Migration policy and the EU

"...many of these people don't have a choice anymore

Table of contents

13

31

47

50

67

Has the EU effectively enhanced cooperation on readmission with third countries?
By Karel Meixner, 'Investment for Cohesion, Growth and Inclusion' Directorate

80

The Finnish authorities should work together more closely to integrate work-based immigrants better
By Sari Hanhinen, National Audit Office of Finland

89

▶ **INTERVIEW**

Interview with Tomas Tobé, Member of the European Parliament
'The EU is really at a crossroads'
By Gaston Moonen

93

▶ **INTERVIEW**

Interviews with Dursa Kadu, who came as a boat refugee to Malta, and Yana Mardus, a refugee from Ukraine
Migrants' own stories - giving reports and data a human face
By Kiara Borg and Gaston Moonen, Directorate of the Presidency

Table of contents

102

Civil society's key concerns about the reform of EU asylum law

By Catherine Woollard, European Council for Refugees and Exiles (ECRE)

112

▶ **FORESIGHT AND AUDIT**

The dawn of a new age of implementation in EU migration policymaking?

By Hanne Beirens, Migration Policy Institute Europe

Editorial By Gaston Moonen

About time to deliver on an EU migration and asylum policy… for both migrants and EU citizens

The Achilles' heel of the EU. This is what some policymakers, for example MEP Tomas Tobé, a contributor to this Journal, have called migration. Some label it one of the most controversial topics in EU policymaking, exposing the EU's ability to act, and even more so since the 2015/2016 migration crisis. Since then, the European Commission has set out various plans to overhaul the bloc's legal framework in response to the surge of asylum seekers fleeing civil war in Syria. Since then, we have seen even more reports – global reports from the UNHRC (see page 7), the Commission, the European Parliament, external auditors, various think tanks and civil society groups – providing data on migrants, including refugees, on overflowing reception facilities, hiccups in the procedures, the weaponisation of refugees to put pressure on the EU, integration challenges, etc. For several years now, migration and asylum have seemingly been in crisis mode, drowning out information on how the EU has successfully given shelter and a future to many migrants and asylum seekers…

There is seemingly plenty of data available, although perhaps not all the data required for well-founded decision-making, as several ECA reports relating to migration issues have pointed out (page 58). Lots of footage too, with many images of boat refugees facing horrific situations when trying to cross the Mediterranean Sea. But beyond the data, beyond the reports, what is the effect on *you* as EU citizens when you are confronted directly with refugees? A few years ago, I came close to direct personal experience when sailing w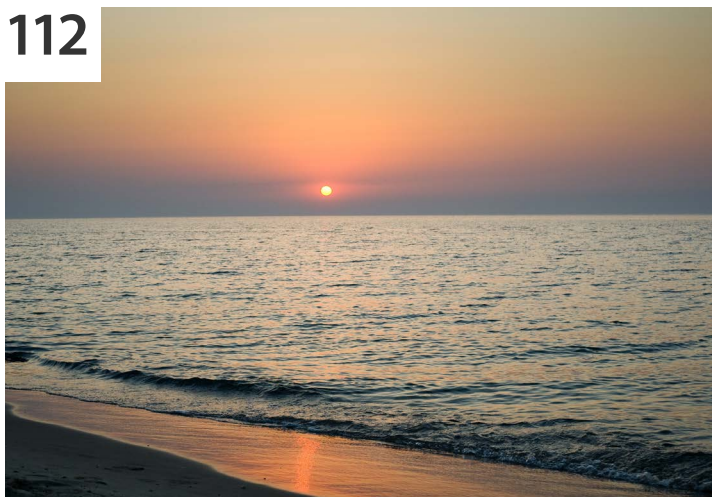ith my family in the English Channel. While at sea, we heard messages on the VHF – marine radio – about a group of boat refugees trying to cross the Channel towards the UK. It sounded as though they were very close to our location. As skipper, my mind raced not only through the *options* for assistance, but also the *obligation* to help people in distress. My children and I scanned the horizon for the inflatable boat in distress. In the end, we never found the boat, so the issue of assistance did not materialise. On that occasion, the refugees were to remain faceless to us.

For many EU citizens, however, the wave of refugees fleeing the Russian war on Ukraine from February 2022 onwards meant that these refugees were no longer faceless. Well over four million refugees came from Ukraine into the EU and many were wholeheartedly welcomed and given shelter, food and authorisation to work. Some were welcomed by my colleagues, who provided temporary homes, mostly to women and children. This was heart-warming, as were other actions undertaken to provide financial and practical support. With Luxembourg setting up a new temporary shelter for refugees next door to the ECA premises, the issue of an EU migration and asylum policy became even more visible. Every refugee has their own unique story, and we spotlight just two here: one story of crossing the Mediterranean Sea as a boat refugee, and another of fleeing Kyiv in March 2022 (page 93).

However, the vast majority of migration stories – roughly three out of four in the EU – relate to regular, legal migration, triggered by labour needs in Europe and various other regions ranging from North America to the Middle East. The major cause of this migration is demographic development, fuelled by economic aspirations, as highlighted by EU Commissioner Ylva Johansson in her contribution. She argues that while irregular migration needs to be prevented, pathways to legal migration need to be extended, including through increased cooperation within the EU (page 31). As Professor Heaven Crawley points out in her contribution (page 21), many of the root causes underlying refugees' decision to migrate to Europe lie in their countries of origin. But she also puts this into perspective when she mentions 'Fortress Europe', referring to the unwillingness or inability of EU member states to address the economic needs and fundamental values underpinning the EU's collective identity. This last aspect is highlighted in particular by Professor Violeta Moreno-Lax in her contribution, as she argues that these values may have been the starting point for the EU's asylum policy but are lost in practice with the new EU Pact on Migration and Asylum (page 106).

This new Pact seems to be a result of many years of negotiations to capture solidarity between member states not only in words but also in legislation and implementation, as Professor Philippe De Bruycker explains in our Long Read (page 13). Whether this quest for solidarity will result in physical solidarity between the EU frontline member states and those beyond these borders remains to be seen following the adoption envisaged by June 2024. Is there enough trust between member states for everybody to live up to their commitments? All policymakers, ranging from Swedish Minister for Migration Maria Malmer Stenergard, who managed the unexpected Council agreement last June (page 47,) to EU Commissioner Ylva Johansson or MEP Tomas Tobé (page 89), agree that it is 'Now or never' – the Pact on the negotiation table now is a unique opportunity to finally address the migration challenge, particularly when it comes to

the illegal migration that the EU is facing. Political deliberations have been painfully slow, as can be concluded from Lorenz Tripp's analyses (page 26). Hopefully, however, with the agreement reached by member states in early October 2023 on the proposed related Regulation for situations of crisis and *force majeure*, and the negociations resumed, the deadlines for the adoption of the new Pact – at least before June 2024 when the European Parliament breaks for elections – remain within reach.

