

Policy Update February 2019

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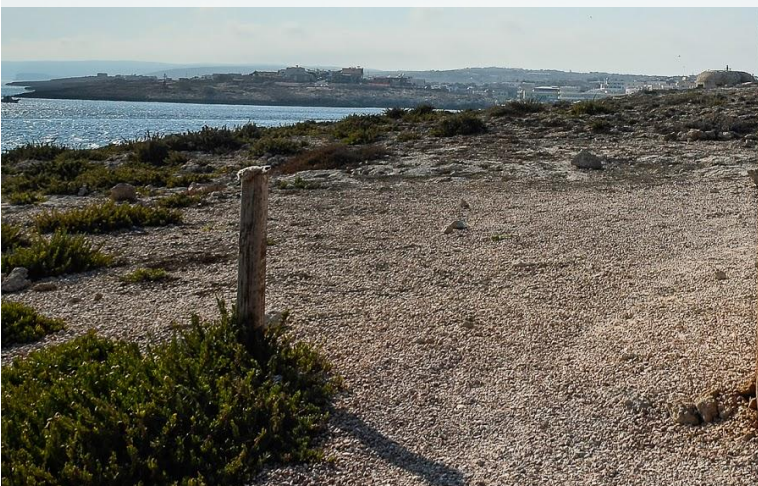


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Winter on the Greek islands Disembarkation stand-off Alternatives to detention

This policy update's Special Focus looks at the situation in the Mediterranean, where [SAR vessels](#) have been caught in stand-offs with EU member states over the disembarkation and relocation of asylum seekers. Since the end of 2018, so-called "temporary arrangements" have been implemented aiming to relocate migrants rescued at sea to those member states willing to cooperate. In an effort to move away from this problematic, ad-hoc approach, the [Commission](#) proposes setting up a contingency plan that would provide a more structural mechanism for relocating asylum seekers to EU member states.

Difficult winter conditions on the Greek islands are prompting a number of [NGOs](#) to (again) call on Greek authorities to relocate migrants to better equipped reception centres on the mainland. At the same time, advocacy efforts are being made to improve [housing conditions](#) on the islands, where the refugee camps,

due to the geographical restrictions of the EU-Turkey deal, have long surpassed their maximum capacity.

The restriction put on the migrants' movement is also a topic of debate in the context of increased [border management](#) cooperation between France and the UK. Faced with a rise in the number of people crossing the Channel, the British Home Office has increased [border surveillance](#) activities. These activities, and the UK Home Secretary's [rhetoric](#) in respect to the Channel crossings, have been widely criticised by [NGOs](#) and [legal commentators](#).

In the Closer Look section, the [European Alternatives To Detention \(ATD\) Network](#) describes the progress made towards decreasing the use of immigration detention and offering alternatives to decision-makers. The aim of these alternatives is to establish migration management systems that produce better outcomes for migrants, communities and governments.

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SPECIAL FOCUS



Photo: PAU BARRENA / AFP

Temporary Disembarkation Arrangements

Asylum Immigration Detention

Over the course of the past few months, Search and Rescue (SAR) NGOs have faced considerable obstacles to their activities. This Special Focus gives an overview of the latest challenges in the Mediterranean, including disembarkation disputes, the criminalisation of SAR NGOs and an uncertain future for Operation Sophia. A second section analyses the ad-hoc nature of current disembarkation and relocation arrangements, and the Commission's initiative for a more structural contingency plan.

SAR vessels are still being prevented from docking in Italian and Maltese ports and disembarking the people they have rescued at sea. Among others, the NGO vessels [Sea-Watch 3](#) and [Professor Albrecht Penck](#), which together had rescued 49 migrants, were denied permission to access Maltese waters or dock in a European port for 19 days over the course of late December and early January. EU member states were caught in a [stand-off](#) as

governments were reluctant to come forward with relocation spaces. Civil society organisations strongly [condemned](#) member states' inaction against the background of quickly deteriorating [conditions](#) on board of the vessels. The standoff only ended after an ad hoc agreement was reached by [eight member states](#) (Germany, France, the Netherlands, Portugal, Ireland, Romania, Luxembourg and Italy) to relocate the migrants involved in this incident. In addition, another 224 out of a previously saved group of 249 and another 131 migrants that were already in Malta were also relocated. In a later incident, at the end of January, the [Sea Watch 3](#) was only allowed to dock in Catania when an agreement was found after two weeks of negotiations between seven member states to take in the migrants on board. One day earlier, the [European Court of Human Rights](#) had issued an interim measure ordering Italy to provide [basic supplies](#), medical care and legal assistance to those on board.

Another serious challenge faced by SAR NGOs is the increasing [criminalisation](#) of their activities since the summer of 2017. In a recent instance, after the Sea Watch 3 had docked in Catania in January, [Italy](#) threatened [criminal charges](#) against its crew for "favouring illegal immigration". Although the crew was cleared of these [charges](#), their ship continues to be [blocked](#) in Catania's harbour on grounds of alleged "technical irregularities" such as navigation safety and environmental laws. Since mid-January, the SAR vessel [Proactiva Open Arms](#) has been blocked from leaving the Barcelona harbour. The ship was accused by [Spain's public works ministry](#) of not taking the migrants it had rescued to the nearest port possible. A number of [Catalan political parties](#) have called for the ship's immediate release.

