylum policy. The Commission's New Pact on Migration and Asylum is premised on the goal of building consensus among member states; this will be no easy task.

As leaked details of discussions on the new pact suggest, the most likely path forward looks set to involve a combination of mandatory flexible solidarity and border procedures. As in the German proposal, this combination would seem to be more palatable and to give all states something to support: stronger border controls would most probably be made a pre-

condition for any form of responsibility sharing and vice versa. On solidarity, member states' positions are bound to lead to a balance between some form of substantial solidarity being guaranteed to southern member states, and some form of flexibility being granted to Central European states that refuse relocations. This will involve either mandatory contributions or strong financial incentives to contribute. It would also likely be combined with efforts to establish a border procedure, which is either partly or fully mandatory. To ensure its feasibility, and to avoid placing too much pressure on states of first arrival, other states will need to contribute substantial resources to Frontex and EASO to facilitate asylum assessments, the allocation of responsibility, and return procedures if appropriate.

If this is the way forward, the degree of existing fragmentation within the EU should not be underestimated. The proposals will still require difficult negotiations before getting the support of member states, as several red lines will necessarily be crossed. Furthermore, important implementation issues will remain, such as how to avoid unacceptably weakening safeguards on asylum procedures or giving rise to unsustainable large-scale detention, as well as how to secure sufficient, reliable, long-term solidarity, whether through relocations, financial contributions, or otherwise.

Winding back states' divisions will be critical under this Commission. As noted throughout this section, the increasingly unilateral and bilateral modes of policy making they have fostered are unlikely to be constructive to long-term reform. For a start, they tend to limit public scrutiny and bypass the procedural expectations of policies that have an EU-wide impact. Furthermore, they tend not to be workable proposals that can translate effectively to the EU level. Finally, they undermine confidence in the future CEAS. By creating 'interim' alternatives to the existing legal framework, states complicate efforts to develop binding legislation and secure buy-in for harmonization efforts. Member states will not be more inclined to comply with the future package, or accept compromises reached at the EU level, if earlier compromises have been ignored by certain countries. This is particularly problematic when overt attempts to evade CEAS safeguards or replace its processes unilaterally go unchallenged by the Commission. In other words, treating the CEAS as a 'lame duck' is likely to be self-fulfilling.

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[17] "Food for Thought: Outline for Reorienting the Common European Asylum System," Berlin, November 13, 2019 (published by Statewatch).

2.2 Developments in EU external migration policy

Whereas the internal dimension of EU migration policy has been marked by stalling progress and increasing divisions in member states' positions, the external dimension has taken center stage as a policy area where progress appears easier to achieve. Efforts have concentrated, in particular, on strengthening cooperation with non-EU countries to manage irregular arrivals and on efforts to increase the rate of return and readmission of migrants without permission to remain in the EU. Other aspects of the external dimension, such as resettlement or developing labor migration channels, have received less attention.

Partnerships with non-EU countries to limit arrivals through irregular channels have intensified. Much of this has taken place under the EU Emergency Trust Fund for Africa (EUTF), which targets countries of origin and transit and has improved migration management as a primary objective. As of January 2020, €4.4 billion had been approved (see table 2).

Cooperation with Libya and Turkey received specific attention in 2019. Despite facing questions from the European Parliament among others, the European Commission has continued the EU's partnership with the Libyan coastguard, which includes training, information sharing, and considerable financial support.[18] Meanwhile, cooperation under the EU-Turkey Statement of 2016 has come under increasing strain. Turkish President Recep Tayyip Erdoğan has made recurring threats to cease patrolling the border in the absence of more financial support. These escalated in early March 2020 following his announcement that Turkey had 'opened the doors' to asylum seekers hoping to enter Europe. Although the Commission has so far stood by the agreement and discussions are ongoing on a further allocation of funds to Turkey, the form of future cooperation under the Statement remains unclear at the time of writing.[19]

Table 2 Allocations under the EUTF, January 2020

Region	North of Africa	Sahel/Lake Chad	Horn of Africa
Countries	Morocco, Algeria, Tunisia, Libya, Egypt	Burkina Faso, Cameroon, Chad, Cote d'Ivoire, the Gambia, Ghana, Guinea, Mali, Mauritania, Niger, Nigeria, Senegal	Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan, Tanzania, Uganda
Total funds to region	€ 807 million	€ 2,023 million	€ 1,611 million

Source: European Commission, "Factsheet—EUTF for Africa: The EU Emergency Trust Fund for Stability and Addressing Root Causes of Irregular Migration and Displaced Persons in Africa," Brussels, 2020.