With an increasing political consensus that migration and asylum policy is something that can only be realised by the member states together, EU competences have also increased. As Nina Gregori, Executive Director of the European Union Agency for Asylum, argues, a multinational asylum system requires coherence not only in the overall legislation but also in the application by the different member states with responsibilities on the ground (page 42). Such harmonisation, as foreseen by the new Pact, also applies to border management issues, as explained by Hans Leijtens, Executive Director of Frontex, the EU's fastest growing executive agency. He underlines to stand for EU's border management as a means of ensuring that fundamental rights are properly applied, in the interests of migrants and the EU at large, living up to high human rights standards (page 36). However, as Catherine Woollard explains (page 102), civil society groups have been critical about border control practices in the past and fear that the new Pact will actually weaken procedural guarantees and possibilities for asylum seekers, and even increase the risk of detention and pushbacks forcing asylum seekers out of EU territory.

The proof of the pudding is in the eating and clearly both politicians and migration experts argue that there is an urgent need to deliver an EU migration policy that is implemented instead of merely talked about. Hanne Beirens identifies a change of focus towards implementation, with mandatory implementation plans for both the Commission and national governments (page 110). Hence the start of an era of policy implementation instead of policymaking?

The latter would open up more possibilities for external auditors to assess the new Pact, particularly when it comes to its effects, ranging from shorter, more efficient procedures to the wider impact of both a more manageable *and* a more human way to handle migration and asylum flows towards the EU. Bringing facts to power. External auditors have already assessed various instruments and procedures implemented by the EU and its member states over the last five years, including in response to the 2015/2016 migration crisis. ECA Member Bettina Jakobsen points out that the ECA is able to address a sensitive policy issue like migration, as shown by the numerous ECA reports issued in this area in recent years. But to do so, the maturity of implementation on the ground is key (page 50). Former ECA Member Leo Brincat refers to how earlier ECA recommendations have contributed to various aspects of the new Pact, including the introduction of clear and tangible objectives (page 54). For example, the ECA has published reports relating to root causes (page 62), information systems for border control (page 72) and enhanced cooperation on readmission issues (page 67). ECA Director Bertrand Albugues also identifies a shortfall in systematic needs assessments (page 76). This edition also includes contributions from colleagues at the Finnish and Czech supreme audit institutions, with Sari Hanhinen zooming in on actions for integrating migrants (page 80) and Lukáš Topinka assessing the performance framework in place in relation to migration spending (page 84).

For me, the nagging question remaining is whether the new Pact will decrease the horrifically dangerous situations potentially facing boat refugees or people desperately considering their options at the EU's external borders. Does the Pact really address the issues that could change asylum seekers' decision on whether or not to come to the EU and how to attempt the journey? Will it address this Achilles' heel of EU policymaking and decrease the sense of crisis that many EU citizens appear to feel in relation to this policy area? Michael Spindelegger of the International Centre for Migration Policy Development identifies more cooperation efforts with non-EU partners and flags seven priorities that could trigger real change. He also observes that the main drivers of migration lie outside the EU (page 98).

Other experts on migration, however, have argued that the latter statement is a persistent myth in the field of migration policy. For example, Professor Hein de Haas, in a recent publication, even identifies 22 myths, ranging from the idea that we are currently experiencing an era of mass migration to the idea that poverty is the driving force behind migration. Based on his research, he argues that it is the demand for labour, particularly in the US and Europe, that drives migration flows, much more than conflict. He and other experts argue that instead of focusing on external migration pressure and preventing boat refugees from crossing, the EU and its member states need to identify their long-term vision for society and the economy and see what is necessary and feasible in order to realise that vision. Somehow this rings a bell… a lack of systemic needs assessments, coincidently one of the ECA's most common findings? Perhaps another Achilles' heel that needs to be addressed in order to ensure that the EU remains a liveable society, now and in the long term, both for its citizens and for migrants.

Refugee situation worldwide – UNHRC 2022 report shows sharp rise in number of forcibly displaced people

By Maximilian Geissler, Directorate of the Presidency

Source: UNHCR

Cover of the 2022 UNHCR Global Trends report.

We can understanding the EU's asylum and migration policies and actions better by placing them within the context of global refugee flows and changes. And these flows have clearly changed: the United Nations High Commissioner for Refugee (UNHCR), the UN Refugee Agency, reports that 108.4 million people were forcibly displaced by persecution, conflict, violence, human rights violations, etc. in 2022, an increase of 21 % on the previous year. Maximilian Geissler, who until recently worked as an intern in the Directorate of the Presidency, provides some insight on UNHCR's key findings, including putting Europe's refugee situation into a global perspective.

Global forced displacement

The number of forcibly displaced people has more than doubled since 1990, from 40 million to 108.4 million in 2022 (see **Figure 1** – data taken from the UNHCR Global Trend report 'Forced displacement in 2022', published on 14 June 2023). In 2022 persecution, conflicts, violence and wars increased the number of forcibly displaced people by 19 million compared to the previous year. According to UNHCR's statistics on forced displacement, this was also the largest ever year-on-year increase and these numbers are expected to keep rising. The Ukraine war has contributed significantly to this situation.

The war in Ukraine had left 11.6 million Ukrainians displaced by the end of 2022.

> **Box 1 – United Nations High Commissioner for Refugees (UNHCR)**
>
> UNHCR, the UN Refugee Agency, is dedicated to saving lives, protecting human rights and building a better future for people forced to flee their homes because of conflict and persecution. UNHCR leads and coordinates international action to protect refugees, forcibly displaced communities and stateless people and ensure that people at risk of persecution are granted asylum in other states. According to its mandate, UNHCR also has the task of finding durable solutions for refugees. These include voluntary return, integration in the host country or resettlement in a third country. UNHCR runs humanitarian aid programmes for refugees, internally displaced people and returnees in numerous countries and operates in over 137 countries.

Refugee situation worldwide – UNHRC 2022 report shows sharp rise in number of forcibly displaced people

Overall, the global refugee population under UNHCR's mandate increased by 8.1 million people, to reach 29.4 million by 2022. At a global level, Türkiye, Iran, Colombia, Germany and Pakistan were the countries that hosted the largest refugee populations at the end of 2022. The same year saw the highest ever number of new asylum applications – 2.6 million – by people of more than 140 nationalities in 155 countries.