The SAR vessel Aquarius has faced similar challenges. After the ship was stripped first of its [Gibraltarian](#) and then of its [Panamanian](#) flag last year, the NGO [SOS Méditerranée](#) tried to find another country under whose flag the ship could sail. Following an ultimately [unsuccessful struggle](#), the organisation stopped chartering the Aquarius at the end of January. In a review of these incidents, [Human Rights at Sea](#) found that Italy had exerted undue pressure on Gibraltar and Panama to withdraw their licenses. According to the report, "politically-motivated State influence [prevailed] over well-publicised humanitarian search and rescue (SAR) activities at sea". In addition, the crew of the Aquarius has also been the focus of an [investigation](#) into improper [waste dumping](#). The ship itself is held in the port of Marseille because of these accusations. [MSF](#) called the seizure of the vessel "a disproportionate and unfounded measure, purely aimed at further criminalising lifesaving medical-humanitarian action at sea". The organisation intends to submit an appeal to Italian review courts. The increasing criminalisation has been met with severe [criticism](#) by [NGOs](#) and the EU's [Fundamental Rights Agency](#) (FRA).

Because of this repressive climate, there are currently no NGO ships operating in the Central Mediterranean. As [research](#) has shown, NGOs had taken on a considerable share of the SAR activities in the Mediterranean, rescuing up to 40% of all migrants assisted in 2017 and 2018. Their gradual disappearance and the ensuing gap in SAR activities has led to [increasingly dangerous](#) situations for migrants. [Mortality rates](#) have also risen sharply. In January alone, an estimated 170 migrants are believed to have died or gone missing in two separate [shipwrecks](#). Migrants have also been subjected to increasing [interceptions](#) by the Libyan Coast Guard and returns to Libya. After having been rescued by a merchant vessel, another 150 people are reported to have been returned to [detention](#) in Libya in the same month. Three weeks later, on 12 February, a second merchant ship is reported to have returned an additional [150 people](#) to Libya. Migrants continue to suffer from [life-threatening conditions](#) and gross human rights [violations](#) in [Libyan](#) detention centres.

Meanwhile, following on from [earlier discussions](#), a decision was reached in late December to [extend](#) Operation Sophia's mandate until the end of March. However, Italian Minister of

the Interior [Matteo Salvini](#) again made the mission's continuation conditional on changing the [rules](#) for disembarking migrants. One month later, in late January, [Germany](#) decided to discontinue its support of Operation Sophia, reportedly because of [Italy's reluctance](#) to allow the disembarkation of migrants in its ports and sending the German navy to parts of the Mediterranean with few migrant crossings. The naval mission's [mandate](#) focuses on disrupting smuggling and human trafficking in the Mediterranean. It has often been criticised for its [limited scope](#) and for its attempts to curb migration at the [expense](#) of important human rights principles. According to Amnesty International, Operation Sophia has led to [smugglers switching](#) from more stable wooden boats to cheaper and disposable rubber boats, since the naval mission routinely destroys the vessels used by smugglers. This has also made Mediterranean crossings even more perilous.

These problems are part of the larger debates taking place in the context of the Dublin Regulation reforms, and in particular, the questions of how to organise a fair responsibility-sharing over asylum applications among member states. The Commission's [proposal](#) for a Dublin IV Regulation includes a mandatory relocation mechanism. This mechanism was further extended by the European Parliament in its [report](#) on the file. However, the negotiations have reached an impasse in the [Council](#). Italy's refusal to allow ships to dock and disembark in Italian ports has been interpreted as part of a [deliberate](#) strategy aimed at pushing other member states into accepting a mandatory relocation mechanism. As highlighted by [analysts](#), aside from the grave humanitarian concerns they raise, Italy's actions are actually detrimental to its own long-term interests. In the short-run, the refusal to disembark migrants in Italian ports could lead to the opening of a port in Spain or France on a one-off basis. On a broader level, however, Italy's actions are worsening diplomatic tensions on the file. In that way, they undermine opportunities to find a viable, structural solution for the responsibility-sharing question.

Faced with the political stand-off, the [Commission](#) called for the introduction of a "[safety net](#)" for times of "particular pressure" in December. In the absence of a structural solution in the context of the Dublin discussions, this mechanism should, in the meantime, "serve as a bridge" and guarantee "real support" to a concerned member state. During the February informal Justice and Home Affairs meeting, [Germany](#) reiterated its support for a temporary arrangement that should cover the whole Mediterranean and called on more member states to join this coalition of the willing. [Commissioner Avramopoulos](#) repeated that a more structural scheme could only work if a high number of member states participated, yet declined to comment on how many and which member states would join the initiative.