Table 3 Returns of migrants following return decisions by EU countries, 2014—18

Year	2014	2015	2016	2017	2018
Issued return decisions	470,080	528,645	486,150	505,300	478,155
Returns conducted	170,415	196,190	228,905	189,740	170,360
Rate of effective returns (%)	36.3	37.1	47.1	37.6	35.6

Source: Eurostat, own compilation.
Note: Figures are for the EU28 and only include returns to non-EU countries, not within the EU.

[18] European Commission, "EU Support on Migration in Libya: EU Emergency Trust Fund for Africa—North of Africa Window," Brussels (2019), https://ec.europa.eu/trustfundforafrica/sites/euetfa/files/eutf-factsheet_libya_dec_2019_1.pdf.
[19] The situation on the Greece-Turkey border was continuing to unfold.

EU return and readmission policy

At the same time, increasing returns of migrants without a legal right to remain has grown as a political priority. The rate of effective return to non-EU countries, or the percentage of return decisions that are actually enforced, has mostly remained under 40 percent.[20] These include voluntary returns following an order to leave, which are approximately half of all returns (see table 3).

These results vary significantly from one member state to another. Between 2016 and 2018, Portugal, Hungary, Slovenia, the Czech Republic, and France had the lowest rates of return (all under 15 percent), whereas Malta, Latvia, Poland, Romania, and Lithuania were all above 85 percent (see figure 1).

The figures also varied by the returnees' country of nationality. Of the countries for which the largest number of return decisions were issued across 2016-18 (over 20,000 decisions), Albania, Serbia, Kosovo and Ukraine had the highest rates of return. Mali, Guinea and Syria had the lowest rates, all below 7 percent. Rates for a selection of countries with a high number of return decisions are shown in figure 2.

The EU has long reiterated that effective expulsion is a prerequisite for the integrity of its asylum and mi-

Figure 1 Breakdown of return rates by EU countries, 2016−18
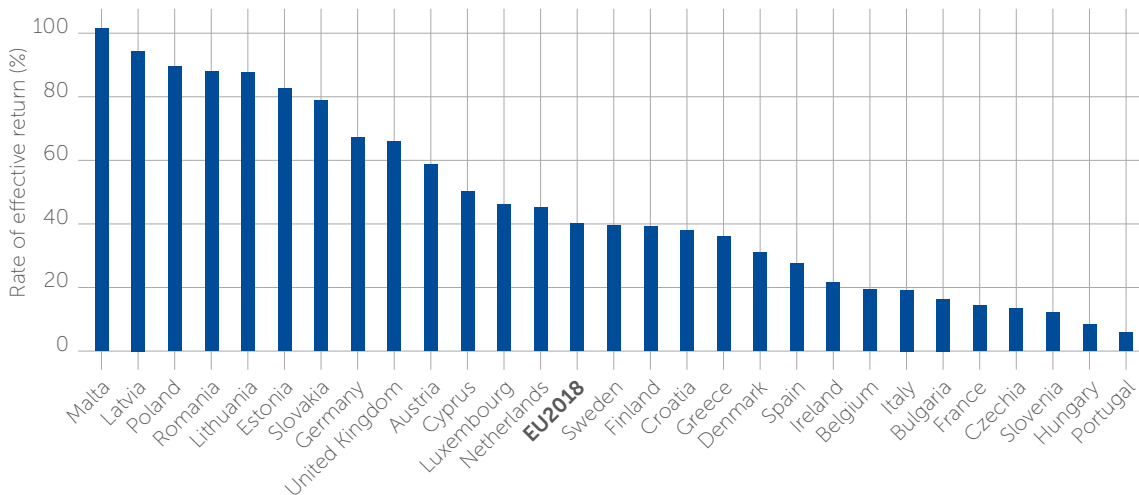
Source: Eurostat and own compilation.
Note: The figures only include returns to non-EU countries, not within the EU. The absolute number of return decisions issued by member states from 2016-18 vary widely, from 1,400 in the case of Malta, to 271,235 in the case of France.