Figure 1 – People forced to flee worldwide

Source: UNHCR Refugee Data Finder
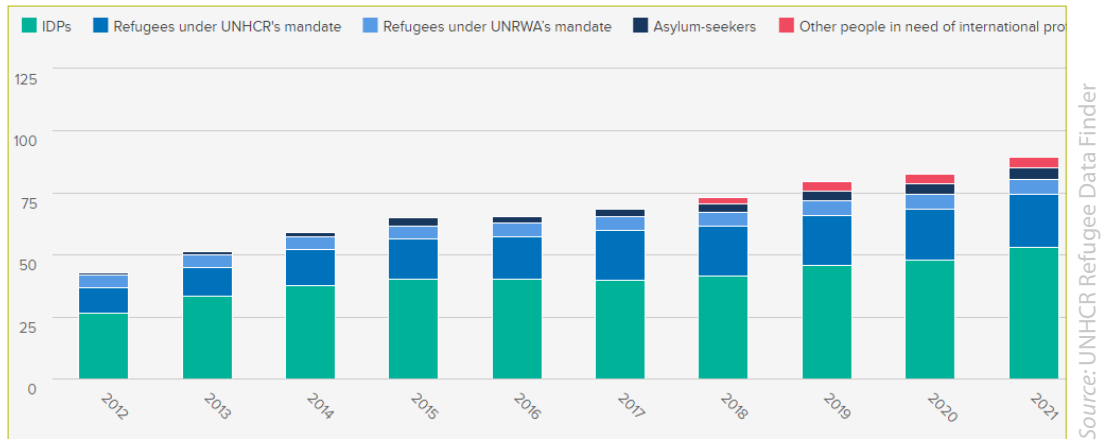
Most people tend to stay as close to their home countries as possible. As of the end of 2022, 70 % of refugees, including people in refugee-like situations, were being hosted by neighbouring countries. **Figure 2** shows that over the last five decades, three-quarters of such populations remained within their region of origin.

Figure 2 – Flows of refugees and people in refugee-like situations* from their region of origin to their region of asylum 1975-2022

Source: UNHCR Global Trends report: 'Forced Displacement in 2022'.
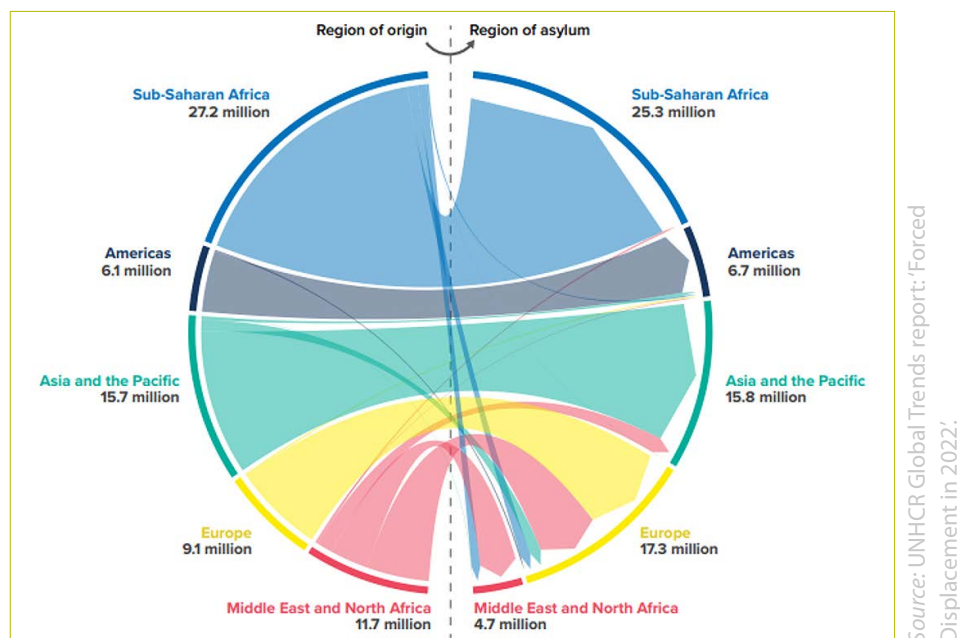
*Also includes 'other people in need of international protection' besides internally displaced persons, refugees and asylum-seekers (see paragraph below).

Focusing on four groups

In its report, UNHCR identifies four different groups making up these 108 million forcibly displaced people: 62.5 million internally displaced people (IDPs), 35.3 million refugees, 5.4 million asylum-seekers and 5.2 million other people in need of international protection, consisting mostly of stateless people.

Internally displaced people

According to the UN's Guiding Principles on Internal Displacement, IDPs are 'persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized border'.

Forcibly displaced people – the largest group of IDPs – are people who have been forced to flee due to armed conflict, violence or human rights violations and who remain in their own country. As in previous years, IDPs represented the majority of the forcibly displaced population, at about 58 % as of the end of 2022. Colombia and Syria continued to report the largest number of people displaced within their own country (6.8 million each). In Ukraine, 5.9 million people were internally displaced. In Africa, the Democratic Republic of Congo ranked fourth in the world with 5.5 million people. In addition to conflict and violence, natural disasters pose another challenge. In 2022, disaster-related internal displacement accounted for more than half (54 %) of all new displacements. An example is the flooding in Pakistan, where 8.2 million people had to relocate.

Refugees

UNHCR defines refugees as people who have been forced to flee their homes and have crossed an international border to find safety in another country. Refugees are defined and protected by international law. The total number of refugees worldwide increased by 35 % 35.3 million in 2022 (see **Figure 3**). This increase can be attributed mainly to the Ukraine war in Europe and an increase in the number of Afghans fleeing to Iran and Pakistan.

