

Policy Brief 2020:2

Pieces of the puzzle - managing migration in the EU

Author: Bernd Parusel*

The Common European Asylum System today suffers from a number of long-standing problems, such as the lack of legal pathways to Europe for people in need of protection, the absence of true responsibility-sharing among the EU Member States and wide divergences between national decision-making in asylum cases. Progress on these issues is essential if the EU wants to establish a sustainable new system.

Five years after the “European Refugee Crisis” of 2015, the EU and its Member States are still divided over how to reform the Common European Asylum System (CEAS) and the management of migration flows. The European Commission’s *New Pact on Migration and Asylum*¹ presented in September 2020 has revived the debate and quest for new solutions.

The key problems of the CEAS

On the basis of the study *Pieces of the Puzzle – Managing Migration in the EU*², this policy brief aims to show what the EU could do to deal with migration and asylum in a more credible, sustainable and solution-oriented manner without compromising the right to asylum, its values and international human rights. The analysis is based on the idea that the current tensions over asylum and migration all have their roots in some fundamental, long-standing problems.

1. There is a lack of legal entry pathways to the EU for people seeking protection, which pushes them towards irregular

and dangerous routes and creates emergency situations at the borders.

2. Despite clear commitments to solidarity among its Member States, the EU has no system that guarantees a fair sharing of the responsibilities arising from the arrival and reception of asylum seekers. The distribution of asylum seekers across the Member States is volatile and unbalanced.³
3. The chances of asylum applicants to receive protection in the EU vary greatly depending on where in the EU their asylum claims are processed. Some nationalities are recognised as being in need of protection in some Member States, but not in others.

The CEAS also faces other problems, such as differences in asylum procedures and reception conditions between the Member States; moral and practical difficulties regarding the prevention of irregular migration in cooperation with non-EU countries; limited competencies and capabilities of EU-level institutions, mainly the European

¹ European Commission 2020.

² Parusel 2020.

³ Eurostat 2020.

Asylum Support Office (EASO); and problems to return irregular migrants and rejected asylum seekers to their countries of origin.

Reform options

These main problems are interdependent and consequently difficult to address. For example, harmonised asylum decisions across the EU as well as a further approximation of asylum procedures and reception conditions for asylum seekers are to a high degree a precondition for a fair responsibility-sharing system because it would be unfair to allocate asylum seekers to a Member State where their chances to receive protection are small while they would have better chances in another State.⁴ A sustainable reform of the CEAS should focus on all these issues.

More legal pathways

In response to the crisis of 2015, the Member States have expanded resettlement and – to some degree – other humanitarian admission programmes. Still, the scale of these programmes is too small to offer credible alternatives to irregular routes and spontaneous asylum applications. No significant progress has been made regarding humanitarian visas (or similar instruments), and Member States will probably continue to act reluctantly because they are afraid of unforeseeable consequences.

Yet there is a great need to systematically work to establish legal alternatives to irregular entry routes. Developing a common EU resettlement framework with a substantially increased number of available spots could be a first step. Similar frameworks, such as humanitarian admission schemes or pilot projects on humanitarian visas, could also be useful. Another piece of the puzzle is to widen the opportunities for family reunification, which can help refugees and other people with protection needs who already have family members in the EU. For people who migrate irregularly without fulfilling the criteria for asylum, the Member States should offer visas or residence permits for temporary or permanent work, studies or circular migration, linked to their domestic needs for labour. When there are credible alternatives,

dangerous and irregular crossings could be reduced and asylum could become more manageable. However, expanding legal pathways must not lead to the right to apply for asylum being questioned.

Fair responsibility-sharing

Responsibility-sharing and the current Dublin system have been particularly contested issues among the Member States. However, failure to achieve agreement on a new system based on the principle of solidarity, as provided by Article 80 of the Treaty on the Functioning of the EU, risks leading to a breakdown of the CEAS and a race to the bottom as regards national asylum standards.

There seems to be little political will to adopt an ambitious new system with fair quotas for distributing asylum seekers across the EU. A system in which asylum applicants themselves would be free to choose where to go, appears even more unlikely. However, there are scenarios that might work as interim solutions, such as *flexible solidarity*.

Flexible solidarity would mean that the Dublin Regulation's criteria for determining the State responsible for an asylum application are complemented with new criteria. As an expression of solidarity, Member States that receive fewer asylum seekers than others would contribute to responsibility-sharing in flexible ways, such as by relocating asylum seekers from countries under pressure or offering other types of assistance or financial compensation.

However, a *flexible solidarity* approach, as proposed by the European Commission in its *New Pact*, is not likely to work well in the long run. A system where Member States take on different roles on a voluntary basis (with some acting border guards, some carrying out returns and some receiving and integrating refugees) is not likely to be sustainable and can lead to further divisions. Governments will almost certainly question each other's roles and commitments as soon as emergencies appear. We can also expect that there would be permanent debates, both within and between the various States, about different solidarity

⁴ Parusel and Schneider 2017.

contributions, the number of people that each State accepts, and the question whether each of them really does enough. Consequently, in the long run, the EU should work towards a system of asylum seeker reception quotas for each Member State.

