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Pushbacks investigation   New Pact on Migration and Asylum   Inclusion Action Plan

This Policy Update's Special Focus examines the New Pact on Migration and Asylum. On 23 September, the European Commission presented a comprehensive package of proposals aimed at forging a "fresh start" for EU migration and asylum policies. However, analysts and NGOs have questioned whether the Pact's proposals will bring the much-needed structural reforms or, instead, exacerbate existing problems and create new risks for migrants in Europe.

Further sections highlight the growing pressure on the European Commission and Frontex to investigate and prevent pushbacks at the EU's external borders.

Meanwhile, conditions on the Greek Aegean Islands continue to worsen. Several months after the tragic fires in the Moria camp in Lesvos, NGOs have warned that reception conditions for asylum seekers are not suitable for winter.

This Update also considers the European Commission's Action Plan against Racism and the Action Plan on Integration and Inclusion, both of which were published in autumn 2020. Civil society voices broadly welcomed the initiatives within both Plans and urged member states to fully and promptly implement them.

'Golden passports', or investor citizenship schemes, have also received renewed scrutiny as the Commission launched infringement procedures against Cyprus and Malta. In addition, the Italian government amended the controversial 'Security Decrees' that had been introduced by the previous government. This reform was praised for undoing the worst elements of the Decrees.

In the Closer Look section, the European Citizen Action Service sheds light on the impact of the COVID-19 pandemic on mobile Europeans, summarising findings of their forthcoming report.

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SPECIAL FOCUS

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The New Pact on Migration and Asylum

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On 23 September, the European Commission put forward its highly anticipated New Pact on Migration and Asylum. It consists of a complex set of five legislative proposals, a series of recommendations and guidance for states, and an outline of further initiatives set to follow next year. In the context of the launch, the Commission vowed to introduce a "fresh start" for EU migration and asylum policies based on a "human and humane approach". The New Pact, it stated, would "rebuild trust" between member states, strengthen Europe's resilience and bring about "a change of paradigm" in cooperation with non-EU countries. In the two months since its launch, however, many of these claims have already been put into question. This Special Focus highlights the New Pact's key elements, namely, the proposed solidarity mechanism, border procedures and strengthened focus on returns, as well as some of its smaller, more promising components. It focuses on whether these proposals can live up to expectations and on challenges around their practical implementation. Finally, it discusses the political prospects for the Pact following the start of negotiations over its proposals.

The first key proposal in the New Pact is the new mechanism of '[mandatory flexible solidarity](#)' to replace the Dublin Regulation. This is contained within the newly proposed Asylum and Migration Management Regulation ([AMR](#)). When a member state is in a situation of migratory pressure or crisis, as determined by the Commission based on a flexible "holistic qualitative assessment", other states would be required to contribute. Generally, and with [some caveats](#), they can choose to do so by either relocating asylum seekers, through "return sponsorships" of migrants issued return orders, or with financial or operational assistance. Although some corrective actions are envisioned if responses fall short overall, the [Commission](#) was clear that there will "at no point be mandatory relocations", as states will always retain the [option](#) of contributing through returns. However, if returns cannot be carried out within 8 months (or 4 in crisis situations), returnees would be transferred to the sponsoring state's [territory](#) to continue the return process. A similar mechanism applies to arrivals following search and rescue (SAR).

Questions of solidarity and reforming the Dublin system have long been highly sensitive and [divisive](#) among member states. Accordingly, this new solidarity mechanism is already proving [contentious](#) in negotiations. This proposal embeds the [realpolitik](#) vision that [analysts](#) have noted dominates the Pact, often at the [expense](#) of [migrants' rights](#) and operational feasibility. The Commission's priority was clearly to [resolve](#) the [contrasting](#) [positions](#) among member states, particularly between those that have firmly called for systematic responsibility-sharing over asylum seekers arriving in Europe, and those that reject any form of mandatory relocation quotas.

On one hand, experts and civil society [voices](#) welcomed the effort to establish a predictable solidarity mechanism that included cases of [SAR](#) arrivals. However, they also quickly [noted](#) that the [Commission](#)'s declaration of 'the [death](#) of Dublin' was [premature](#), as the Dublin Regulation's core principles [still stand](#). The default responsibility for assessing asylum claims remains with the [first country of arrival](#). The Commission proposal does positively add [new criteria](#) for determining the responsibility of states beyond those of first arrival, such as prior education, or an expansion of the notion of [family members](#) to include siblings. However, these are unlikely to be a game-changer for countries along the EU's external border. Meanwhile, solidarity contributions would remain [flexible](#) and limited, and may require a complex matching exercise between what some states need and what others are willing to contribute.

The return sponsorship mechanism has been a focal point of criticism. Firstly, counting returns as solidarity contributions has been denounced as a "[distortion of solidarity](#)" that does nothing for [asylum seekers](#) and could tip the [balance](#) of the EU asylum systems further from asylum and towards exclusion. Secondly, NGOs have warned that placing the states most hostile to migrants in charge of returns could create human rights risks and accountability gaps. Accordingly, [Human Rights Watch](#) described the policy as "asking the school bully to walk a kid home." Concerns relate particularly to the legal status, [protections](#) and integration prospects for migrants who cannot be returned after being transferred to sponsoring states. It remains to be seen if states would even agree to transferring returnees after the given period, and whether those most likely to choose to sponsor returns will have any meaningful diplomatic leverage or expertise to contribute to readmission negotiations.