Figure 3 – refugees by region of asylum

Source: UNHCR Global Trends report: 'Forced Displacement in 2022'.
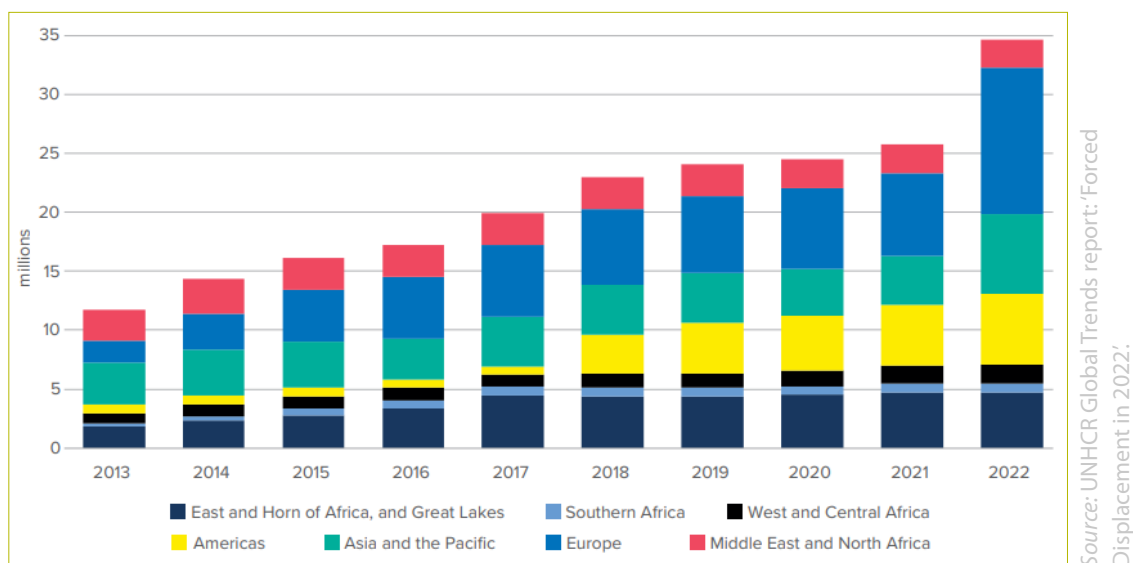
Looking at Europe it is noticeable that, including Türkiye, the continent hosts more than a third of all refugees. Türkiye remains the largest host country for refugees with 3.6 million. The top ten countries worldwide in terms of number of refugees hosted by the end of 2022 include two EU member states: Germany in fourth place with 2.1 million people and Poland in tenth place with 0.97 million.

More than 87 % of all people who were refuges as at the end of 2022 originated from just 10 countries. Syria was the main country of origin, accounting for 6.5 million refugees. Ukraine and Afghanistan were second with 5.7 million each, and Venezuela with 5.5 million people. Only 24 % of refuges were hosted in high-income countries, while 20 % of all refugees were hosted by least developed countries.

Asylum-seekers

An asylum-seeker is someone whose request for sanctuary has yet to be processed. National asylum systems exist to determine who qualifies for international protection. However, during mass movements of refugees, it is not always possible to conduct individual interviews with every asylum-seeker who crosses a border. These groups are often called 'prima facie' refugees.

Refugee status determination (RSD) is the process by which a government or UNHCR determines whether a person seeking international protection is a refugee. Refugee status can be determined either in individual or group procedures. Individual procedures exist mainly in the Americas and Europe. These two regions remained those with the largest number of individual applications in 2022, with five countries alone (the United States of America, Germany, Costa Rica, Spain and Mexico) accounting for more than half of all 2.6 million new individual applications registered worldwide : (see **Figure 4**). The top three countries of origin for individual applications were Venezuela, Afghanistan and Cuba.

Figure 4 – Individual asylum applications registered by region of asylum 2013 – 2022

Source: UNHCR Global Trends report: 'Forced Displacement in 2022'.
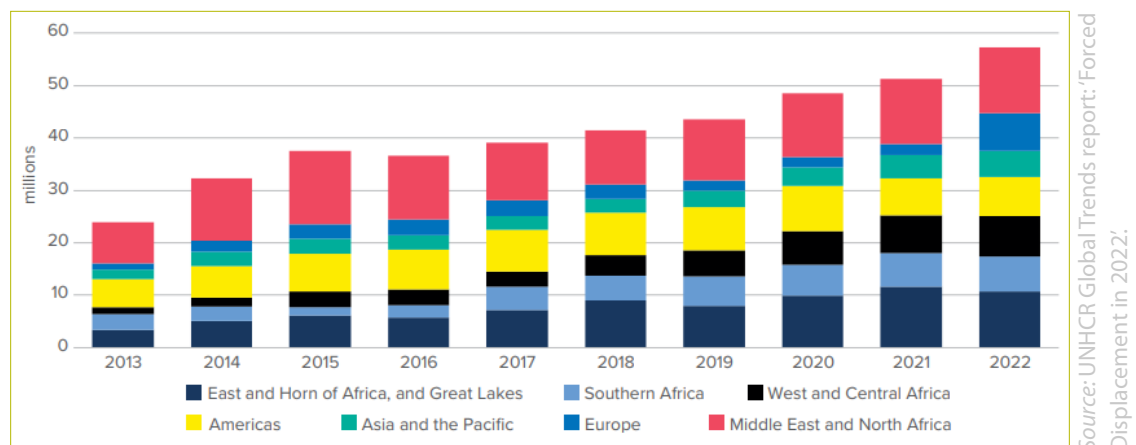
In addition to group and individual refugee protection, people may apply for temporary protection. These mainly include refugees from Ukraine who have been granted temporary protection under the EU Temporary Protection Directive, activated by the Council in March 2022. Ukrainians made up 98 % of those granted temporary protection (see **Figure 5**).

Figure 5 – Type of recognition by country of asylum 2022

Source: UNHCR Global Trends report: 'Forced Displacement in 2022'.
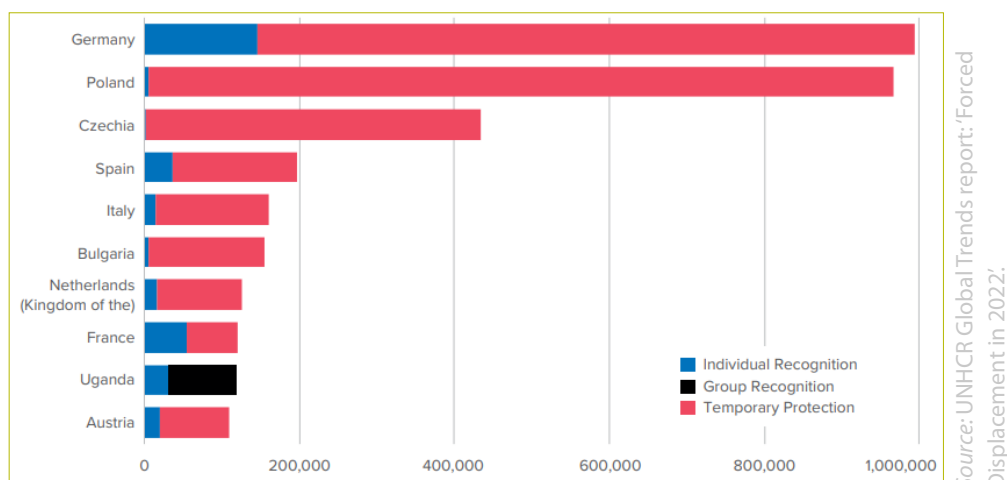
In 2022, over 1.3 million people received a substantive decision on their individual refugee status. This represents an increase of 27 % on the previous year and shows a significant increase in productivity. Of these, nearly 717 300 people were granted refugee or other protection status in 146 countries, while 585 300 were refused. A major challenge is the 5.4 million pending asylum cases, an increase of 18 % on the figure as at the end of 2021. This legal uncertainty places a major burden on many asylum-seekers.