Civil society organisations have also been calling for a more structural solution to the disembarkation and relocation of migrants, emphasizing the plight of the individuals stuck on board the vessels during member states negotiations. [ECRE](#) provided a series of recommendations as to how such structural [mechanisms](#) could work. Similarly, [SOS Méditerranée](#) called for "a common, predictable and coordinated mechanism... as a matter of emergency". Other organisations emphasised the need for safe and swift [disembarkation](#) policies and increased [resettlement pledges](#). [UNHCR](#) highlighted the importance of simultaneously "increasing coordinated multi-state rescue, restoring rapid disembarkation in a place of safety, and lifting impediments to the work of NGO rescue vessels". In early February, in a joint statement, [fifty NGOs](#) criticised the "painful, drawn-out debates" around ports of disembarkation and called on member state governments to adopt predictable disembarkation arrangements and end returns to Libya. At the same time, and as similarly highlighted by civil society [voices](#), whilst interim measures are urgently needed, it is important that efforts towards creating EU-wide solidarity on responsibility-sharing over refugees are continued as well.



UK-French Border Management Cooperation

Asylum

In January, the United Kingdom and France signed a [joint action plan](#) to prevent migrants from crossing the Channel between the two countries. The agreement was adopted in the wake of a recent increase in the number of migrants trying to reach the UK using small dinghies and fishing vessels. The action plan intensifies cooperation between the two countries on border management, sea crossings, deterrence campaigns, and returns under the Dublin Regulation. In doing so, it commits the UK to providing EUR 7 million in funding to France for so-called “reinforced preventive security measures”. The [declaration](#) also mentions an increasing use of CCTV footage, air, boat and land patrols and the criminal prosecution of migrants that cross the Channel by boat.

The document is the most recent product of a growing [militarised surveillance](#) of the border between the two countries, with the [British navy](#) being involved in intercepting vessels carrying migrants since the beginning of this year. [Sajid Javid](#), the UK Home Secretary, declared the migrant crossings “a major incident”. According to [Home Office](#) figures, a total of 539 migrants had attempted to travel to the UK in 2018, 42% of which were intercepted by French border control before reaching British shores. Javid also questioned why “genuine” asylum seekers would not have [sought asylum](#) in France already and, in the House of Commons, stated that asylum should be claimed in the [first safe country](#) reached. He added that the failure to do so in France would be taken into account when assessing the credibility of an asylum claim.

[NGOs](#) and other [commentators](#) were highly critical of the Home Secretary’s choice of words and accused him of an [overreaction](#). The [Refugee Council](#), which had already called on the UK government to open more safe and regular [routes](#), stated that prejudging asylum claims in such a way was “a blatant breach of international law”. [Immigration lawyers](#) underlined that the Geneva Convention contained no obligation that a refugee should claim asylum in the first country reached. [Steve Peers](#) similarly stressed that EU legislation such as the Dublin Regulation places no responsibility on asylum seekers to apply in certain countries, but rather identifies the state in charge of an asylum seeker’s application.

Winter on the Aegean Islands

Three years after the conclusion of the [EU-Turkey Statement](#), the situation for migrants on the Aegean islands continues to be precarious. As addressed in a previous [EPIM update](#), asylum seekers who have arrived on the Greek islands after 20 March 2016 are not allowed to leave the islands until their asylum application has been assessed. This [geographical restriction](#) was implemented to facilitate returns to Turkey, one of the [main pillars](#) of the EU-Turkey Statement. Since May 2017, vulnerable people, as defined by [Greek asylum law](#), are exempted from this geographical restriction. This section looks at two sets of structural problems on the islands that have returned as a source of concern during winter: (i) general accommodation conditions and (ii) the treatment of vulnerable asylum seekers.

To begin with, the start of the winter brought renewed concerns about the lack of adequate housing conditions on the islands. Twenty NGOs, including the [Greek Council for Refugees](#), repeated earlier calls to both the Greek as well as EU authorities to relocate all asylum seekers to better equipped reception centres. In reaction to the death of a 24-year old man from Cameroon in Camp Moira on Lesbos in early January, [local NGOs](#) as well as the Council of Europe [General Rapporteur](#) on Reception Conditions for Refugees and Migrants urged to immediately improve reception conditions. On the island of [Samos](#) a group of migrants staged a public protest to draw attention to their poor living conditions. [Refugee Support Aegean](#) noted that the situation on Samos “reached the edge” in late February due to overcrowded reception centres, lack of infrastructure and rising xenophobic tensions on the island. Greek Migration Minister [Dimitris Vitsas](#) acknowledged that the situation in Samos is currently the most worrisome, and that 2000 people need to be moved from the islands as soon as possible. [ECRE](#) and the International Commission of Jurists (ICJ), with support of the Greek Refugee Council, filed a legal complaint against Greece with the European Committee of Social Rights. This [complaint](#) specifically focuses on migrant children and points out how the Greek authorities continuously and systematically fail to provide sufficient accommodation facilities for these children. In combination with the lack of an effective guardianship system for unaccompanied minors, this has led children to be exposed to severe protection risks, including homelessness and detention.