The second [controversial](#) element of the Pact is the new procedure at the external border. In the first place, all people arriving irregularly at the EU's borders, or disembarking after SAR, would be subject to a [screening process](#) that is to be completed within five days. Migrants would then be channelled into either regular or accelerated asylum and return [procedures](#). These accelerated border procedures would apply for migrants coming from countries with low protection rates in Europe. Border asylum procedures would have to be carried out within 12 weeks (with another 12 weeks for return procedures). From a [legal perspective](#), migrants would not be regarded as being present on the [EU's territory](#) during the screening and border procedures. Certain vulnerable groups, such as unaccompanied minors and minors aged

under 12, would, as a rule, be excluded from border procedures – although older children may still be subjected to them. In times of crisis, states could derogate from these standards, including through a far broader use of the border procedure.

This proposal also met outcries from civil society. Firstly, NGOs condemned the attempts to create legal grey zones with inadequate safeguards and weakened effective remedies within border procedures. Where these procedures have been used in the past, they have led to significantly higher rejection rates, suggesting that people could be wrongly denied asylum. Analysts also remarked that if the goal was truly to speed up asylum processes, then applicants with manifestly well-founded cases should also be channelled into faster procedures, as UNHCR has defended, not only those likely to be rejected. Secondly, deadlines for both screening and border procedures may be too short to be feasible, particularly in overstretched Southern European states, as evidenced by the failures of Greek and Italian hotspots in recent years. In the best-case scenario, implementing resource-intensive border procedures would place even greater burdens on countries of first arrival. In the worst case, bottlenecks could lead to the systematic degradation of human rights, comparable to that faced by asylum seekers on the Greek Aegean Islands. Against this background, the Commission's guarantee that there would be "no more Morias" following the New Pact does not appear to measure up. Thirdly, commentators stressed that a greater use of border procedures will likely lead to large-scale detention, thus undermining its supposed exceptional nature. Although the New Pact stops short of advocating for systematic confinement, it is hard to see how screening and border procedures that do not grant legal entry could be implemented without a significant expansion of detention.

A third important element of the New Pact is its substantial focus on the return and readmission of migrants who lack permission to remain in Europe. Beyond the return sponsorship mechanism, the Commission plans to link states' issuances of asylum and return decisions, appoint an EU Return Coordinator, and introduce a Strategy on Voluntary Returns. It also seeks to expand the use of conditionality to boost returns, namely, making visas, development aid, trade, legal pathways and other policies contingent on third countries' cooperation on readmission. For commentators, this approach is as unrealistic as it is unsustainable. Analysts and officials from third countries, for whom returns tend to be highly sensitive, have reacted negatively to these proposals and to the failure to consult them before setting out this approach. IOM, for example, urged the EU to "strive for balance" between its readmission objectives and other states' priorities, "such as enhanced mobility and legal migration channels." Whereas the Pact introduces some positive references to legal pathways, experts argue that they fail to correct the imbalance in the external dimension. The Pact highlights the prospective role of Talent Partnerships with non-EU countries, although concrete initiatives will only follow separately in 2021. Resettlement and complementary pathways also feature within the proposals, although commentators called to strengthen these commitments further in light of growing global needs.

Other, smaller elements of the New Pact are more promising, although these have also raised critiques and may only hold a small impact in practice. For a start, Home Affairs Commissioner Ylva Johansson had announced this summer that the Pact would contain a new mechanism to monitor, investigate and address pushbacks; something which Members of the European Parliament (MEPs) and NGOs have long demanded. Such a mechanism is proposed within the new Screening Regulation. However, it is far narrower than expected, and analysts have warned that it must be strengthened to be meaningful. Firstly, its scope is limited to monitoring screening procedures, yet most pushbacks do not happen in the context of formal procedures at official crossing points, but rather in the high seas or across the external border. Secondly, the proposal places member states in charge of establishing monitoring mechanisms, whereas in most cases, their authorities are also the ones conducting the abuses. This bodes ill for the independence and transparency of investigations into abuses. Thirdly, it remains unclear what enforcement measures could apply if states fail to investigate abuses or

comply with the monitors' findings. Lastly, to strengthen the proposal's monitoring role, NGOs have demanded access to border facilities and the ability for themselves, journalists, migrants and other actors to report abuses.

The New Pact also issued welcome guidance on the interpretation of the Facilitation Directive. It stresses that it should not lead to the criminalisation of humanitarian activity in the form of SAR – a practice that NGOs and UN bodies have long condemned. However, commentators also regretted the weakness of the proposed guidance. Among other issues, it only defends humanitarian acts mandated by law, rather than acts permitted by law. Acts of solidarity towards migrants on land, such as providing food, shelter or car lifts, may still be targeted. Secondly, SAR efforts are only considered legitimate if they comply with the "relevant legal framework" and follow instructions from the coordinating authority. This may lead to further restrictions if states continue their efforts to bar SAR NGOs from operating or order them not to intervene or conduct a rescue. Advocates are calling for a firmer defence of humanitarian acts and urging the EU to establish its own much-needed SAR mechanism to save lives in the Mediterranean.

