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Policy Update December 2018

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UN Global Compact for Migration   Implications of Brexit   Humanitarian visas

This policy update covers developments on the draft Brexit Withdrawal Agreement, and the implications for the rights of EU27 citizens in the UK, and UK citizens in the EU27. Further sections look at Germany's bilateral asylum transfer agreements with Greece, Spain and Portugal, and consider the continued extension of internal border controls in the Schengen area. Borders are also discussed in the context of the treatment of refugees at the EU's external border in the East and the South.

The special focus considers the adoption of the UN Global Compact for Safe Orderly and Regular Migration (GCM) amidst disinformation campaigns and contention. While several states decided not to endorse it, the adoption of the Compact in Marrakech on 10 December by an overwhelming majority of states was still widely considered a historic achievement.

Further sections in this update look at the European Parliament's resolution for a legislative proposal on humanitarian visas. With this initiative, the Parliament wants to enable asylum seekers to apply for visas in EU member states' embassies or consulates in order to decrease the need for dangerous journeys. The text also considers the adoption of a Parliament mandate to negotiate changes to the Schengen Borders Code, and in particular to the rules on temporary reintroductions of internal border controls. The case law section considers the CJEU's judgements in K&B and Ayubi, concerning family reunification and the link between social assistance rights and residence status in Austria respectively.

In the Closer Look section, ECRE and PICUM introduce their work on influencing EU funding for the inclusion of third country nationals in the negotiations of the Multiannual Financial Framework for the years 2021-2027.

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SPECIAL FOCUS

Photo: FETHI BELAID/AFP

Contention around the Global Compact for Migration

On 10 December, following a two-year negotiation process, the UN Global Compact for Safe, Orderly and Regular Migration was adopted at a UN Intergovernmental Conference in Marrakech. The Compact puts forward 23 objectives that range from providing accurate information at all stages of migration to managing borders in a secure and coordinated manner. The Compact also includes goals that focus on the human rights of migrants. For instance, it calls on signing parties to provide access to basic services or empower migrants in the interest of full inclusion and social cohesion.

The rationale behind these objectives can be traced back to the large migration movements of 2015 and 2016, and the parallel increase in awareness of the need for international cooperation in this area. In that light, the 2016 New York Declaration for Refugees and Migrants of the UN General Assembly called for the adoption of a UN Global Compact on

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Refugees (adopted on 17 December) and a UN Global Compact for Safe, Orderly and Regular Migration. Throughout the past months, particularly this last Compact became the subject of considerable controversy. In what follows, this special focus analyses the political debates around the Compact. A second section provides a fact-check on some of the main points of contention and reflects on what is ahead.

In July 2018, all states, except the US, approved the final draft of the Global Compact for Migration at a meeting in New York. Controversy unfolded soon after, however, as the Compact became subject to heated domestic debates in an increasing number of states. Outside of the EU, these debates led to the withdrawal of support from, chronologically, Israel, Australia, the Dominican Republic and Chile. Switzerland has delayed its decision pending a vote from Parliament.

Within the EU, Hungary was the first to announce its withdrawal from the Compact. Consistent with the government's anti-immigration stance, Péter Szijjártó, the Hungarian Minister for Foreign Affairs and Trade, claimed that the Compact would undermine national sovereignty. It was followed by Austria which, in October, similarly announced that it would withhold its endorsement. Commentators have accused radical right groups such as the "Identitäre Bewegung" of discrediting the Compact in mainstream media outlets, leading to political pressure on the populist far-right Freedom Party of Austria (FPÖ) and its coalition partner, the centre-right Austrian People's Party (ÖVP). Moreover, a misleading official translation into German of the original title of the Compact, including the word "planned" (planmäßig) instead of "regular" (regulär) migration reportedly contributed towards opposition against the Compact and Austria's withdrawal. In light of its current role holding the rotating EU Council presidency, the decision of the Austrian government was criticised, including in European Parliament circles, for failing to show EU leadership. The Austrian decision was soon followed by similar announcements from, chronologically, Bulgaria, the Czech Republic and Poland. These governments highlighted concerns related to a perception of the text as encouraging irregular migration. At the end of November, Slovakia similarly withdrew support for the Compact after a vote in the national parliament. Foreign Minister Miroslav Lajčák first resigned in response, yet later withdrew his resignation. Four days ahead of the Marrakech conference, Latvia was the last EU state to withdraw support following a national parliament vote on the question. Italy, in turn, decided not to attend the conference in Marrakesh, and instead to put the vote to Parliament, delaying its decision.