[Greece](#) has been allocated a total of EUR 509 million under the 2014-2020 [Asylum, Migration and Integration Fund](#) (AMIF) and the [Internal Security Fund](#) (ISF), which includes funding for improving accommodation conditions. On top of this, EUR 267 million of the emergency assistance budgets of both funds has been earmarked for Greece. A recent [evaluation](#) by ECRE and UNCHR of the AMIF found that Greece actually received the largest total payment in AMIF emergency assistance between 2015 and 2017, amounting to EUR 114.5 million. However, there have been ongoing [concerns](#) about how these EU funds are spent. The [European Court of Auditors](#) announced in January that it will conduct an audit of five ‘hotspots’ in Greece (Kos, Lesbos, Chios, Samos and Leros) to assess whether the funds have been spent appropriately and achieved their objectives.

In addition, further concerns were raised regarding the special regulations that have been adopted for the most vulnerable asylum seekers on the islands. According to [Oxfam](#), these regulations are failing to identify and assist particularly vulnerable people such as pregnant women, victims of human trafficking and unaccompanied children and youth. This failure is a result of flawed and continuously changing screening procedures, and a lack of qualified staff to carry out vulnerability assessments. In response to the report, Minister [Dimitris Vitsas](#) vowed to send more qualified medical professionals to the islands.

Discussions on ‘Golden Visas’

At the end of January, the European Commission released its long-awaited [evaluation](#) of the so-called golden visa schemes. Also known as ‘Residence by Investment’ (RBI) or ‘Citizenship by Investment’ (CBI), these schemes give individuals the opportunity to bypass regular visa and citizenship procedures by buying government bonds or investing in property. At the start of this year, three EU member states ran Citizenship by Investment programmes (Bulgaria, Cyprus and Malta) whilst a number of EU member states had Residence by Investment programmes. As discussed in a previous [EPIM update](#), these programmes have been a subject of long-standing debate. While there have been [precedents](#) of closer involvement of EU institutions, citizenship policies touch on sensitive issues of state sovereignty and remain a largely national competence. Yet, given free movement and other rights derived from EU citizenship, which complements member state citizenship, the programmes are highly relevant from an EU law perspective, too. Last year the [European Parliamentary Research Service](#) and [Transparency International and Global Witness](#) released reports raising concerns about the poor accountability within these schemes, the lack of transparency and links to corruption, bribery and money laundering.

The Commission report of January highlights similar abuse and vulnerability concerns. It finds that both schemes in general lack adequate security checks of applicants and that the information shared by member states about the applications is insufficient and not transparent. RBI schemes, for instance, often failed to meet the conditions set out in the [Long Term Residence Directive](#) which require third country nationals to have lived in a member state for five continuous years before qualifying for long term residency. CBI schemes, on the other hand, were sensitive to being misused for the purpose of circumventing EU anti-money laundering rules and evade taxes. Moving forward, the report proposes continuous monitoring of the schemes, and the creation of a member state expert group. This group will be tasked with setting up an information and consultation exchange system and with developing a common set of security checks for CBI schemes.

The Commission report received mixed responses. [Some legal scholars](#) argued that the Commission raised several significant issues such as the lack of oversight on non-public bodies involved in the schemes. [Others](#) argued, however, that the Commission ignored the economic benefits of CBI schemes, and overstepped its power by meddling in national competences on nationality and citizenship.

NGOs such as [Transparency International and Global Witness](#) criticized the lack of concrete, adequate measures and called on the Commission to suspend all schemes until their potential security risks would be cleared. Similar responses were voiced in [The Guardian](#). Critics such as Green MEP [Sven Giegold](#) described the proposed solutions as “half-hearted”, and called for new European legislation and binding minimum standards. The Organized Crime and Corruption Reporting Project ([OCCRP](#)) questioned why the Commission removed its toughest demands, such as the refusal of applications from any individual on a UN or EU sanction lists, as outlined in earlier leaked drafts of the report they had seen.

Reactions also came in from EU member states administering RBI and CBI schemes. [Malta](#) argued that CBI and RBI applicants were actually subject to “rigorous due diligence checks and investigations”. The [Bulgarian Ministry of Justice](#) announced that it would eliminate CBI schemes. Reasons to cancel the schemes were attributed to a lack of investment and profit, rather than any concerns mentioned in the Commission report.



Upgraded EU Visa Information System

Children and Youth

At the beginning of February, the European Parliament's [Civil Liberties Committee \(LIBE\)](#) voted in favour of a number of changes to the EU [Visa Information System \(VIS\)](#). This follows on from the [Commission proposal](#) last year to [upgrade](#) the VIS to be interoperable with other EU information systems (see developments on the interoperability regulations below). The VIS is used in the Schengen area by national immigration authorities to examine and decide on visa applications, as well as by border guards to verify the identity of a visa holder. The present reforms include mandatory security checks across all EU databases to prevent identity fraud. Moreover, long-stay visas, including so-called 'golden visas' (see the political developments section above), as well as residence permits will now be included in the VIS. The age for retaining biometrical data such as fingerprints and facial images will be lowered to six years. As a last development, Europol and other law enforcement agencies will be granted greater access to VIS data.