Overall, these key, contentious elements of the New Pact do not appear to be that new nor humane and fail to offer the structural rethinking of EU asylum policies for which many had hoped. However, experts also commended the Commission's important efforts to forge an agreement between member states after years of growing polarisation, strengthen Europe's crisis resilience, and "de-dramatise" the migration debate.

Critically, significant questions still surround the implementation, feasibility and enforcement of the new proposals, particularly given the well-reported implementation gaps in existing EU asylum legislation. Naturally, many aspects of the New Pact may still change significantly over the course of negotiations, and many practical details were purposely absent from the proposed text to allow room for manoeuvre. All signs point to these negotiations being long and difficult.

In the weeks following its publication, divisions between member states have continued to surface. The Visegrad Group and like-minded states quickly and loudly stated their opposition to the Pact, insisting on stricter containment measures and branding return sponsorships as relocations "through the back door". Conversely, Southern European states stressed that the proposals do not go far enough on solidarity and that border procedures will place disproportionate and permanent pressure on their asylum systems. In a joint letter in late November, the leaders of Spain, Italy, Greece and Malta warned that firmer rules on relocation will be needed, that the current screening and border proposals "are unrealistic and will not work", and that expanding legal pathways must be a priority.

At the same time, negotiations between the Council and the European Parliament (EP) will likely not be straightforward, either. MEPs' positions vary, with some considering the initiative a "step in the right direction", while others demand the compulsory relocation of asylum seekers. The Chair of the EP's Civil Liberties, Justice and Home Affairs (LIBE) Committee, Juan Fernando López Aguilar, warned that in appeasing member states' "minimum, common denominator", the Commission has moved farther from the EP's earlier negotiating mandate, which has included calls for mandatory solidarity.

The German Presidency of the Council of the EU had hoped to secure a political agreement around three core issues, namely border procedures, preventing secondary movements and solidarity, by the end of this year. However, as the date neared, member states' differing views came strongly to the fore, while other issues, such as reacting to recent terrorist attacks in Europe, rose to the top of ministers' agendas. Accordingly, it remains uncertain whether reaching even this broad agreement will be feasible.

Growing pressure to end pushbacks

Asylum

Pressure is mounting on the European Commission and Frontex, the European Border and Coast Guard Agency, to fully investigate and put an end to pushbacks on the EU's external borders. The first part of this section will discuss Frontex's reported involvement in a series of collective expulsions that took place in Greece. The second part will examine the Commission's alleged failure to monitor violent pushbacks on the Croatian-Bosnian border.

A journalistic report published in late October reported that Frontex surveillance drones and ships were present in at least six pushbacks off of the Greek coasts. In April, for example, Greek border guards reportedly intercepted a group of asylum seekers who had already reached the island of Samos. They were then placed on a rubber raft and dragged back out to sea, while a Frontex surveillance plane passed over the area twice. In June, a Frontex ship was reported to have blocked a small refugee boat and created dangerous waves in an attempt to push it back to Turkey. A November report by the Council of Europe's Committee for the Prevention of Torture also called attention to the "consistent and credible allegations" of pushbacks of migrants crossing the Aegean Sea.

For experts, these journalistic findings show the EU border agency's failure to report and address human rights infringements and demonstrate "a level of toleration [...] which unquestionably amounts to complicity". Although Frontex officers are required to file a Serious Incident Report whenever they observe potential abuses, only a handful of reports have been filed in recent years. Under EU law, asylum seekers can also lodge individual complaints against Frontex staff. However, practical and administrative obstacles and the discretionary powers of the Agency's internal oversight body render this instrument ineffective. When abuses are perpetrated by national authorities, Frontex relies on the respective member state to investigate the incidents. This means that compromising material is unlikely to be revealed. When the Agency asked Greek authorities to investigate two potential incidents this year, no evidence of unlawful acts was found.

Following the publication of these recent investigative reports, the European Ombudsman announced an inquiry into the Agency's accountability gaps. Frontex launched its own internal inquiry on 27 October. However, the preliminary findings of the investigation found no proof of the direct or indirect involvement of the Agency's staff or member state officials in the reported incidents. The European Commission also called on Frontex to organise an extraordinary Management Board meeting on 10 November to discuss the accusations. The Board concluded that the alleged pushbacks must be urgently and thoroughly investigated and asked Frontex Executive Director Fabrice Leggeri to strengthen its monitoring system. A second extraordinary meeting is planned for 9 December, to discuss the allegations further.

Meanwhile, in a meeting of the LIBE Committee on 1 December, MEPs questioned Leggeri over the allegations. The Executive Director only provided partial and evasive answers and failed to clear up doubts over the role of Frontex in the reported pushbacks. This led civil society as well the European United Left and the Socialist groups in the EP to demand his resignation. MEPs in the LIBE Committee also joined calls by multiple NGOs for a thorough and independent investigation and for prompt and effective responses to any abuses found.

In the meantime, collective expulsions also continue to be reported on the Western Balkan route. In late October, the Danish Refugee Council collected multiple testimonies accusing Croatian border guards of violent pushbacks, with "horrifying" reports of torture and sexual abuse. In November, German newspaper Der Spiegel published video recordings showing what appears to be the brutal treatment of migrants near the Croatian-Bosnian border. Although the Croatian government initially rejected the accusations, it later agreed to investigate them and keep the Commission informed.