The UNHCR report also contains 'nowcasting' statistics, which predict the very recent past using a mix of actual data and statistical models to estimate the current refugee or asylum-seeker figures. Interestingly enough, the estimated refugee population is expected to decrease slightly due to fewer Syrian refugees in Türkiye. However, for asylum-seekers the figures indicate an upward trend overall (see **Figure 6**).

Figure 6 - Nowcasting regional estimates for Europe, including uncertainty intervals December 2022 – May 2023

Source: UNHCR Global Trends report: 'Forced Displacement in 2022'.
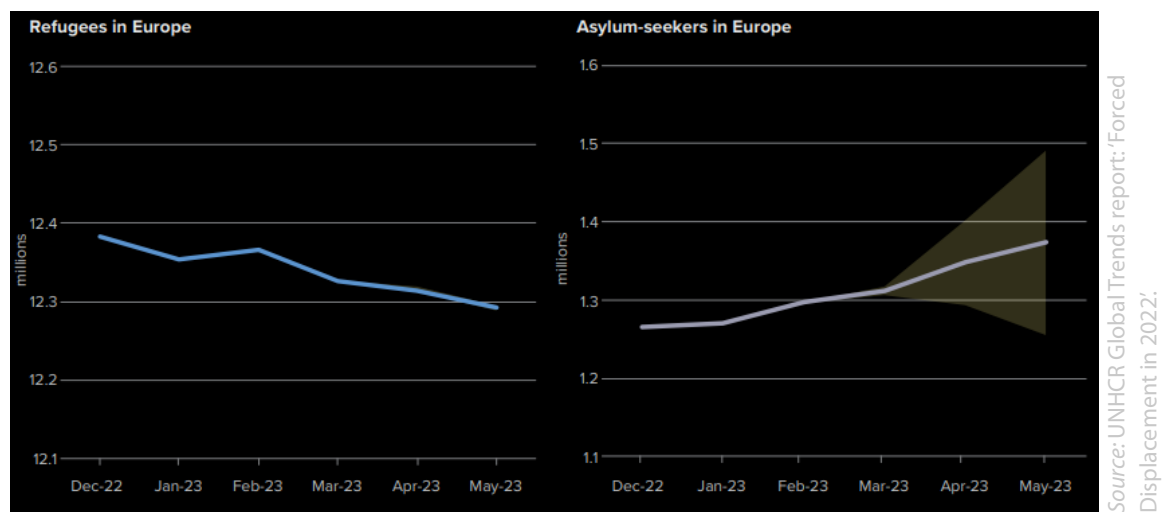
Other people in need of international protection

The fourth group UNHCR identifies are other people in need of international protection, the vast majority being stateless people, i.e. those not recognised as citizens of any country. Denied a nationality, they therefore often lack access to essential services and fundamental rights: education, healthcare, formal employment, the right to vote or the ability to travel. As of the end of 2022, an estimated 4.4 million people worldwide were either stateless or without citizenship, up 2 % from the end of 2021.

Solutions

In its report, UNHCR identifies *durable* solutions as a top priority to allow refugees and internally displaced people to build their lives in safety. In 2022, at least 5.7 million IDPs returned to their places of origin, 8 % more than in the previous year. Durable solutions for refugees include voluntary repatriation, local integration, and resettlement in a third country. Complementary pathways and family reunification can expand solutions in third countries and alleviate pressure on host countries. It is essential to promote refugee ownership through capacity building and access to education. In 2022, 339 300 refugees returned to their country of origin, while 114 300 refugees were resettled in a safe third country (changes of -21 % and +99 % respectively compared to 2021). For every refugee who returned or was resettled in 2022, there were 16 new refugees.

UNHCR signals that new and ongoing conflicts continue to force people to flee in 2023. Somalia, Sudan, Myanmar and the Democratic Republic of Congo are experiencing armed conflicts as well as natural disasters such as floods and droughts and poor food supplies. The increase in global energy and commodity prices has had a negative impact on many countries. Countries in the Sahel region, which were already struggling with the negative economic impacts of the COVID-19 pandemic, were particularly affected.

Finally, UNHCR reports that despite the numerous challenges mentioned above, there are also examples showing that many positive things can be achieved in this world by working together, such as groups of refugees being able to return to their home countries because lasting peace has been secured. Other welcome developments in 2022 included the cessation of fighting in northern Ethiopia, with 1.9 million IDPs returning during the year. In Yemen, the ceasefire was successful and largely respected. This all enhances the prospects of starting to build durable solutions for people to rebuild their lives in safety and dignity.

Solidarity under EU asylum policy with the New Pact on Migration and Asylum: Deal or Grail?

By Professor Philippe De Bruycker, Université Libre de Bruxelles

Source: lightsource/ Depositphotos

In recent decades, the EU has realised that having common borders means so much more than having a customs union: it also entails sharing responsibilities and burdens when it comes to asylum and migration issues. How has such solidarity manifest itself on paper and in practice? Philippe De Bruycker is a professor in the Institute of European Studies of the University Libre de Bruxelles and coordinator of the Odysseus Network for Legal Studies on Migration and Asylum in Europe. He holds the Jean Monnet Chair for European Law on Immigration & Asylum and has published extensively in this area. In this Long Read he analyses how solidarity has forged EU asylum policies and assesses how it should do so to address the EU's future migration challenges.

Tackling migration issues alone or together?

More than thirty years ago, the EU made a significant choice with the conclusion, in 1990, of the Schengen agreement and the Dublin convention. These two international instruments, which later became EU law, rely on each member state taking individual responsibility rather than on solidarity between them, as I explain in the first part below. After 20 years of solidarity being considered a non-issue, member states were eventually prompted to face this debate by the refugee crisis in 2015, when about one million people entered the EU through Greece. In 2020, the European Commission's New Pact proposed a flexible solidarity mechanism that has led to a harsh political debate. This shows that the quest for solidarity on asylum policy is one of the most difficult issues facing the EU, as I discuss in the second part of this article.