These changes were criticised by European data protection authorities, as cited by [Statewatch](#). Amongst others, they feared that they would "fail to meet basic data protection and fundamental rights standards" as protected under EU data protection law. According to [Statewatch](#), the European Data Protection Supervisor (EDPS) was also critical of the Commission's proposal with regard to screening rules covering age, sex, nationality; country of residence; destination; first entry; purpose of travel; and current occupation. The [EDPS](#) warned that profiling techniques of this kind pose "serious technical, legal and ethical questions, related to their transparency and accuracy". Moreover, [data protection authorities](#) have been highly critical of the fingerprinting of children and youth in this context. They are doubtful whether the new VIS rules are in line with considerations about the child's best interests and with necessity and proportionality checks.

New Schengen Information System (SIS) rules

Asylum

[Three new regulations](#) governing the Schengen Information System (SIS), the EU's information sharing system for security and border management, entered into force at the

end of 2018. This follows on from the [European Council's](#) adoption of a Commission proposal to strengthen the SIS in November. More specifically, there are two amending regulations – one on the use of the SIS in the field of [police and judicial cooperation](#) in criminal matters, and one in the field of [border checks](#) – as well as a new regulation on the use of the SIS in the context of [return](#) operations. Rules that apply immediately relate to member states' use of the SIS for all terrorism-related offences, as well as stronger data protection rules in line with the [General Data Protection Regulation](#) and the [Police Directive](#) on data protection. In a subsequent phase, additional rules will come into effect that govern: obligatory alerts in the SIS for return decisions; alerts on wanted criminals; preventive alerts on missing children and persons in need of protection; and entry bans for third country nationals. The new regulations also provide [greater access](#) for EU agencies to data retained in the SIS. In this regard, the European Border and Coast Guard Agency (Frontex) plans to establish a technical interface that [links](#) to the SIS and that will issue alerts in case of hits in the SIS database.

Member states have been accused in the past of instrumentalising the SIS for political reasons, thereby unduly restricting free movement rights. A high-profile example is the case of [Lyudmyla Kozlovska](#), a Ukrainian national living in Poland and, in the context of her work as president of the Open Dialogue Foundation, a critic of the Polish government. Poland had entered an [alert](#) in the system, preventing Kozlovska from entering the Schengen Zone without official explanation. She was subsequently deported back to Ukraine and her case remains unresolved until now. The alleged silencing of this well-known and vocal civil society actor and possible political misuse of the SIS continues to be [petitioned](#) and debated by [civil society](#), [legal commentators](#) and [MEPs](#).

The Interoperability Regulation: Political Agreement

Asylum

The Parliament and Council reached a political agreement at the beginning of February on the [Commission's proposal](#) for a framework for interoperability between EU information systems. This concerns two new regulations that now will need to be formally adopted by the European Parliament and Council: [one](#) on interoperability in the fields of police and judicial cooperation, asylum and migration and the [other](#) on interoperability in the fields of borders and visas. The regulations will give border guards and immigration officials greater access to personal and immigration data across [different systems](#). Among other things, they will be able to use a European search portal to check biometric as well as biographical data of non-EU citizens. According to the [Commission](#), the regulations will not change access rules to such information and therefore protect fundamental rights.

The new rules would cover the already existing, centralised [Schengen Information System](#) (SIS), [Eurodac](#), and [Visa Information System](#) (VIS). Moreover, they would also apply to three new systems, among them the yet to be adopted [European Criminal Records System for Third Country Nationals](#) (ECRIS-TCN) and the already adopted [Entry/Exit System](#) (EES) and [European Travel Information and Authorisation System](#) (ETIAS). The Commission's initiative on interoperability is part of an ongoing [restructuring](#) of EU databases in the field of justice and home affairs which aims to improve connections between different information systems. [Statewatch](#) has raised concerns that this would in fact create a centralised EU database and affect non-EU citizens in a discriminatory manner. It also raised concerns about the risk of conflating terrorism threats with migration control. The [European Data Protection Supervisor](#) similarly warned, in early 2018, that the interoperability of large-scale EU databases was "liable to have profound legal and societal

consequences". Given the scale of the data retained in the interoperable databases, a data breach could have a profound impact on the fundamental rights of a considerable number of individuals.

Progress on Frontex Reform

Asylum

The European Parliament and Council have adopted their negotiating positions on the Commission's [proposal](#) for a reform of the European Border and Coast Guard ('Frontex'). Points of discussion during the negotiations will likely relate to the size and roll out of the agency's standing corps as well as to the EU's cooperation with third countries on the return of so-called "irregular migrants".

The Parliament [report](#) includes a number of amendments to the original legislative proposal. With regards to the creation of a standing corps of 10,000 operational staff, the Parliament proposes a gradual roll-out. 5,000 staff should be operational two years after the regulation would come into effect and the standing corps' full capacity would be reached after five years. Whilst the [Parliament](#) expressed its general support for strengthened cooperation with third countries on returns, it also introduced several safeguards to ensure a respect for fundamental rights during return interventions. These safeguards stipulate, for instance, that Frontex would have to conclude a status agreement with the third country in question before an intervention, or that the return destination would be deemed safe by UNHCR.