On 6 November, the European Ombudsman launched a second inquiry, which looked at the Commission's possible failure to ensure that Croatian authorities respect human rights while conducting EU-funded border operations. In exchange for EU financial support in 2018, Croatia should have set up a mechanism to monitor incidents and abuses against migrants. However, details about the mechanism remained unclear ever since. In fact, the Croatian government may have used the funds to pay the salaries of police forces accused of violent pushbacks.

The Ombudsman expects the Commission to clarify how the money was spent by 31 January 2021. If evidence of mismanagement of EU funds emerges in the course of the inquiry, the Ombudsman may decide to issue recommendations which, while non-binding, could further pressure the Commission to address state-led pushbacks. Against this background, Amnesty International expressed hopes that the inquiry into the monitoring mechanism "will prompt the Commission to take action" to prevent a further escalation of violence at Europe's borders.

Worsening conditions after fires on Greek islands

Asylum   Children and Youth

In early September, fires in the Moria camp on Lesvos rendered around 12,000 people homeless overnight, as reported in the last Policy Update. As MEPs and NGOs unanimously condemned the poor reception conditions on the Aegean Islands, the EU declared that there should be "no more Morias". However, three months later, the situation has become yet more critical.

In the weeks following the fires, some of the most vulnerable asylum seekers residing on Lesvos, including unaccompanied minors, were relocated to other EU member states, bringing the total of relocated persons in 2020 to over 1,600. Several hundred were also transferred to the Greek mainland in an attempt to decongest the Aegean Islands, although many reportedly found themselves homeless and without sufficient assistance upon arrival. Nevertheless, most remain on Lesvos, where roughly 7,300 former Moria residents now reside in a new tent camp in Mavrorouni. Residents report even worse circumstances there, such as the lack of basic access to water, adequate shelter, sanitation or healthcare. This has led NGOs to describe the site as "Moria 2.0". Conditions have deteriorated in recent weeks, due to heavy rains and cold weather. Aside from the ongoing risk of COVID-19 infections, there are concerns of a growing mental health crisis amongst residents. NGOs working on the ground have called for further urgent evacuations to the mainland or other EU states.

While struggling to provide basic conditions for asylum seekers in the new camp on Lesvos, the government decided to close other accommodation facilities on the island, further raising alarm among civil society. These include the volunteer-run PIKPA camp, which was continuously praised for its humane living conditions. MEPs and human rights defenders

expressed concerns about the decision. NGOs responded with outrage, highlighting the crucial role these facilities played in assisting particularly vulnerable migrants. The PIKPA camp was evacuated in a sudden move by the Greek police on 30 October, despite protests, preventative legal action and the government's promises to hold off until the end of the year. Its residents were brought to the municipal centre of Kara Tepe, where they face an uncertain future.

Meanwhile, conditions across other overcrowded camps have continued to raise concerns, notably on Samos, where insufficient COVID-19 prevention measures combined with a recent earthquake and several fires have rendered the situation near to untenable. Against this background, during a LIBE Committee debate in October, MEPs highlighted the failure of the hotspot approach and stressed Greece's legal obligation to provide adequate reception standards for asylum seekers residing in its territory. With the New Pact on Migration and Asylum in the backdrop, analysts have warned that the situation in Greek camps will only worsen without much-needed structural reform, as discussed in the Special Focus. In mid-November, the Greek government announced a new, two-year migration strategy. This includes the construction of closed controlled centres on five islands, including Lesvos, by autumn 2021, and maximum 6-month stays on the islands. However, analysts question whether this will do much in the way of fundamentally changing the status quo.

'United in Diversity': EU Action Plan against Racism

Inclusion | Mobile EU citizens

As outlined in the previous EPIM Policy Update, massive mobilisations against racism and discrimination throughout 2020 led to unprecedented headlines for these issues globally. In Europe, this prompted an EP resolution condemning racism in June 2020, as well as pledges from the European Commission to build "a truly anti-racist Union". As part of these efforts, on 18 September, the Commission unveiled the EU Anti-racism Action Plan for 2020-25.

One of the Action Plan's aims is to improve EU coordination against racism. It will do so through a new EU anti-racism coordinator, a dedicated summit in spring 2021, and regular meetings with civil society and people with a minority racial and/or ethnic background. The Commission also plans to further monitor and improve the enforcement of EU equality legislation. As such, a report on the implementation of the Racial Equality Directive will be issued next year. It will also adopt measures to assess and improve the racial diversity and representativeness of its staff, including a review of the Commission's traineeship programme. Other efforts will aim to tackle negative societal stereotypes of racialised communities. Lastly, the Action Plan urges member states to strengthen their efforts. Among other measures, they should adopt national action plans against racism by the end of 2022, tackle discriminatory attitudes among law enforcement authorities, and improve the collection of equality data that is disaggregated by racial or ethnic origin – a long-time sensitive issue for some member states. On 7 October, as the first contribution to the Plan's implementation, the Commission adopted a new 10-year EU Roma strategic framework on equality, inclusion and participation.