Figure 2 Breakdown of return rates by nationality of selected non-EU countries, 2016-18
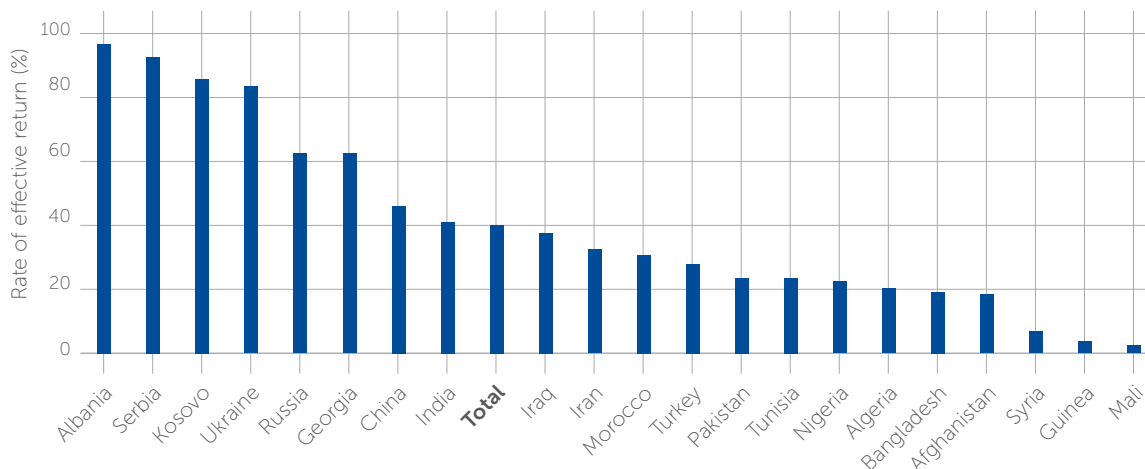
Source: Eurostat and own compilation.
Note: The figures relate to the nationality of individuals issued return decisions and returned. However, not all people were returned to their country of nationality. Only nationalities for which at least 20,000 return decisions were issued from 2016-18 are included. The absolute number of return decisions issued for the countries included from 2016-18 vary widely, from 22,400 in the case of Mali to 101,015 in the case of Morocco.

[20] European Commission, "2018 Annual Activity Report—DG Migration and Home Affairs," Brussels (2019, 10), https://ec.europa.eu/info/sites/info/files/home_aar_2018_final.pdf.

gration system. As such, both the Jean-Claude Juncker (2014–19) and Ursula von der Leyen (2019–24) European Commissions have sought to increase the low rate of returns. In 2018, the Commission advanced the goal of achieving a "return rate of at least 70% by 2020."[21] While the new Commission has dropped that unrealistic figure, it has retained the emphasis on developing a "more robust system of readmission and return."[22] It is already clear from the hearings, mission letters, and recent statements of the two commissioners with a migration portfolio, Ylva Johansson and Margaritis Schinas, that this will remain a priority in the New Pact on Migration and Asylum.

The Commission has identified several factors influencing the low rate of returns. These include the lack of cooperation by non-EU countries (such as in issuing travel documents), practical problems in the returning member state (such as in determining the identity of a returnee), and migrants' unwillingness to cooperate with return decisions for various reasons. Yet, there are other limitations to a high rate of return that will be much harder to address. For instance, many people subject to return decisions cannot be returned without violating international law, and in particular the principle of non-refoulement. Some of the countries with the largest number of pending returns in 2019 are refugee-producing or conflict-ridden, such as Afghanistan, Mali, and Iraq.[23] Returns to these countries, or to others like Turkey that pose risks of indirect (or secondary) refoulement, have faced repeated legal challenges across the EU (Sundberg Diez 2019). This can occur, for example, because EU asylum procedures under the Qualification Directive do not consider all grounds that could amount to refoulement, and because individuals who would face persecution if returned may be refused international protection on procedural or technical grounds. This is the case for a non-trivial proportion of rejected applications. At the same time, scholars have continually highlighted concerns about how data on returns are collected, including the likely double-counting of return decisions and undercounting of unmonitored voluntary returns (ibid., 12).

Determining the scale of these limitations (the number of 'unreturnable' people, or the number of unrecorded returns) is a difficult feat. Whereas returning individuals without a legal right to remain continues to be a legitimate EU policy objective, increasing the rate of returns much beyond the current rate may be both a more nuanced and a more complex policy issue than present policies suggest.

Recent policy developments

Several initiatives aimed at accelerating returns have been launched in the recent past, spanning a wide range of policy areas. These include revisions of the Visa Code, the European Border and Coast Guard Regulation, and the Return Directive, as well as intensified negotiations on readmission agreements with non-EU countries.