Several other member states also experienced heated domestic debates over the question of whether or not to endorse the Compact. In Croatia, Estonia, the Netherlands and Slovenia discussions were particularly strong. The Dutch government endorsed the Compact but will put forward an additional 'explanation of position' paper. This paper, reportedly, aims to clarify, amongst others, that the Compact's text cannot be used as a basis in asylum procedures. Slovenia endorsed the Compact, but domestic political actors have criticised the government for failing to put the question to a parliamentary vote. Estonia did not send a representation to the Marrakech conference but is expected to endorse the Compact at the 19 December UN General Assembly session in New York. Croatia was represented in Marrakech by Interior Minister Davor Božinović.

In Germany and France, questions on the Global Compact were also a source of intense political debates following contestation from (far-) right-wing political parties. In Germany, heated discussions took place, amongst others, in the national parliament, following a motion from the Alternative for Germany (AfD) party which called for Germany to withdraw from the Compact. In a widely publicised speech, Chancellor Angela Merkel expressed her strong support for the Compact. Her later endorsement at the Marrakech

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conference, and her reference to the important historical rationale for UN cooperation, grounded in the experiences of WWII, received a standing ovation.

Heated debates were also observed in Belgium, where they led to a government crisis. Following the sudden and belated opposition to the Global Compact from the right-wing New Flemish Alliance (N-VA), one of the government parties, the Belgian government was split on the question of endorsement. The issue was particularly divisive as Belgian Prime Minister Charles Michel had already formally pledged Belgium's support in a speech before the UN General Assembly in September. What followed were heated and lengthy discussions within the federal parliament and among the governing parties in the days and weeks before the Marrakech conference. Matters came to a head in the late evening of 8 December and resulted in the departure of the N-VA from the government. In follow-up, Belgian Prime Minister Michel endorsed the Compact in Marrakech representing a 'minority government'. In a well-publicised speech at the conference, he denounced the instrumentalisation of the Compact in domestic debates to "spread lies and false truths", "fanning fear and anxiety".

Charles Michel's denouncement came amidst comments by many others on the disinformation campaigns that surrounded the discussions on the Global Compact. Louise Arbour, UN Special Representative for International Migration, at a press conference in Marrakech, expressed surprise at the amount of "misinformation about what the Compact is and what the text actually says". Similar regrets were voiced by the European Parliament.

More specifically, to begin with, a lot of debate and misinformation targeted the legal implications that could derive from the Compact. Several politicians publicly expressed concerns about the Compact's binding nature and its potential to infringe on national sovereignty. While the Compact may come to carry a normative weight, its text clearly states that it represents "a non-legally binding, cooperative framework" which also "reaffirms the sovereign right of States to determine their national migration policy". Experts and UN advocates have been at pains to point this out.

Second, some far-right parties asserted that the Compact did not sufficiently differentiate between 'economic migrants' and 'refugees' or between 'regular' and 'irregular' migration'. Concerns were also raised around the text's supposed recognition of migration as a human right and its potential to promote migration. These claims have no factual basis and have been widely discredited. The text explicitly recognises that "only refugees are entitled to the specific international protection as defined by international refugee law" and does not contain any reference to migration as a human right.

Third, some actors claimed that the Compact would promote migration towards European countries in an irresponsible way. This perspective is mistaken for several reasons. First, it ignores the fact that European states are also migrant-sending states. Second, it disregards the Compact's sections around the need for cooperation in returns and readmission, which were stressed by the EU during the negotiations. In connection, it undermines the potential of the Compact to strengthen EU-African partnerships and cooperation on migration. As highlighted by European Commissioner for Migration and Home Affairs Dimitris Avramopoulos, the withdrawal of support from some EU member states hampers EU efforts at signalling to African countries that it is determined to cooperate with them on an "equal base".