MEPs and NGOs celebrated this Action Plan, having previously advocated for many of its proposed measures. They welcomed, for example, the Commission's explicit acknowledgement of racism as a structural, institutional and historical challenge, and the strong role for civil society in the Plan's implementation. Nevertheless, they warned that anti-racism would need to be firmly embedded within broader EU policies, such as migration and policing. Regarding the latter, in a debate with Commissioner Johansson in October, MEPs reiterated calls for accountability mechanisms to address racism and violence in policing. Similarly, advocates welcomed the efforts to improve Roma socioeconomic inclusion, and called on European states to "step up" to tackle still pervasive antigypsyism, which results in hate crimes, forced evictions, school segregation and mistreatment by police.

EU scrutiny over golden passports

The European Commission has launched [infringement procedures](#) against Cyprus and Malta after a recent [investigation](#) revealed Cyprus' abuse of its investor citizenship scheme. Under citizenship by investment (CBI) schemes, third country nationals may acquire a member state's nationality and, by extension, EU citizenship in exchange for pre-determined payments or investments. [Bulgaria](#), which offers a similar scheme, was also issued a formal letter of notice.

CBI or 'golden passport' schemes raise thorny [legal](#) [questions](#) and are subject to [growing scrutiny](#). Crucially, the new nationals are entitled to the same rights as EU citizens, including the right to move, reside and work freely in the EU. The [Commission](#) has stated that granting EU citizenship to investors without [any genuine link](#) to a member state "undermines the essence of EU citizenship." In her State of the Union speech on 16 September, Commission President [Ursula von der Leyen](#) further emphasised that "European values are not for sale." Recently, [MEPs](#) stressed that this practice also erodes [mutual trust](#) between member states and threatens Europe's [internal security](#). Lastly, the Commission and [MEPs](#) had repeatedly warned that investor passports run the [risk](#) of increasing political [corruption](#), tax evasion and money laundering. Accordingly, the investigation that triggered the launch of infringement procedures revealed that Cypriot authorities had knowingly granted citizenship to [foreigners](#) who were under criminal investigation or international sanctions. Cyprus and Malta reportedly made billions in [revenue](#) thanks to the scheme.

The anti-corruption NGO [Global Witness](#) welcomed the Commission's decision to launch infringement procedures, while [Transparency International](#) criticised its slow response to accusations of abuse. Malta maintains that citizenship law is a [national competence](#) and intends to [continue](#) the scheme, albeit with [some](#) [amendments](#). Under the new system, applicants are required to become residents and live in Malta for at least a year before applying for citizenship. [Cyprus](#) committed instead to [suspending](#) its scheme as of November. However, [commentators](#) warn that it could simply continue under a different name. In this context, [Transparency International](#) reiterated its demands for an end to the respective schemes, while urging the Commission to put forward a "solid legislative proposal" to regulate the existing schemes in the interim. It also called for similar programmes offering residence permits, such as those in [Portugal](#) or Austria, to receive further [scrutiny](#). Whether states will be willing to undertake reforms to improve the transparency and accountability mechanisms of the programmes, at the expense of [economic gains](#), remains to be seen.

Commission presents its Integration Action Plan

On 24 November, the European Commission unveiled its [Action Plan](#) on Integration and Inclusion for 2021-27. The Plan aims to help [migrants](#) "reach their full potential", and European societies to "benefit from their strength and skills" by promoting and coordinating EU-wide actions, as well as by mobilising [EU funds](#) to improve access to education, jobs, healthcare and housing. This section examines the proposals in these four policy areas.

First, the Plan encourages member states to promote education among migrant communities from early childhood to tertiary and adult education. A toolkit of practical guidance is to be published in 2021. It also aims to ensure a more inclusive environment by helping national authorities develop accessible language programmes and improve teachers' competences to deal with cultural and linguistic diversity. At the same time, the Plan highlights the need for

swifter recognition of qualifications obtained abroad, also referring to the many foreign-born [doctors and nurses](#) currently working on the European frontline against COVID-19. However, concretely, the Plan only proposes to improve the transparency of qualification systems through the [European Qualifications Framework](#).

The second objective of the Plan is to increase [employment opportunities](#) for newcomers through vocational training and more effective advisory services. Among other actions, it encourages member states to use the EU [Skills Profile Tool](#) to ease access to the EU labour market. However, the Plan fails to fully address the numerous [practical and legal obstacles](#) to [regular employment](#), such as lack of information, financial instability, residence-based restrictions and complicated procedures for obtaining work permits. The [COVID-19 pandemic](#) reinforced pre-existing socioeconomic vulnerabilities and revealed that migrants work in sectors where stable employment is more at risk.

Third, the Commission aims to promote equal access to affordable medical services, and thus address the specific health-related [challenges](#) which were revealed by the [COVID-19 pandemic](#). The Action Plan also underlines that housing is a key dimension of integration, with many newcomers experiencing [obstacles](#) in accessing decent and affordable accommodation. The Plan aims to tackle discrimination in the European housing market and mobilise dedicated funds, including the future Asylum and Migration Fund and the European Social Fund Plus, to support affordable housing initiatives.

[UNHCR](#), [NGOs](#) and [trade unions](#) have generally welcomed the initiatives that the Plan seeks to promote, as well as its [positive narrative](#) focussing on migrants' contribution to European societies. However, questions were raised about its scope and practical implementation. Unlike the [2016 Plan](#), which only covered non-EU nationals, the new Action Plan targets newcomers as well as EU citizens with a "[migration background](#)". While welcoming the effort to support all those in need, regardless of their nationality and residence status, [NGOs](#) also warn that it might perpetuate prejudices against EU citizens who already feel treated like [foreigners](#). Ahead of its adoption, [NGOs](#) had also raised concerns that the Commission might link the Plan to [security concerns](#) and the EU [anti-terrorism agenda](#). They further warned against framing [integration as an obligation](#), for instance by making residence conditional or forcing newcomers to learn the host country's language. The Plan does highlight that integration is a "two-way process", with success depending on both migrants and host societies. However, it does not recommend making language or civic integration courses mandatory.