In the Council, the Frontex reform proposal created discord on a number of issues. As follows from an earlier [leaked document](#), concerns related to the size and roll-out of the corps. A [negotiating position](#) was agreed to in late February. The [Council](#) proposes to roll out the 10,000 operation staff until 2027. In that way, it would extend the envisaged timeline even further than the Parliament. The Council also proposes for the Commission to carry out a mid-term review of the overall number and composition of the corps. Following the review's discussion by the Council and Parliament, the Commission would then confirm or amend the number, composition and member states' contribution to the corps by March 2024.

In the negotiations, the Parliament and Council will have to find an agreement on a number of difficult issues. In particular, the initially proposed timeline for making the 10,000 standing corps operational as well as its total size has been assessed as a challenge by [commentators](#). Moreover, the Frontex reform has given rise to [sovereignty concerns](#) among member states, in particular in relation to the proposal's aim of [centralising decision-making power](#) with the Commission instead of the Council. This would apply, for instance, to emergency situations in which, according to the original proposal, it would be up to the Commission, not the Council, to decide whether Frontex should intervene.

More generally, the Frontex reform has also been criticised as forming part of a wider EU [strategy](#) of externalisation and pushing responsibilities to third countries with dubious human rights records. In this respect, [Migreurop](#) has called for greater scrutiny of Frontex's activities in third countries by the European Parliament. The EU's [Fundamental Rights Agency](#) has also issued suggestions on how to strengthen the overall fundamental rights protection framework in the Frontex reform.



Asylum

Mobile EU citizens

Children and Youth

Case [C-661/17](#), M.A., S.A., A.Z. v International Protection Appeals Tribunal, Minister for Justice and Equality, Attorney General, 23 January 2019

This case concerned a family of three who had resided lawfully in the UK for several years. Upon the expiry of their visas, they travelled to Ireland where they applied for asylum. In line with the Dublin Regulation, the Irish authorities issued a take back request to the UK. In subsequent proceedings against the transfer decision, the family appealed to Article 17 of the Dublin Regulation (“Discretionary Clauses”) according to which member states may decide to examine an asylum application themselves, even if they would not normally be responsible for it. The family cited, in this respect, health concerns of two family members as well as the pending withdrawal of the UK from the EU. The case appeared before the High Court of Ireland which referred several questions to the EU Court of Justice. With respect to the implications of the pending Brexit, first, the Court of Justice reiterated, as it had done earlier in [RO](#) (relating to the continued execution of European Arrest Warrants), that EU law, in casu the Dublin Regulation, continued to apply in full in the UK until the UK’s actual withdrawal from the EU. Accordingly, the pending Brexit did not oblige a member state to use the discretionary clause and examine an asylum application for which the UK was designated as ‘responsible’. The Court also noted that the presumption of respect for fundamental rights enshrined in EU law continued, similarly, to apply in full force in the UK until its withdrawal. Further Court conclusions reinforced states’ discretion in choosing whether or not to apply the Article 17 discretionary clauses. Among other things, it ruled that considerations relating to the best interests of the child do not oblige a member state to examine an asylum application for which it is not responsible under the Dublin Regulation.

Case [C-322/17](#), Eugen Bogatu v Minister for Social Protection, 7 February 2019

This case concerned the situation of Mr Bogatu, a Romanian national, who has lived in Ireland since 2003. He submitted a claim for family benefits for his two children, residing in Romania, with the Irish authorities. His claim was approved by the Irish authorities, except for a period between April 2010 and January 2013 during which Mr Bogatu received non-contributory unemployment benefits. According to the Irish authorities, Mr Bogatu did not, at that time, fulfil the conditions to receive family benefits for his children in Romania, since he was neither employed nor receiving contributory benefits in Ireland. Mr Bogatu challenged this decision with reference to EU law. In the context of proceedings which appeared before the High Court of Ireland, the CJEU was asked to clarify, first, whether [Regulation 884/2004](#) on the coordination of social security system requires a claimant with children living in other EU member states to be employed in order to be eligible to receive

family benefits, and second, whether the Regulation requires the claimant to be a beneficiary of cash benefits as a result of employment. The Court established that the Regulation entitles a person to family benefits in accordance with the national legislation of the respective member state. This entitlement also covers family members residing in other EU member states, and such family members should be treated as if they were residing in the same member state as the claimant. The Court found that the Regulation does not require a person to have a specific employment or other status. Accordingly, it was not necessary for a person such as Mr Bogatu, either to be employed or in receipt of cash benefits in order to be able to receive family benefits for his children living in another member state.

Other relevant case law

Case [C-492/18 PPU](#), TC, 12 February 2019

A CLOSER LOOK FROM...