The contention and misinformation surrounding the adoption have led to questions on its likely future impact and effects. However, as pointed out in a joint statement by civil society actors present in Marrakech, an "overwhelming number of member states" still committed to the adoption of the Compact. On that basis, it remains a "historic achievement". The statement goes on to recognise that the Compact's potential depends on effective

implementation strategies and provides several policy guidelines in this respect. Similar messages were provided in separate civil society statements. Amongst others, the Danish Refugee Council highlighted the importance of developing a "solid monitoring and review system" to monitor the implementation of the Compact's objectives. IFRC emphasised the Compact's goal of providing all migrants with access to basic services, information, and support. Others have highlighted how opposition to the Compact, grounded in disinformation as well as emotionalised or symbolic claims, calls for conscious communication strategies that can provide a counterweight to such claims.

POLITICAL DEVELOPMENTS

Draft Agreement for Brexit

Mobile EU citizens

European leaders endorsed a draft Brexit Withdrawal Agreement at a special meeting of the European Council on 25 November 2018. The draft Agreement was met with scepticism in the UK. Under severe pressure to shore up support for the Agreement among a doubting Conservative Party, Prime Minister May portrayed the end of free movement as the Agreement's saving grace. Mrs May went so far as to state that with the draft Agreement EU nationals, regardless of their skills or experience, will no longer be able to "jump the queue ahead of engineers from Sydney or software developers from Delhi". The comment met with sharp criticism and eventually led to the Prime Minister admitting that she was wrong in using that language.

The draft Agreement provides for an end to freedom of movement by the end of 2020. Up to that point, EU27 citizens coming to the UK (and UK citizens who are in the EU27) will retain the same rights as those who arrived prior to the UK's withdrawal. The CJEU will continue to have jurisdiction over the free movement of EU27 citizens in the UK for eight years after the transitional period ends. After the 2020 deadline, there are plans for short-term visa-free travel between the EU and the UK, but long-term stays will be subject to a visa or work permit application. The new system will likely include a minimum salary threshold. The current threshold for third-country nationals is GBP 30,000 (EUR 33,300), which 76% of the EU citizens currently in the UK would not meet.

If the draft Agreement is rejected, it is possible that there will be no deal. A plan was published outlining the rights of EU citizens living in the UK in a no deal scenario. As expected, the EU Settlement Scheme currently in place would continue, but in such a scenario, the protections on offer to EU citizens will be diluted in several important ways. The European Commission has also set out its approach to British citizens in the EU in such a scenario.

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There has also been some unease in the UK about the government's delay in releasing its immigration [white paper](). It remains unclear as to when the long expected policy document will be released. The white paper will essentially set out the future for immigration into the UK post-Brexit. At the time of writing it is also unknown when the [postponed]() Parliamentary vote will take place. It also looks doubtful whether [Prime Minister May]() will be able to secure the legal guarantee from other European leaders that she feels she needs in order to gain parliamentary approval for the Agreement.

Border Controls in the Schengen Zone Sustained

Asylum Mobile EU citizens

In the first half of November, France, Germany, Sweden, Norway and Austria extended [internal border controls](). The controls are now set to be upheld until May 2019, except the Swedish controls for which the extension is foreseen to run up until February 2019. These latest extensions continue a process of sustained internal border checks that has been ongoing since the autumn of 2015. At the time, Germany was the first to re-introduce border checks along its land borders with Austria following large migrant arrival numbers in the German federal state Bavaria. What followed was a [chain reaction]() of reintroduced border controls by Austria, Slovenia, France, Hungary, Sweden, Norway, Denmark and Belgium. These controls have been continuously upheld since, on the basis of repeated extensions, by the five states referred to above. Consequently, at this stage, the Schengen free movement area has not been without border controls for over three years.

This situation has been subject to sharp criticism. The legality of the continued checks has been called into question, among others, by the [European Parliament](). The practice of accumulating different legal bases for what are intended to be 'temporary' controls, and the limited justifications provided for doing so (hampering necessity and proportionality checks), have been the subject of particular scrutiny. In respect of those justifications, and as a further point of [criticism](), states have continued to refer to [internal security risks]() resulting from "continued significant secondary movements" of migrants. Such justifications cannot easily be supported by facts. While precise numbers on secondary movements remain difficult to source, the [European Commission]() reported that these movements had become 'limited' in parallel to a general drop in migrant arrival rates.