Lastly, [commentators](#) highlighted that [member states](#) are not obliged to follow the Plan's [proposals](#). Education, health, employment and housing are policy areas within the responsibility of national governments, leading [critics](#) to warn that the Plan may "fall flat". In this context, [Oxfam](#) and the [International Rescue Committee](#) urged states to implement the proposals. ECRE and PICUM also called for a [mechanism](#) to monitor the Plan's implementation.

New Immigration Decree introduced in Italy

Asylum Inclusion

In October, the [Italian government](#) repealed parts of the ["Security Decrees"](#), introduced in [2018](#) and [2019](#) under the previous administration. Pending approval by the Italian Parliament, the [new law](#) reforms the rules governing SAR missions and reduces fines against NGO vessels. It restores alternative forms of protection against deportation and aims to improve reception conditions and speed up the naturalisation process. However, some of the [punitive measures](#) established by former Interior Minister Matteo Salvini remain in place in four key areas.

First, under the new Decree, rescue vessels docking in Italian ports without authorisation will no longer face fines of up to [€1 million](#). However, [NGO ships](#) can still be fined up to €50,000 and incur criminal sanctions if they do not contact responsible maritime rescue centres or fail to

follow their instructions. According to the [Italian Refugee Council](#), this could criminalise NGO staff that refuse to disembark rescued migrants in unsafe ports, such as Libya.

Second, the [new law](#) reintroduces a residual form of [humanitarian protection](#) for those who are not entitled to refugee status or subsidiary protection, but still face the risk of abuse if returned to their countries of origin. Persons with serious medical conditions, and those who have created familial and other social ties in Italy could also be granted protection. Their two-year residence permit could later be converted into a long-term work visa. The abolition of [humanitarian protection](#) under the previous government had raised the number of people in an [irregular situation](#) significantly. [Experts](#) praise its reintroduction, as it reduces the risk of [labour exploitations](#). However, the Decree preserves the notion of safe countries, a measure that [experts](#) criticise as discriminatory.

Third, the new Decree makes it possible for asylum seekers to access the regular Italian reception system. Under the [previous law](#), asylum seekers were channelled to emergency accommodation centres, which were under-resourced and lacking integration support. In line with a [recent ruling](#) by the Italian [Constitutional Court](#), the new law also codifies the right of asylum seekers to register with the local authority of the place where they live, thereby easing their access to basic social services. The law also restores a former system of [decentralised reception](#), prioritising smaller centres capable of offering better integration support. However, local authorities can still [unilaterally](#) opt out of the system.

Fourth, the new law amends Italy's nationality law, reducing the time for obtaining a response to a naturalisation application from four to three years. However, this still falls short of the two-year period provided by Italian law before 2018, meaning applicants could face unnecessary [delays](#) in accessing equal social assistance and labour rights.

Although [NGOs](#) praise the long-awaited reforms as "a step in the right direction", [experts](#) also point out that more needs to be done. To this end, the Associazione per gli Studi Giuridici sull'Immigrazione ([ASGI](#)) advanced a series of proposals to improve the new legal framework ahead of discussions in the [Italian Parliament](#). These include the abolition of all sanctions against NGO rescue vessels and humanitarian activities, greater safeguards against pushbacks, and strengthening legal and safe channels.

SELECTED ECJ CASE LAW & LEGAL ACTIONS

`Asylum` `Children and Youth`

Case [C-402/19](#), LM v CPAS Seraing and Case [C-233/19](#), B v CPAS Liège, 30 September 2020

These two cases concerned the expulsion of third country nationals who had previously obtained the right to remain in Belgium on medical grounds. In the first case, LM v CPAS

Seraing, the beneficiaries of the leave to remain were a minor who was suffering from several serious illnesses, and her father who cared for her. Shortly before the daughter became an adult, national authorities did not extend the father's right to remain and ordered him to leave the Belgian territory. In this case, the Court of Justice was asked to examine whether, under the [Return Directive](#) an appeal brought by a third country national against a return decision should have automatic suspensive effect if its enforcement could expose the dependent adult child to serious health risks. In its ruling, the Court noted that the Return Directive establishes additional safeguards to suspend the return of persons with serious medical conditions pending the appeal, in line with the principle of non-refoulement. The expulsion of the caretaking father, the Court continued, would not put his health and life at direct risk. However, when a dependent child who is seriously ill requires the presence and assistance of a family member, the appeal must nevertheless have an automatic suspensive effect. The enforcement of the return decision would otherwise expose the dependent person to a serious risk of irreversible health deterioration.