The choice against solidarity

Solidarity is nowadays one of the hottest topics in relation to EU asylum policy. It is headline news and discussed at length by the Council of Ministers, which managed to reach an agreement in June 2023 after years of discussions. It has even become the subject of debate as high as European Council level. This is a new development: despite the congenital defects of the Schengen area, solidarity had been a non-issue for the preceding 20 years.

ECA Journal Short Read

Until the 2015/2016 crisis, the EU's common asylum policy was **mostly in the hands of its member states**, and EU support and mutual solidarity were non-issues. However, various EU treaty changes **enshrined the principle of solidarity** while leaving EU lawmakers room for manoeuvre. Solidarity tools for sharing responsibilities developed, characterised by **EU funding**, the **setting-up of EU agencies** and **EU relocation schemes**.

The **2015/16 crisis triggered mandatory solidarity actions**, including relocation and increased EU funding. With its 2020 proposals for a New Pact on Migration and Asylum, the European Commission added the **idea of flexibility**, giving member states a **choice of how to implement solidarity measures.** It maintained **broad discretion regarding the parameters to consider** when identifying which member states will benefit from solidarity and which will share the burden, with the **Council having the final say**.

Whether the new Pact will generate enough solidarity with benefitting member states remains to be seen, not least given the **large discrepancy between the annual target figure of 30 000 relocations** and the **one million asylum applications** the EU faced in 2022. If it does not, **further Europeanisation** of migration policies may be an option to **ensure solidarity**, giving **EU agencies more responsibilities** and increasing EU funding.

The congenital defects of Schengen and Dublin

The Schengen Convention of 19 June 1990 is an invention of northern member states while the Dublin Convention of 15 June 1990 was clearly inspired by Schengen, which it replaced to allow the UK to join the system for determining responsibility for asylum applications while remaining outside the Schengen area. The problem with both these Conventions stems from the fundamental political choice made at the time to leave it up to each member state individually to deal with the external borders and asylum applications.

The southern member states are therefore legally obliged to, on their own, control their part of the external borders and examine the asylum applications lodged on their territory. This is problematic because the burdens are asymmetrical in the EU. Greece and Italy in particular are the member states most exposed to migration flows because of their geographical location. However, the same is not true of the eastern and northern member states, which, in principle[1], have very limited responsibilities due to the absence of land borders with non-EU countries and only a limited number of asylum-seekers arriving directly on their territory.

The way the responsibilities are allocated among EU member states is thus extremely unequal and therefore flawed. It is surprising that such a principle was ever devised as it is totally unfair and therefore creates a huge risk of ineffective application by the most burdened member states. Its adoption is explained by the fact that the Schengen system, and the Dublin system it inspired, were the product of five northern member states (France, Germany and the three Benelux countries) within an intergovernmental framework and was subsequently imposed on the others once the Schengen and Dublin rules became EU law[2]. There was almost no mechanism of solidarity accompanying these rules, leaving the southern member states to face their burden alone. It is a real surprise not only that such mechanisms were ever invented, but that they remain applicable in the EU today, 33 years after their adoption. This is because, until the crisis of 2015/16, solidarity was considered a non-issue.

Solidarity as a non-issue

Following the entry into force of the Amsterdam Treaty (Article 63(2)(b)), measures on refugees and displaced persons were supposed to be adopted within five years to 'promote a balance of effort between member states in receiving and bearing the consequences of receiving refugees and displaced persons'. The Tampere conclusions adopted by the European Council in 1999 contained only a vague reference to an 'agreement on the issue of temporary protection for displaced persons on basis of solidarity between Member States' (point 16). The legal rules on solidarity[3] included in the Temporary Protection Directive[4] are weak and vague. Article 25 of Directive 2001/55 required member states to receive displaced persons 'in a spirit of solidarity', leaving it up to them to their reception capacity 'in figures or general terms'. If the number of displaced persons exceeds their capacity, 'The Council shall examine the situation and take appropriate action'. It is interesting to observe that the activation of this directive for the first time in 2022, due the influx of millions of Ukrainian refugees resulting from Russia's aggression, has revealed the huge discrepancies between the number of displaced persons received by member states[5]. In particular, it has shown that giving refugees free choice of destination member state leads to unfair distribution among them.

The authors of the Lisbon Treaty took the issue of solidarity seriously in 2007, not least by including Article 80 of the Treaty on the Functioning of the European Union (TFEU), which states: 'The policies of the Union set out in this Chapter and their implementation shall

---

1   There are exceptions, however, e.g. due to the massive influx of Ukrainians into these member states following the Russian attack on Ukraine in February 2022.
2   On the negotiation of the Dublin II Regulation 343/2003, see AUS, P., Logics of decision making on Community Asylum Policy, A case study of the evolvement of the Dublin II regulation, Arena Working Paper n°3, 2006; see also Tsourdi, L. and Costello, C, The evolution of EU law on refugees and asylum, in: CRAIG, P. and DE BURCA, G., OUP, 2021, *Evolution of EU law*, pp.807-808.
3   See Solidarity in EU Asylum Policy, European Parliamentary Research Service (EPRS), January 2023, PE 649.344.
4   Directive 2001/55.
5   As of July 2023, according to Eurostat, out of 4 114 320 beneficiaries of temporary protection, 971 080 are in Poland and 357 540 in the Czech Republic, compared to 67 350 in France.

be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle'. The language used is strong: it is no longer about 'promoting' solidarity as it was under the Amsterdam Treaty, but rather implementing it in EU legislation based on a clearly binding provision of primary law.

However, there have been discussions about its value[6], as the principle of solidarity and fair sharing of responsibility is rather vague and gives EU lawmakers much room for manoeuvre. Be that as it may, the provision nevertheless legally requires solidarity measures leading to 'a fair sharing of responsibility', according to its interpretation by Lilian Tsourdi[7]. It goes further than the idea of burden sharing, often debated under international refugee law. If indeed what is fair cannot be defined precisely, a system like the Dublin one is clearly contrary to that provision as it is totally unfair[8].