Further points of criticism relate to the high costs connected to these controls. A [study]() commissioned by the European Parliament has estimated that these may range between EUR 1 to 3 billion in annual operating expenses, and can run up to EUR 19 billion in one-off costs. Furthermore, as reported by [La Cimade](), the practices of border control police at the reintroduced checks have exacerbated risks of fundamental rights' breaches. In addition, [incidents]() of racial profiling were observed at German border posts.

A Commission [proposal]() advanced in September 2017 seeks to strengthen the proportionality and necessity requirements connected to reintroduced border controls. As discussed in the legislative section below, the recent adoption of the European Parliament's [report]() on this proposal allows for inter-institutional negotiations on this file to start.

Bilateral Arrangements on Asylum Transfers

Asylum

Three "Administrative Arrangements" on the transfer of asylum seekers between Germany and Greece, Spain and Portugal came into effect. Following domestic political pressure on German Chancellor Angela Merkel, the agreements were first discussed at the fringes of the June European Council Summit, and were concluded in August (with Greece and Spain) and September (with Portugal). Germany's decision to develop agreements independently with various member states at the external border follows a prolonged and frustrating standstill in negotiations on the reform of the Dublin system. However, several commentators have warned that the development of a "Quasi-Dublin" system of bilateral agreements may be counterproductive vis-à-vis the possibility of a Dublin revision that would result in a fairer system for the Southern member states.

The three arrangements aim to reduce secondary movements and involve rapid return procedures from Germany of asylum seekers that were previously registered in these Southern EU states. In exchange, Germany agreed to family reunification procedures in respect of 2,900 people present in Greece. No such clauses appear to have been included in the arrangements with Spain and Portugal. Similar deals were reportedly discussed with 11 other countries, yet failed to become more concrete. In particular, negotiations with Italy stalled when, in addition to requesting Germany to take in an equal number of asylum seekers who had been rescued at sea, Italy placed further demands.

This new form of bilateral cooperation has been criticised for replicating the terms of the existing Dublin III Regulation while evading its formal legal framework. Pro Asyl and Refugee Support Aegean compared it to the 2016 EU-Turkey Statement, given the lack of transparency and scrutiny in its negotiation, and its obscure legal nature. In particular, important safeguards provided by Dublin III are circumvented, such as a consideration of the best interest of the child, family reunification criteria and the right to appeal with suspensive effect. In addition, access to the asylum procedure and reception conditions post-transfer may also be compromised. The agreements specify that returns must begin within 48 hours after establishing that the asylum seeker has already been registered in the Eurodac database. The Greek Council for Refugees illustrated the risks involved in this new system when it reported violations of international and EU law in the first transfer of a Syrian asylum seeker under the agreement with Greece. His asylum claim in Germany was not registered, he was deprived of his right to appeal the transfer, and he was subsequently detained in Greece pending his return to Turkey.

All is not so Quiet at the Eastern Border

Asylum **Children and Youth** **Immigration Detention**

The treatment of refugees and other migrants at the Eastern EU border has come under increased scrutiny following allegations of violence and arbitrary detention. Over the past year, following the imposition of stronger border controls by Hungary, an increased number of people have taken an alternative route through Bosnia and Croatia. Over 22,000 asylum seekers and other migrants have arrived in Bosnia and Herzegovina thus far in 2018. Many of them have found themselves in improvised camps, lacking shelter, food, hygiene or medical care. Doctors without Borders have warned that the conditions will only

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worsen as winter weather sets in. The Red Cross, local NGOs and humanitarian workers have also reported violent pushbacks and the denial of access to asylum procedures by Croatian border guards. Human Rights Watch condemned Croatia's failure to investigate these allegations.