In the second case, B v CPAS Liège, the third country national concerned had applied for asylum in Belgium. Although her application was rejected, she was granted a temporary right to remain because she suffered from numerous health illnesses. After further applications for leave to remain were refused, she was ordered to leave the country. In this case, the Court of Justice considered whether, under the Return Directive, an appeal on medical grounds against an expulsion order requires a full judicial review to have suspensive effect. In other words, the Court had to clarify if, following its decision in LM v CPAS Seraing, filing an appeal is enough to trigger the automatic suspension. In this decision, the Court recalled that the Return Directive establishes that the person subject to a return order must be afforded an effective remedy. Referring to its previous decision, it held that an appeal against a return decision must have an automatic suspensive effect if its enforcement could put the health of that person at serious risk. The Court went on to clarify that the relevant authority is not required to carry out a full review, but must limit itself to assessing whether the appeal appears to be manifestly unfounded. Otherwise, the conditions for the application of an automatic suspensive effect would be confused with those for the success of the appeal against the return decision.

Case [C-238/19](#), EZ v Federal Republic of Germany, 19 November 2020

This case concerned the interpretation of the [Qualification Directive](#) in relation to the situation of a Syrian conscript, EZ, who had fled his country to escape military service. EZ had been granted subsidiary protection status in Germany, but not refugee status, on the grounds that he had not been personally subject to persecution forcing him to leave. In addition, the German authorities had considered that there was no connection between the persecution he would fear upon returning and the five reasons for persecution which give rise to entitlement to a refugee status; i.e. race, religion, nationality, political opinion, membership of a particular social group. EZ challenged this decision before the Administrative Court of Hannover, which in turn referred a series of questions to the CJEU in Luxembourg.

The CJEU held, in response to a first set of questions, that where a state of origin does not provide for the possibility of refusing to perform military service, the person concerned cannot be expected to have formalised his or her refusal. Secondly, and in response to further questions, the Court clarified that in situations of general civil war characterised by repeated and systematic war crimes, it is irrelevant that the person concerned does not know what his or her future military tasks would be. In such cases, it should be assumed that the performance of military service will involve committing, either directly or indirectly, such crimes.

Thirdly, the Court examined questions around the connection between the refusal to perform military service and the five reasons for persecution which give rise to an entitlement to refugee status, as listed above. In this respect, the Court held that reasons for refusing to perform military service could be different from those five reasons for persecution. For

instance, a person may fear being exposed to the dangers of armed conflict. Nevertheless, it continued, there is a strong presumption that a refusal to perform such service reflects an expression of political opinions. In any event, in the context of a civil war, authorities would likely consider such a refusal as an act of political opposition. As the Court reiterated, according to the Qualification Directive, in assessing if the person concerned has a well-founded fear of being persecuted, it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution. What matters is that such a characteristic is attributed to that person by the actor of persecution. Ultimately, the Court stated, it was for the national authorities to establish, in light of the circumstances at issue, whether a connection between the refusal of military service and one of the five reasons for persecution was present.

Other relevant case law

Case [C-651/19](#), JP v Commissaire général aux réfugiés et aux apatrides
Case [C-806/18](#), JZ
Case [C-568/19](#), MO v Subdelegación del Gobierno en Toledo
Case [C-243/19](#), A v Veselības ministrija
Case [C-302/19](#), Istituto nazionale della previdenza sociale (INPS) v WS
Case [C-303/19](#), Istituto nazionale della previdenza sociale (INPS) v VR
[Joined Cases](#) C-225/19 and C-226/19, RNNS and KA v Minister van Buitenlandse Zaken
[Joined Cases](#) C-620/18 and C-626/18, Hungary and Poland v Parliament and Council

A CLOSER LOOK FROM...

European Citizen Action Service

Mobile EU citizens **Inclusion**

By Petar Markovic, PhD and Elena Avramovska, PhD, [European Citizen Action Service](#)

At the start of the COVID-19 outbreak in Europe, freedom of movement quickly collapsed under the pressure of unilateral border closings. Mobile Europeans suddenly found themselves locked down and separated not only from their host communities, but also from their families and friends in their countries of origin. The European Citizen Action Service ([ECAS](#)), with the support of EPIM, decided to conduct a comprehensive research project on the effects the pandemic and its related measures have had on freedom of movement in the EU. Our aim was to focus on mobile EU citizens – arguably the most 'European' Europeans – who live, work, study and love across borders and in member states other than those from which they

originally hail. Via two [surveys](#) on the ECAS crowdsourcing platform, we gathered empirical evidence from [mobile Europeans](#) themselves as well as from [NGOs](#) working on citizen rights and mobility in the EU. The former were asked to share their first-hand experiences during the pandemic, while the latter were invited to propose changes to the overall approach to European mobility in light of COVID-19.

While full results will be available by the end of this year, we can already share the most important and striking findings. First, an overwhelming majority of mobile EU citizens who completed our survey feel that the COVID-19 pandemic and the related restrictions led to more severe isolation in comparison to the majority of 'stationary' Europeans. In addition to being locked away from their host communities, they have been separated from their families and loved ones by newly closed borders. Increasing delays and hurdles in regulating basic rights, such as their residence or their health insurance, compounded this 'double lockdown'. All this led to the most serious finding, which is as unsurprising as it is alarming: Around 70% of mobile Europeans reported experiencing mental health issues since the start of the pandemic.