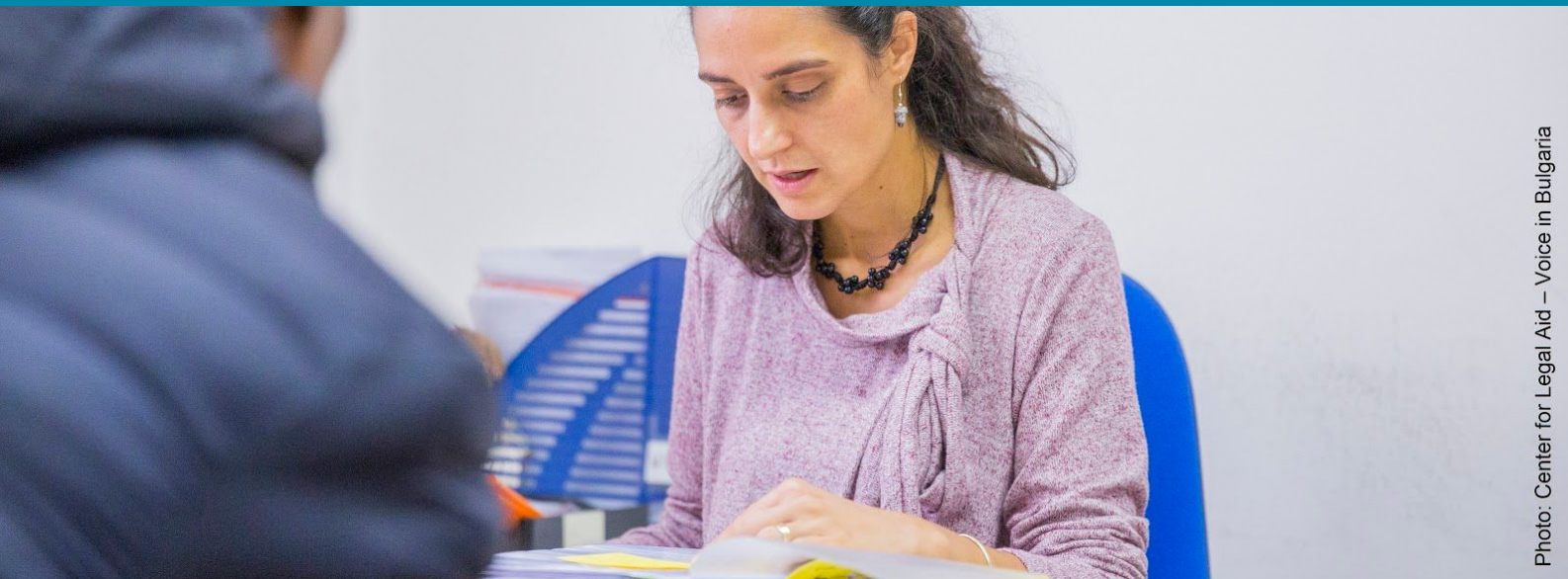


Photo: Center for Legal Aid – Voice in Bulgaria

Progress towards reducing Immigration Detention

Immigration Detention

By Jem Stevens, [International Detention Coalition](#)

What progress are we making towards reducing immigration detention? This was the main question discussed during the fourth [‘European Alternatives to Detention \(ATD\) Network’](#) meeting in Brussels in February.

As EU policies are encouraging more and longer detention to increase returns and prevent secondary movement, several member states are planning to expand the use of detention. Effective opposition to detention is becoming more difficult. Can civil society alternatives to detention, based on high quality case management, show that engagement with migrants in the community works better for everyone?

Set up in March 2017, the European ATD Network is a space to strategize for a future that is different from the looming dystopia of widening mass detention in Europe. To achieve reform that moves away from immigration detention, we need to make it a political problem and provide solutions. The network links NGO partners running case management ATD pilots in Bulgaria, Cyprus, Poland and the UK, with the International Detention Coalition (IDC) and the Platform for International Cooperation on Undocumented Migrants (PICUM). We started by developing a shared theory of change, setting out how implementing small

alternative pilots in four countries could build momentum to work towards the expansion of alternatives and a reduction of detention. We sought to address key barriers in Europe: a lack of practice and evidence on engagement-based ATD and limited buy-in from NGOs for solutions-based advocacy around alternatives. Two years into the process, the network is seeing real progress: the European Commission is putting significant political investment into alternatives involving civil society, while a range of regional, national and local stakeholders are increasingly exploring, promoting and collaborating on ATD.

And we now have evidence to prove that ATD works: EPIM's first independent [evaluation](#) of the pilot projects indicates that 97% of migrants stayed engaged – in countries with often high overall rates of secondary movement - and that case management had a positive impact on case resolution in 88% of cases. The report's qualitative findings help us frame the discussion with decision-makers to address the full complexity of strengthening immigration systems, rather than being limited to crude metrics of short-term return numbers. Less obvious achievements are equally significant. The network has become a hub of learning for trusted allies and beyond. During the network meeting in Brussels, we had an exchange with NGOs from many other countries that are working on ATD as a strategy. National civil society engagement is crucial for getting governments on board with alternatives that can really lead to detention reduction. One such example is the UK, where strategic campaigning linked with advocacy around an ATD pilot has been successful in achieving change. In July 2018, the government made a high-profile commitment to fund additional NGO-led alternatives projects as part of detention reform. This has already led to a 40% reduction in the number of people in detention.

There are many ongoing challenges, not least the question of how we can develop alternatives in complex political contexts and work with migrants towards resolving their cases. Despite this, the level of confidence at our network meeting was high. At a time of unprecedented pressure, there was a sense that this growing movement on alternatives could be a catalyst for change towards migration management systems that produce better outcomes for migrants, communities and governments without relying on detention.