Similar concerns were raised in Hungary, where the UN Working Group on Arbitrary Detention suspended their visit in November after being denied access to camps in "transit zones" near the border with Serbia. The UN human rights expert team was investigating reports of a risk of arbitrary detention. During a visit to the area last year, Filippo Grandi, UN High Commissioner for Refugees, called for the dismantling of the "transit zones" or detention centres and raised concerns about the detention of children. The Hungarian Helsinki Committee has also previously warned of a lack of proportionality and necessity assessments in the detention of asylum seekers and other migrants.

In addition, the European Commission began the first stage of infringement procedures against Bulgaria in November, when it issued a formal notice for its poor implementation of EU asylum legislation. It warned that reception conditions, legal representation of unaccompanied and separated children, and safeguards within the detention procedure were in breach of the Asylum Procedures Directive, the Reception Conditions Directive, and the Charter of Fundamental Rights. A report by French lawyers in June provided testimonies of the dire conditions Afghan asylum seekers face in Bulgaria.

Mounting Challenges for SAR Activities

Asylum

Vulnerable migrants rescued at sea continue to bear the brunt of an ongoing failure to organise a functioning reception system. As documented in the previous EPIM Policy Update, search and rescue (SAR) efforts in the Mediterranean have been increasingly thwarted by laws restricting their activities as well as by restrictions on the disembarkation of ships with rescued migrants in certain ports.

Recent problematic incidents include the situation of the Spanish fishing boat Nuestra Madre de Loreto which rescued 12 people on 22 November and was subsequently stranded at sea for 10 days waiting for authorisation to disembark. Despite the overcrowded situation on the vessel, Spain's Foreign Minister, Josep Borrell, said that the situation on board was "not an emergency", and the ship was instructed to return the migrants to Libya. This move was condemned by Amnesty International and a coalition of SAR NGOs, particularly in light of Libya's abuse of 79 rescued migrants following their forced disembarkation from the Nivin ship at the end of November. On 2 December, Malta allowed the Nuestra Madre de Loreto to dock and announced that, following a medical assessment, all migrants would be relocated to Spain. UNHCR welcomed Malta's decision and reiterated that Libya could not be considered safe for disembarkation.

Attempts to criminalise SAR activities also continued as Italy ordered the seizure of the Aquarius rescue ship for "illegal waste treatment". In December, MSF and SOS Méditerranée announced that they were forced to end the Aquarius' operations, condemning Europe for sabotaging their life-saving activities while also failing to provide its own SAR missions. Following MSF and SOS Méditerranée's decision, no dedicated SAR vessels are currently operating in the Central Mediterranean. The future of rescue missions in the Mediterranean will become even more uncertain when the mandate of Operation Sophia, the EU's naval mission, expires. Its current mandate ends at the end of the year, but Italy recently agreed to a three-month extension while negotiations continue.

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European Parliament Report on Humanitarian Visas

Asylum

On 11 December, the European Parliament adopted a legislative own-initiative [report](#) on [humanitarian visas](#). The LIBE Committee first approved the report on 16 October. It had been proposed by MEP [Juan Fernando López Aguilar](#), who argued that it must be possible to apply for asylum without undertaking a perilous journey. The report was first tabled at the European Parliament plenary on 14 November and received 349 votes in favour, which fell short of the absolute majority (375) that was needed. However, [Mr López Aguilar](#) explained that at the end of a long voting session, at least 60 members prematurely withdrew their voting card before the end of the vote and were therefore excluded. As a result of this procedural issue, a second vote was scheduled for 11 December, at which the report was successfully adopted. The report calls on the European Commission to table a legislative proposal to establish a humanitarian visa system by March 2019.

The Parliament's report proposes to allow asylum seekers to apply for visas in EU member states' embassies or consulates. The visas would, after a security screening, give them the right to travel to that state to submit an asylum application lawfully. The current Visa Code allows member states to offer short-term visas with limited territorial validity on humanitarian grounds, yet this has been criticised for being [unclear](#) and not providing a formal procedure. [Caritas](#) and [JRS](#), among others, have repeatedly made the case that a humanitarian visa would undermine smuggling networks, as well as promote solidarity between member states by reducing pressure on border countries. An open letter by over [170 academics](#) had also called on the Parliament to adopt the report.