Moreover, the Dublin system has not been accompanied by solidarity measures aimed at counterbalancing its unfair distribution of responsibilities as required by Article 80 TFEU. Though several measures have been adopted, their scope remains limited in comparison to the scale of the issue. This is because solidarity was not actually taken seriously until the crisis of 2015/16, despite the Lisbon Treaty adding Article 80 to the TFEU. It was before treated as a non-issue based on the mantra that Dublin – considered the cornerstone of the Common European Asylum System (CEAS) – is a responsibility mechanism, not a solidarity one.

The quest for solidarity

In the early days of EU asylum policy in the 2000s, some solidarity tools were nevertheless developed, but they remained *modest*. The crisis of 2015/16, when about one million asylum seekers entered the EU mainly through Greece, was the catalyst for *mandatory* solidarity with the adoption of relocation measures. Under the New Pact on Migration and Asylum, presented in 2020, the Commission proposed *flexible* solidarity.

The early days during the 2000s: modest solidarity

The Commission published a Communication on 'enhanced intra-EU solidarity in the field of asylum' in 2011. It insisted on practical cooperation through the European Asylum Support Office (EASO) (which later became the European Union Agency for Asylum (EUAA)) to assist member states that face particular pressure and on enhancing the added value of financial solidarity. Abandoning its 2008 proposal to temporarily suspend Dublin transfers when member states face a particularly urgent situation that places an exceptionally heavy burden on their asylum systems, the Commission eventually supported the idea of creating an early warning mechanism to prevent crisis. This proposal became a reality under the Dublin III Regulation in 2013, but such suspensions have never been used. The Justice and Home Affairs Council closed the process on 8 March 2012 by adopting conclusions 'on a common framework for genuine and practical solidarity towards member states facing particular pressures due to mixed migration flows'. These were nothing more than a catalogue listing all the existing solidarity measures adopted to date. Two solidarity tools – funding and agencies – were developed during this period, while a third – relocation – emerged tentatively.

EU funding

Funding was the first solidarity tool used, with the creation of the European Refugee Fund (ERF) in 2000. Solidarity was even the first goal mentioned by ERF I and ERF II in 2004. The third ERF, adopted in 2007, was part of a framework programme explicitly entitled 'solidarity and management of migration flows'. Regulations adopted in 2014 and 2021

---

6   And also whether it can it be used as a proper legal basis or only in combination with other ones (see about this controverse, European Parliament Research Service (EPRS), Solidarity in EU Asylum Policy, briefing, January 2023, pp. 7.

7   Tsourdi, L., Solidarity at work? The prevalence of emergency-driven solidarity in the administrative governance of the Common European Asylum System, Maastricht Journal of European and Comparative Law, 2017, Volume 24, n° 5.

8   See Kucuk, E., *The Principle of solidarity and fairness in sharing responsibility: more than window dressing?*, in: European Law Journal, 2016, Volume 22, No 4, p.448.

respectively incorporated the ERF into one overarching fund – the Asylum, Migration, and Integration Fund (AMIF). The amounts available increased very significantly, from €216 million for the 2000-2004 period to almost €10 billion for the 2021-2027 period. The latter figure includes not only the budget allocated to asylum policy, but also to migration and integration.

However, EU funding remains modest, representing around 2% of the member states' total expenses for their national asylum policies over the 2007-2013 period, when €614 million was allocated to the ERF[9]. Moreover, the funds allocated to asylum are distributed on the basis of absolute numbers (of asylum seekers and protected persons in each member state) rather than, for example, their population or GDP as a proportion of the EU total. This is regrettable because the latter approach would multiply the solidarity effect of the EU funds available[10].

The redistributive effect of the EU funding cannot be denied – for instance, Greece, which is facing particular pressure in the area of asylum, received more (11.3% of the total funding for the 2014-2020 period) than Germany, the biggest member state (which received 9.1%)[11]. However, it remains clear that financial solidarity at EU level does not compensate significantly for the unfair distribution of burdens between the member states[12].

EU agencies

Agencies were the second solidarity tool introduced, with the creation of Frontex in 2004 and the European Asylum Support Office in 2010. Though rarely presented as such, agencies are tools aimed at creating operational or better institutional solidarity, created to support member states. They create solidarity by virtue of being funded by the EU budget rather than by the member states. The best example of such solidarity is Frontex's deployment of border guards or the EASO's deployment of asylum officials to benefiting member states. These officials' costs are paid by the agencies (vertical solidarity from the EU *towards* member states) while their salaries continue to be paid by their member state of origin (horizontal solidarity *among* member states). These agencies' were set up to benefit, in particular, those member states in need of solidarity[13].

European relocation

The third solidarity tool, relocation, which emerged tentatively, concerns the transfer of beneficiaries of international protection (or even of asylum-seekers, as we will see below) from one overburdened member state to another. It is therefore a kind of resettlement scheme – already a familiar concept in international refugee law – but one that is internal to the EU. Initially, relocation was based on 'double voluntariness', meaning that both the person being relocated and member state to which they were being relocated had to agree to the transfer. A pilot project called 'European Relocation Malta' (Eurema) ran from 2009 until 2013. It involved a very limited number of protected persons, with fewer than 600 relocations[14].

Overall, only modest progress was made on solidarity in the 2000s. This is not surprising as, during this period, member states insisted continuously on responsibility, requiring all member states to honour their obligations under EU law, including the Dublin regulation with its unbalanced way of allocating responsibilities among member

---

9   Maiani, F., Sans solidarité point d'UE, Revue Trimestrielle de Droit Européen (RTDE), 2012, volume 48, n° 2, p.319, note de bas de page n° 105. For more details, see D'Alfonso, A., External border control and asylum management as EU common goods: a budgetary perspective, EUI working papers, RSCAS 2019/05.

10   Distribution on a relative basis would imply that smaller or poorer member states taking up large numbers of asylum seekers would receive more funding.

11   *EU funds for migration, asylum, and integration policies*, European Parliament, Policy Department for Budgetary Affairs, PE 603.828, April 2018, p. 18.

12   Monar, J., *Solidarity as a challenge for the EU: the case of justice and home affairs*, in EU Studies in Japan, 2015, Volume 35, p.15.

13   See Article 37(2) of Frontex Regulation 2019/1896 and Article 1(2) last indent of EASO Regulation 2021/2303.

14   According to on the fact-finding report on intra-EU relocation activities from Malta of the European Asylum Support Office.

states. The Bratislava declaration epitomised this view despite having been adopted by the European Council as late as 2016. The declaration tries to reconcile solidarity and responsibility as two opposing political principles, whereas Article 80 TFEU is about one single legal principle of solidarity and fair sharing of responsibility[15] (see above).