The amendment of the Visa Code was proposed in March 2018 and entered into force in February 2020. It expands the role of visa policy in readmission cooperation with non-EU countries. It establishes annual assessments by the Commission of the level of non-EU countries' cooperation on readmission. Based on these assessments, the Commission will propose either visa restrictions or visa facilitation measures regarding specific non-EU countries to the Council. In this way, the EU hopes to incentivize further cooperation.

The revised European Border and Coast Guard (Frontex) Regulation was proposed in September 2018. It was formally adopted in November 2019 and entered into force that December. It incorporates a significantly expanded mandate for the agency to assist member states in conducting returns, including in the preparation of return decisions and acquisition of travel documents. The number of return operations coordinated by Frontex had already risen dramatically, from approximately 3,500 in 2015 to 14,000 in 2017.[24] This remained only 9 percent of all effective returns, however, and the agency's role is projected to increase further.

In September 2018, the Commission also proposed the first recast of the Return Directive since its entry into force in 2010. The Directive sets out common standards and procedures for member states to apply when returning non-EU nationals. The recast proposal seeks to expedite returns by, among others, expanding the grounds for detention, broadening the use of entry bans, extending returnees' obligations to cooperate, and introducing accelerated return procedures at border posts. The European Parliament issued a first draft report in response in January 2019, although the

[21] European Commission, "Managing Migration: Possible Areas for Advancement at the June European Council," Brussels (2018, 3), https://ec.europa.eu/commission/sites/beta-political/files/euco-migration-advancement-june-2018_en.pdf.

[22] European Commission, "Mission Letter to Ylva Johansson, Commissioner-designate for Home Affairs," Brussels (2019, 5), https://ec.europa.eu/commission/sites/beta-political/files/mission-letter-ylva-johansson_en.pdf.

[23] Frontex, "Risk Analysis for 2019," Warsaw (2019, 25), https://frontex.europa.eu/assets/Publications/Risk_Analysis/Risk_Analysis/Risk_Analysis_for_2018.pdf.

[24] Frontex, "Risk Analysis for 2018," Warsaw (2018, 29), https://frontex.europa.eu/assets/Publications/Risk_Analysis/Risk_Analysis/Risk_Analysis_for_2018.pdf.

rapporteur changed following the European Parliament elections the following May (issuing an updated draft report in February 2020). The Council agreed on a partial position in June 2019—an agreement could not be reached on contentious provisions related to accelerated border procedures. Negotiations have not yet begun at the time of writing.

Meanwhile, negotiations with non-EU countries on readmission cooperation have continued, and have taken an increasingly informal form. While the EU has reached only one formal readmission agreement since 2016 (with Belarus), it has, over the same time span, reached at least 10 informal arrangements. These are listed in table 4. Such informal arrangements tend to be easier to negotiate, but they are not legally binding international agreements and, as such, there is a lack of democratic and judicial scrutiny over their contents (Sundberg Diez 2019). The Commission continues to pursue additional partnerships: negotiations

are underway or have recently stalled with Morocco, Tunisia, Algeria, Nigeria, Jordan, and China.

One common thread in these initiatives on return is the resort to conditionality to increase cooperation from non-EU countries on readmission. New policy tools, such as the Visa Code, increasingly allow member states to make cooperation in other policy areas conditional on a non-EU country's support for the EU's migration-management objectives. Discussions on extending this approach to other policy areas—such as development funding under the new EU budget, trade, or the creation of legal pathways—have recently gained traction. These developments suggest that the EU's approach to readmission cooperation will rely heavily on conditionality, and on employing 'all possible leverage' over non-EU countries. However, the effectiveness of this strategy is uncertain, and its implications for broader EU policy objectives need to be investigated. These points are discussed in the following chapter.

Table 4 Informal EU-wide readmission agreements with non-EU countries since 2016

Country	Format of informal cooperation	Date
Cote d'Ivoire	Joint document	July 2, 2018
The Gambia	Good Practices	May 8, 2018
Ethiopia	Admission Procedures	February 5, 2018
Bangladesh	Standard Operating Procedures	September 25, 2017
Guinea	Good Practices	July 24, 2017
Mali (subsequently withdrew)	*Joint Migration Declaration*	*December 11, 2016*
Belarus	Mobility Partnership	October 13, 2016
Afghanistan	Joint Way Forward	October 2, 2016
Ghana	Joint Migration Declaration	April 16, 2016
India	Common Agenda on Migration and Mobility	March 29, 2016
Turkey	Joint Statement	March 18, 2016

Source: Own compilation based on official EU documents.