Humanitarian visas have also been the subject of judicial controversy. In March 2017, in the highly [publicised](#) X&X [case](#), the CJEU was asked to provide clarity on whether a Belgian refusal to grant humanitarian visas to Syrian asylum-seekers breached EU law. The Court ruled, however, that the situation at hand was not covered by the EU visa code, nor any other EU legislation. The question of states' obligation to grant humanitarian visas will now come before the European Court of Human Rights. Jurisdiction has been passed to the [Grand Chamber](#), and eleven States were given leave to intervene in the procedure before the Court, as well as several [NGOs](#).

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European Parliament Report on Schengen Reform

On 29 November, the European Parliament adopted a report on the Commission's proposal to reform the Schengen Borders Code rules on temporary reintroductions of internal border controls. The European People's Party (EPP) notably opposed the report.

The original Commission proposal advances new time limits for the reintroduction of internal border controls. These could run up to one year initially, and be extended for a further maximum period of two years in the event of serious threats to public policy or security. At the same time, the proposal advances a series of strengthened safeguards to ensure the proportionality and necessity of the measures. The Parliament report, in turn, suggests limiting initial border controls to a maximum period of six months, with further extensions limited to a maximum of one year. Thereby, the report halves the Commission's proposed maximum period from three years to one and a half years. In addition to the safeguards introduced by the Commission, it calls for improved information for and involvement from the European Parliament.

The Council has agreed its position and negotiating mandate on the proposal in June 2018. This position, reportedly, would involve weakening some of the requirements for proportionality and necessity proposed by the Commission. Given the discrepancy between the institutions' positions, it is unlikely that sufficient progress on this file will be reached before the European Parliament elections in May 2019.

SELECTED ECJ CASE LAW & LEGAL ACTIONS

Asylum   Mobile EU citizens

Case C-380/17, K, B v Staatssecretaris van Veiligheid en Justitie, 7 November 2018

K&B concerned a request for family reunification by a third-country national holding subsidiary protection status in the Netherlands. While such persons are nominally excluded from the EU Family Reunification Directive's scope, Dutch asylum law does not distinguish between refugee status and subsidiary protection status. Accordingly, in the Netherlands, the latter group has access to the more favourable family reunification regime provided to refugees in Chapter V of the Directive. In implementing the Directive, however, and in line with the possibility provided in Article 12, Dutch law established a time limit of three months (following from the moment protection status is granted) within which applications for family reunification need to be made in order to be exempted from some requirements

(e.g., possessing 'stable and regular resources') in line with the more favourable regime. In the case at hand, the family reunification request was lodged after this three-month period and, on that basis, rejected. In the context of actions against that decision, two questions were referred to the Court of Justice. First, the Court was asked to clarify whether it held jurisdiction to interpret the Directive concerning persons with a subsidiary protection status. If so, and as the second question, the Court was asked to clarify whether the Dutch three-month time limit was in line with the Directive's general system.

In response to the first question, the Court established that it held jurisdiction in a situation, such as that at hand, where the Dutch legislature had chosen to directly and unconditionally apply the Directive's provisions. In response to the second question, the Court held that the three-month time limit was not precluded under EU law. However, it could not be applied when particular circumstances rendered the late submission of the application objectively excusable. Also, a possibility would need to be granted to apply for family reunification anew under different rules. Lastly, member states were reminded that the three-month limit could not be used in respect of the Directive's other, more favourable provisions for refugees (e.g. the exemption from waiting periods).

Case C-713/17, Ayubi v Bezirkshauptmannschaft Linz-Land, 21 November 2018

The case concerned the claim of Mr Ayubi, a refugee with a temporary residence permit, to family social assistance in Austria. Following a reform of the relevant Austrian legislation in 2015, refugees who do not have a permanent residence permit are treated in the same way as beneficiaries of subsidiary protection as regards social assistance. On that basis, they receive benefits which are lower than those paid to Austrian nationals. Only refugees who have a right of permanent residence receive the same benefits as Austrian nationals. On these grounds, as a refugee with a temporary residence status, Mr Ayubi was only granted minimum subsistence. In the context of actions against that decision, the Court of Justice was asked to interpret Article 29 of the Qualification Directive regarding social assistance for recipients of international protection. The Court found that the social assistance rights provided by that Directive derive from the grant of refugee status, and not from the issuing of the residence permit. Those rights can only be limited under the conditions set out in the Directive and member states are not able to set out their own restrictions. The Court further stated that the Geneva Convention covers all refugees and does not make the rights to which they are entitled dependent on the length of their stay in the member state concerned or the duration of the residence permit they have. Accordingly, the Court held that the Qualification Directive precludes national legislation which provides refugees with a temporary residence with lower benefits than those received by nationals.