Harmonising asylum-decisions

Approximating national asylum decision-making so that applicants receive fair and similar treatment irrespective of where their asylum claim is made, is a process that requires time and patience. At the same time, this is a goal that can be reached. Experiences have already been made through mutual learning, joint asylum processing exercises involving several Member States' authorities, and common country of origin information.

For real progress to be made, it is now time to move from just exchanging information to working on benchmarks, targets and binding commitments. A future new *EU Asylum Agency* could supervise this process and be given advisory and monitoring tasks. In a similar manner as national asylum authorities in some States review and monitor asylum decisions taken at local or regional branch offices, to detect deviations and improve consistency, the EU Agency could monitor States' decision-making and issue recommendations. Certain variations will certainly continue to exist as long as decision-making is in the hands of national authorities. However, to shift this task entirely from national bodies to the EU would be a far-reaching step, and probably premature at this point in time, especially with regard to the lack of trust between Member States on asylum matters. However, it should be contemplated as a long-term goal.

Is it time for a new grand reform?

The fact that the central problems of the CEAS are complex raises the question whether they should all be tackled at once, i.e. as a package, or one after another. With its Pact, the European Commission has opted for the first option. Voices that advocate a step-by-step approach and argue that priority should be given to consolidating and gradually improving the

already existing frameworks and ensure Member States' compliance with them, have been sidelined. In a situation where many Member States are profoundly unhappy with the existing rules, EU decision-makers have perhaps no other option than to propose a major overhaul. They should keep in mind, however, that the more complex and ambitious a reform scenario becomes, the harder it will be to ensure that it actually works in reality.

A CEAS with different speeds

A new way of overcoming the tensions between some of the Member States over solidarity and responsibility-sharing could be to accept the development of a CEAS with different speeds. While this may not seem an ideal way forward in terms of cohesion and unity, the depth and speed of European integration is already differentiated in matters such as the Economic and Monetary Union and Schengen. In principle, it is not unthinkable that a sufficiently large group of Member States joins forces and establishes a fair responsibility-sharing system among its Members that goes beyond the current Dublin regulation. Asylum procedures and decision-making could also become more uniform within this group, and the important work to develop legal pathways could also be stepped up more easily. Sceptics could choose to stay out. They would have greater freedom to pursue their own goals, but also risk missing out on the benefits of mutual assistance, help in crisis situations and sharing of resources and expertise.

A new vision

Asylum and migration are not just internal matters. When developing a new approach to migration and asylum, the EU should also be aware of its role and reputation in the world. If it continues to fail to come up with credible solutions and accepts violations of its own human rights standards by accepting unlawful deterrence policies, other regional and global initiatives for refugee protection and responsibility-sharing as well as cooperation between the EU and other regions and countries, suffer damage as well. If the EU wants

other countries to treat people in need of protection well, it needs to lead by good example.

What might be needed most is an honest debate and common European narrative about

what is at stake and what the EU wants to achieve on migration and asylum – a Europe that risks falling apart because it can't handle migration? Or a Europe that finds realistic solutions together and protects refugees?

References

European Commission (2020): *Communication from the Commission on a New Pact on Migration and Asylum*, COM (2020) 609 final. Brussels.

Eurostat (2020): *612 700 first-time asylum seekers registered in 2019, up by 12% compared with 2018*. News release 48/2020.

Parusel, B. and S. Schneider (2017): *Reforming the Common European Asylum System: Responsibility-sharing and the harmonisation of asylum outcomes*. Delmi Report 2017:9. Stockholm: Delegationen for migrationsstudier.

Parusel (2020): *Pieces of the Puzzle – Managing Migration in the EU*. Stockholm / Brussels: Fores / European Liberal Forum.

About ELF

The European Liberal Forum (ELF) is the official political foundation of the European Liberal Party, the ALDE Party. Together with 46 member organisations, we work all over Europe to bring new ideas into the political debate, to provide a platform for discussion, and to empower citizens to make their voices heard. Find out more at www.liberalforum.eu.

About FORES

Fores – Forum for reforms, entrepreneurship and sustainability – is a green and liberal think tank. We act as a link between curious citizens, opinion makers, entrepreneurs, policymakers and researchers. Do you want to know more about FORES and our work? Visit us at www.fores.se

* About the author

Bernd Parusel is a migration and asylum expert. Until summer 2020, he served as secretary of a cross-party commission of inquiry, tasked by the Swedish government to examine Sweden's future migration policy. He is currently on leave from the Swedish Migration Agency, where he has been responsible for the European Migration Network (EMN). Bernd has previously worked at the Swedish Migration Studies Delegation (DELM) and as a research associate at the Federal Office for Migration and Refugees in Germany, as well as a lecturer of European migration and asylum policy at the University of Erlangen-Nuremberg. He is a political scientist and holds a PhD from the Institute for Migration and Intercultural Studies (IMIS) of the University of Osnabrück.

Published by the European Liberal Forum asbl with the support of FORES. Co-funded by the European Parliament. Neither the European Parliament nor the European Liberal Forum asbl are responsible for

the content of this publication, or for any use that may be made of it. The views expressed herein are those of the author(s) alone. These views do not necessarily reflect those of the European Parliament and/ or the European Liberal Forum asbl.

Contact

Therese Lindström, Director of the Migration and integration programme, FORES therese.lindstrom@fores.se