Second, the optimism expressed by some sociologists and NGOs that travel bans would lead citizens residing in another member state to better integrate into their host community has been disproven. On the contrary, our survey suggests that mobile Europeans have their communities of origin on their minds. In particular, the majority of those originating from Eastern European member states found that the state of democracy back home has deteriorated since the onset of the pandemic. Mobile EU citizens also faced challenges in their professional and family lives, such as discrimination in the host community. Once published, our study will shed light on these issues in much more detail. It will also show the messages that mobile Europeans have for all levels of government, from the local to the European. Most notably, they call for the EU to be granted more powers over health policy, boosting its ability to coordinate and act.

The voice of those who embody the European dream the most by boldly embracing a life across borders too often gets lost in the choir of other interests and vantage points in our complex EU community. It is our goal to help it be heard and listened to. As ECAS prepares for its 30th anniversary in 2021, this study will serve as the vehicle for taking our core mission forward: Advocating for and defending the rights of European citizens and empowering their democratic agency. Join us for the ride!

FACTS & FIGURES

Between January 2020 and October 2020, only 15,425 refugees were resettled globally, compared to 50,086 in the same period last year.

Source: **UNHCR, November 2020.**

UNHCR statistics on arrivals.

Asylum

Recent data by UNHCR [reveal](#) the following trends:

- 81,487 sea arrivals have been recorded since the beginning of the year: 35,862 have arrived in Spain, while 32,909 have arrived in Italy and 9,450 in Greece;

- So far, an estimated 902 people have been reported dead or missing in 2020;

- In Spain, two fifths of people arriving by sea originate from Algeria, followed by Morocco and Mali. Two fifths of all refugees arriving in Italy come from Tunisia, followed by Bangladesh. Two thirds of all refugees arriving in Greece come from Afghanistan and Syria.

Relevant reports

Asylum Inclusion Immigration Detention

Amnesty: 'Between Life and Death': Refugees and Migrants Trapped in Libya's Cycle of Abuse

This report documents migrants' experiences of abuse as well as the growing use of shadow detention facilities and summary deportations in Libya. It urges the EU to reconsider its cooperation with Libya and make future support conditional on an end to abuses in the latter.

Refugee Rights Europe: Time for a change: On the need for safe and legal pathways to the UK

Against the background of ongoing Brexit negotiations and a recent rise in Channel crossings, this report offers ways to expand safe and legal pathways to the UK, including humanitarian visas and family reunification. Refugee Rights Europe also calls for greater UK-France cooperation on sustainable solutions for migrants who are not eligible to enter.

Border Violence Monitoring Network: Shrinking Spaces: Report on Criminalisation of Solidarity in the Western Balkans

This report provides an overview of the various forms of criminalisation of humanitarian action in the Western Balkans. It calls on the EU to explicitly exempt humanitarian work from sanctions, and ensure that EU funding does not contribute to human rights violations.

Passerell: Report on the Living Conditions of Beneficiaries of International Protection in Greece

This report documents obstacles to adequate protection and social rights that asylum seekers and recognised refugees face in Greece. Before returning asylum seekers to Greece under the Dublin Regulation, EU states should assess whether adequate living conditions can be guaranteed and whether an individual's vulnerabilities may be exacerbated upon arrival.

Danish Refugee Council: A Restriction of Responsibility-Sharing: Exploring the Impact of COVID-19 on the Global Compact for Refugees

This report explores how the Global Compact on Refugees (GCR) can be used to improve refugee protection during the pandemic and the recovery phase. To this end, the GCR must be translated into national and local implementation plans and accompanied by a stronger refugee presence in national healthcare, education and social protection systems.

EU Funding opportunities

Asylum Inclusion Children and Youth

Calls for proposals - EU funding

- **AMIF-2020-AG-CALL-01**: Developing and implementing local integration strategies through multi-stakeholder partnerships.
  o Call out on 15.10.2020 - Deadline 16.02.2021

- **AMIF-2020-AG-CALL-02**: Reducing obstacles and promoting access to basic services for third-country nationals.
  o Call out on 15.10.2020 - Deadline 16.02.2021

- **AMIF-2020-AG-CALL-03**: Promoting the participation of migrants in the design and implementation of integration policies.
  o Call out on 15.10.2020 - Deadline 16.02.2021

- **AMIF-2020-AG-CALL-04**: Promoting complementary pathways for people in need of protection and their further integration.
  o Call out on 15.10.2020 - Deadline 16.02.2021

- **AMIF-2020-AG-CALL-05**: Address assistance, support and integration of third-country national victims of trafficking in human beings.
  o Call out on 15.10.2020 - Deadline 16.02.2021

- **AMIF-2020-AG-CALL-06**: Migrant children's transition into adulthood.
  o Call out on 15.10.2020 - Deadline 16.02.2021

Other opportunities

EPIM: Rolling Call for Proposals on Asylum. Submissions will be reviewed every three months starting on 04.05.2020.

EU CALENDAR: UPCOMING EVENTS

European Council and Council of the European Union

	14 December 2020	JHA Council
	10-11 December 2020 25-26 March 2021	European Council

European Parliament

	14-17 December 2020 18-21 January 2021 8-11 February 2021	EP Plenary

Other events

	11 December	Two Years into the Life of the Global Compacts on Refugees and Migration: A Status Check, Migration Policy Institute (Online)
	14 December	Deportation Union: The role of Frontex, Statewatch (Online)
	15 December	Alternatives to Detention: A State of Play, European Migration Network Belgium (Online)