The case touches on sensitive political questions relating to refugees' access to member states' welfare systems. The Court was applauded for defending refugees' equal treatment with nationals regarding social assistance as one of the main pillars of refugee status.

Other relevant case law

Case C-484/17, K v Staatssecretaris van Veiligheid en Justitie, 7 November 2018

Case C-257/17, C, A v Staatssecretaris van Veiligheid en Justitie, 7 November 2018

Joined Cases C-47/17 and C-48/17, X and X, 13 November 2018

Joined Cases C-412/17 and C-474/17, Touring Tours und Travel and Sociedad de Transportes, 13 December 2018

Advocating for Better Funding: The Future EU Budget and Social Inclusion of Third Country Nationals

Inclusion

By Giacomo Manca, The European Council on Refugees and Exiles (**ECRE**) and the Platform for International Cooperation on Undocumented Migrants (**PICUM**)

The proposals for the next multiannual financial framework (MFF) of the EU, currently in negotiations, will define the future of EU funding for the integration of third-country nationals (TCNs) for the years 2021-2027. National budgets for migrants and refugees' inclusion are likely to shrink against the background of a growing populist narrative. An adequate amount of funding from the EU budget, therefore, represents a vital resource for ensuring the continuation of successful inclusion policies.

The proposal from the European Commission introduces significant changes in the structure of EU funding concerning the socio-economic inclusion of TCNs, which will be split between the proposed **European Social Fund + (ESF+)** and the **Asylum and Migration Fund (AMF)**. The proposal for the ESF+ builds on the experiences gained with the ESF fund in the current financial period. It gathers several pre-existing funds, delivering on employment and social affairs policies, into a single instrument. Combining funding instruments should simplify the administrative burden for managing authorities and applicants. It should also boost synergies across different programmes and help to better deliver on employment and social objectives. Although many member states already use the ESF fund for migrant and refugee inclusion, starting from the next MFF, the fund will directly include the long-term socio-economic inclusion of TCNs among its policy objectives. The AMF will complement these actions by financing early-integration measures.

Transferring long-term integration of TCNs to the ESF+ represents a step towards the inclusion of migrants into mainstream social policies, and towards overcoming targeted programmes based on recipients' status. However, splitting TCNs' inclusion between two different instruments also raises concerns regarding policy coherence. First, integration is not a linear sequence of independent actions. The division of activities funded by the two programmes needs to be carefully considered, and promote a person-centred approach tailored to different users. Second, as effective integration starts from day one, the division

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of responsibilities between the two funds needs to be clarified, to ensure that asylum seekers and newly arriving migrants do not fall between ESF+ and AMF, especially concerning labour integration. Third, a framework for cooperation between the national managing authorities responsible for these funds must be developed, to allow for successful coordination between the funds.

Also, allocation requirements for TCNs' inclusion are not fully clarified by the two proposed regulations. The AMF regulation needs to be amended with regards to allocation and spending requirements, in order to ensure adequate funding for the integration objective in those member states that are less keen on improving migrant inclusion. With respect to the ESF+, which despite its specificity does not foresee allocations to specific target groups, the Commission needs to advise on and monitor the effective integration of TCNs within the preparation of national strategic programmes. A meaningful inclusion of civil society organisations within monitoring committees is essential to ensure that operational programmes adequately meet this priority.