FACTS & FIGURES

In 2018, EU countries recorded some 634,700 asylum applications, a decrease by 10% compared to 2017.

Source: EASO, December 2018.

UNHCR statistics on arrivals

Asylum

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

- 7,685 sea arrivals have been recorded since the beginning of the year. 235 have arrived in Italy, while 2,530 have arrived in Greece and 4,835 have arrived in Spain;
- So far, an estimated 207 people have been reported dead or missing in 2019;
- In Italy, the majority of refugees come from Tunisia, Eritrea and Iraq, while more than half of all refugees arriving in Greece originate from Afghanistan and Syria. In Spain, the majority of refugees come from Morocco, Guinea and Mali.

Relevant reports

Asylum Children and Youth Immigration Detention Mobile EU citizens

Human Rights Watch: No Escape From Hell

This [report](#) details the human rights abuses documented by HRW researchers in four migrant detention centres in Libya. It describes inhumane conditions, including the use of extreme violence by guards, and the mistreatment of children. The report highlights how the EU's cooperation with the Libyan Coast Guard contribute to this cycle of extreme abuse.

Hungarian Helsinki Committee: Crossing a Red Line – How EU Countries Undermine the Right to Liberty by Expanding the Use of Detention of Asylum Seekers upon Entry

The Hungarian Helsinki Committee conducted research on the de facto detention of asylum seekers in Hungary, Bulgaria, Greece and Italy. Their [report](#) looks at the statistics, different forms of detention, legal grounds and the political motivation of these practices. It provides recommendations to properly regulate and limit asylum seekers' deprivation of liberty.

Migration Policy Group: Piloting one-stop-shop citizenship campaigns for mobile EU citizens - Evaluation and lessons learned for practitioners

MPG evaluated a pilot model for one-stop shops for 'citizens campaigns', promoting the political participation of mobile EU citizens. Together with national partner NGOs this pilot was executed in Ireland, the UK and Belgium. The [report](#) provides recommendations on how to inform and promote political participation amongst mobile EU citizens.

EU Funding opportunities

Inclusion Asylum Children and Youth

Calls for proposals - EU funding

- [REC-RCIT-CITI-AG-2019](#): Call for proposals to improve the awareness on EU citizenship rights and inclusion of mobile EU citizens
 - Call out on 15.01.2019 – Deadline: 11.04.2019
- [REC-RRAC-RACI-AG-2019](#): Call for proposals to prevent and combat racism, xenophobia, homophobia and other forms of intolerance and to monitor, prevent and counter hate speech online
 - Call out on 31.01.2019 – Deadline: 24.04.2019
- [REC-RCHI-PROF-AG-2019](#): Call for proposals on capacity-building in the area of rights of the child and child-friendly justice
 - Call out on 15.01.2019 – Deadline: 14.05.2019
- [ISFP-2018-AG-SMUGG](#): Smuggling
 - Call out on 13.12.2018 – Deadline: 28.05.2019
- [REC-RDAP-GBV-AG-2019](#): Call for proposals to prevent and combat all forms of violence against children, young people and women
 - Call out on 15.01.2019 – Deadline: 13.06.2019

- [REC-RDIS-DISC-AG-2019](#): Call for proposals to promote the effective implementation of the principle of non-discrimination

o Call out on 13.12.2018 – Deadline: 20.06.2019

Other opportunities

[Strategic Legal Fund for Vulnerable Young Migrants](#) (UK only). ILPA; Deadline 01.03.19

[EPIM Call for Proposals - “Unlocking Alternatives”](#); Deadline 04.04.2019

[Documenting Human Migrations](#). National Geographic Society; Deadline 10.04.19

EU CALENDAR: UPCOMING EVENTS

European Council and Council of the European Union

 7-8 March JHA Council

 21-22 March European Council

European Parliament

 25-27 February LIBE Committee Meetings

 11-14 March EP Plenary

 18 & 21 March LIBE Committee Meetings

Other events

 28 February [ORAMMA Final Project Event](#), ORAMMA

 6 March [Family reunification under the Dublin Regulation](#), EPC

 21 March [Transformations in Migrants’ Access to Social Protection](#), IEMed

 25-29 March [Access to Social Protection for Migrant Workers, Refugees and Their Families](#), ITC-ILO

This document provides a focused analysis of recent EU level policy-making, legislation and jurisprudence relevant to EPIM’s sub-funds on (1) Immigration detention; (2) Reforming the European Asylum System; (3) Children and Youth on the Move; (4) Mobile EU citizens and (5) Building Inclusive European Societies and covers the period from 14 December 2018 to 25 February 2019. We kindly ask the readers to keep in mind that the present Policy Update is composed of a selection of documents and does not claim to be exhaustive.

Should you, as representatives from EPIM’s Partner Foundations or EPIM-supported organisations, have questions related to the analysis provided in this document or on EU developments in the field of migration and integration in general, you are invited to contact the authors (k.bamberg@epc.eu, m.desomer@epc.eu, i.vanbrouwershaven@epc.eu). The sole responsibility for the content lies with the author(s) and the content may not necessarily reflect the positions of EPIM, NEF or EPIM’s Partner Foundations.

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