To support effective advocacy strategies both at the national and the EU level, the European Council on Refugees and Exiles (ECRE) and the Platform for International Cooperation on Undocumented Migrants (PICUM) have recently engaged in a joint project on influencing EU funding for inclusion of TCNs in the MFF negotiations. This initiative is funded under EPIM's Thematic Fund on Building Inclusive Societies. The project builds on the wealth of good practices carried out by civil society organisations across Europe. At the national level, ECRE and PICUM want to inform civil society organisations about this process and identify specific priorities, which needs to be supported through national advocacy strategies. To this end, regional workshops in member states for civil society – including refugee and migrant-led organisations – will start from early 2019.

FACTS & FIGURES

Migration to the EU has fallen by more than 90% in comparison to the peak in arrivals of 2015.

Source: **Frontex, November 2018.**

UNHCR statistics on arrivals

Asylum

Recent data by the UNHCR reveal the following trends:

- 109,900 sea arrivals have been recorded since the beginning of the year. 23,033 have arrived in Italy, while 30,447 have arrived in Greece and 54,622 have arrived in Spain;

- So far, an estimated 2,160 people have been reported dead or missing in 2018;

- In Italy, the majority of refugees come from Tunisia, Eritrea and Sudan, while more than half of all refugees arriving in Greece originate from Syria and Afghanistan. In Spain, the majority of refugees come from Morocco, Guinea and Mali.

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Relevant reports

Global Detention Project: Harm Reduction in Immigration Detention

This report, commissioned by the Norwegian Red Cross and developed by the Global Detention Project, examines whether it is possible to find best practices or harm-reducing strategies within immigration detention. Based on an analysis of centres in Norway, France, Germany, Sweden and Switzerland, it recommends moving away from a prison model for immigration detention. It also advocates for greater rights for detainees, such as increased freedom of movement, access to the Internet, individual cell keys, and paid work.

Sirius: Role of non-formal education in migrant children inclusion: links with schools

This report analyses the role that non-formal education (NFE) plays in migrant children's development, with a particular focus on identifying potential synergies between schools and NFE. It draws lessons that can facilitate the inclusion of migrant and refugee children in education and communities.

European Commission: Second progress report on the fight against human trafficking

The European Commission presented its second progress report on the fight against human trafficking. It provides an overview of patterns and trends in 2015-16, noting that women and girls were predominantly the victims (68%) and over half of the trafficking was for sexual exploitation (56%). The report details priority areas for increased efforts.

UNICEF: A right to be heard: Listening to children and young people on the move

This UNICEF report shares the findings of a new poll, which received over 4,000 responses from migrants and refugees aged 14-24. Noting that these groups are often invisible in the data and face particular risks, this report seeks to give a voice to the challenges and triumphs that children and young people face as they migrate.

EU Funding opportunities

Calls for proposals - EU funding

- DT-MIGRATION-06-2018-2019: Addressing the challenge of migrant integration through ICT-enabled solutions

  o Call out on 06.11.2018 – Deadline: 14.03.2019

- MIGRATION-01-2019: Understanding migration mobility patterns: elaborating mid and long-term migration scenarios

  o Call out on 06.11.2018 – Deadline: 14.03.2019

- MIGRATION-03-2019: Social and economic effects of migration in Europe and integration policies

  o Call out on 06.11.2018 – Deadline: 14.03.2019

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- **MIGRATION-07-2019**: International protection of refugees in a comparative perspective

  o Call out on 06.11.2018 – Deadline: 14.03.2019

  Other opportunities

  Open call for interest to participate in the 5th European Migration Forum on 3-4 April 2019, European Commission, Deadline: 14 January 2019

EU CALENDAR: UPCOMING EVENTS

European Parliament

	7 and 10 January	LIBE Committee Meetings
	14-17 January	EP Plenary
	23-24 January	LIBE Committee Meetings
	29 January	LIBE Committee Meeting
	4 and 7 February	LIBE Committee Meetings
	11-14 February	EP Plenary

Other events

	23 January	Towards a new EU-ACP partnership: An opportunity to deliver on Agenda 2030, Caritas Europa
	24-25 January	Social Innovation for Refugee Inclusion: A Sense of Home, EESC
	29 January	It's broke, let's fix it – Rethinking migration management, Friends of Europe
	3-4 April	European Migration Forum – 5th meeting, EESC
	3-5 April	The Regional Governance of Migration and Mobility: Southeast Asian, African and South American Experiences, EUI

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