The crisis of 2015/16: mandatory solidarity

The crisis of 2015/16, during which around one million of migrants and asylum seekers, including many Syrians, entered the EU from Greece after having transited through Turkey, led the Commission to adopt the EU agenda on migration in May 2015[16]. The Commission launched the idea to temporarily (for a period of two years) use the relocation mechanism to show solidarity with the overburdened member states. This led to the adoption, by the Council, of two decisions on 14[17] and 22[18] September 2015 aimed at relocating a total of 160 000 asylum seekers from Greece and Italy.

This time the system was based on 'double mandatoriness' – neither the asylum-seeker nor the member state to which they were to be relocated could refuse relocation. Interestingly, the number of people to be relocated was shared the member states using a distribution key based on population (40 %), GDP (40 %), resettled refugees (10%) and unemployment rate (10 %). The system did not produce very good results[19]: only 34 700 asylum seekers were actually relocated (25 % of the initial target). The main explanation for this failure is that, to be eligible, asylum seekers had to come from a country of origin from which at least 75 % of applicants were granted protection.

However, this system triggered a political crisis within the EU as it was adopted in Council by a qualified majority, putting some eastern member states in the minority. Refusing forced relocation, Slovakia, and Hungary, supported by Poland, asked the EU Court of Justice to annul Decision 2015/1601. It refused to do, but without emphasising the principle of solidarity and fair sharing of responsibility in its reasoning[20].

In May 2016, the Commission adopted a proposal to reform the Dublin system. The proposal did not envisage reforming the Dublin system but rather accompanying it with a corrective mechanism based on mandatory relocation. Each member state would be responsible for its share of asylum seekers, calculated on basis of a reference key made up of population (50%) and GDP (50%). The system would be automatically triggered when the number of asylum seekers for which a member state is responsible exceeded 150 % of its fair share. The proposal included the possibility for member states to buy their way out of the relocation system by paying a sort of fine of €250 000 per asylum seeker allocated to them. The Council never adopted a common position on this proposal to enter into negotiations with the European Parliament[21].

In 2015 and 2016, EU funding was increasingly used, through the emergency reserve, to help member states deal with the crisis . Emergency funding amounted to almost €546 million during this period, around 20% of the total AMIF[22]. This temporary form of financial support for member states showed that they were no longer capable of implementing EU migration and asylum policies during a crisis and that the EU was itself

---

15   See De Bruycker, P., and Tsourdi, L., *The Bratislava Declaration on Migration: European irresponsibility instead of solidarity*, blog EU Migration and Asylum Law and Policy, 27 September 2016.:

16   For a chronological analysis of this crisis, see Greubel, J., *Towards a profound European Asylum System, On EU governance during the refugee crisis,* in: Wurzburger Jean Monnet Papers, 2018, n°2.

17   Council Decision 2015/1523.

18   Council Decision 2015/1601.

19   See Implementation of the 2015 Council decisions establishing provisional measures in the area of international protection for the benefit of Greece and Italy, European Parliament, Policy Department Citizens' rights and constitutional affairs, PE 583 132, 2017

20   See van der Mensbrugghe F.R., *Crise migratoire: entre solidarité et minimalisme, observations sous CJUE 6 septembre 2017, Affaires jointes C-643/15 et C-647/15, Slovaquie et Hongrie c. Conseil*, in : Revue de la Faculté de droit de l'Université de Liège, 2017, numéro 1, p. 121.

21   For a critical analysis, see *The Reform of the Dublin III Regulation*, Study for the Libe Committee, European Parliament, Directorate General for Internal Policies, Policy Department citizens' rights and constitutional affairs, 2016, authored by F. Maiani.

22   Tsourdi, L., Solidarity at work? The prevalence of emergency-driven solidarity in the administrative governance of the Common European Asylum System, Maastricht Journal of European and Comparative Law, 2017, Volume 24, n° 5.

starting to implement these policies at national level by providing funding.

During the same period, Frontex was strengthened and became the European Border and Coast Agency in 2016[23]. The EASO later underwent a similar evolution, being replaced by the EU Asylum Agency in 2021[24]. Both agencies became active in hotspots in Greece and Italy, where the experts they deployed were tasked with the identification, registration, fingerprinting and debriefing of migrants[25].

Around 5 000 people were relocated from Greece between 2020 and 2022 based on the voluntary relocation scheme put in place under the plan of immediate measures to support Greece. In June 2022, 18 member states adopted the 'modus operandi on the voluntary solidarity mechanism'. This declaration was supposed to pave the way for the adoption of the New Pact on Migration and Asylum. However, as of December 2022, the number of transfers had been very limited at 207[26].

The New Pact of 2020: flexible solidarity

The Commission proposed the New Pact on Migration and Asylum[27] in 2020. The issue of solidarity was this time at the core of this enormous legislative package that included a proposal for an asylum and migration management regulation (AMMR). After the failure of its 2016 proposal, which was based on relocations and the choice to keep the Dublin system but accompany it with a solidarity mechanism, the Commission added the idea of flexibility to mandatoriness.

As the legislative process continues at the time of writing (October 2023), I base my analysis on the common position adopted by the Council on 13 June 2023. This position will be the basis for negotiations with the European Parliament on the adoption of the regulation, which is planned for spring 2024, just before the European Parliament elections.

Types of solidarity

In the Commission proposal for the AMMR, member states can choose between three types of solidarity measures besides relocation: return sponsorship, capacity building measures and operational support. The aim of introducing this flexibility was to accommodate the opposition to relocation expressed by the four Visegrad Group member states (the Czech Republic, Hungary, Poland, and Slovakia) by offering them other ways for showing solidarity with the other member states. The idea of sponsored return has been dropped by the Council, so the choice remains between two main types of physical (relocation) and financial solidarity, plus alternative measures (capacity building, services, staff support and technical equipment). Member states have full discretion to choose between these forms of solidarity.

Relocations concern asylum-seekers but could also concern beneficiaries of international protection if agreed bilaterally between the contributing and benefitting member states. Member states can buy their way out of the solidarity mechanism by paying €20 000 per asylum-seeker. Compared to the amount of €250 000 envisaged in the 2016 proposal (see above), which seemed like a fine, the new amount looks more like a solidarity contribution to the system. Financial solidarity is about direct financial help from the contributing member state for a specific project proposed by the benefitting member state. The projects to be funded concern migration, border management, asylum and even projects 'in third countries that may have a direct impact on the flows at the external borders or may improve the asylum, reception and migration systems of the third country concerned'.

---

23 Regulation 2016/1624, later replaced by Regulation 2019/1806.
24   Regulation 2021/2303.
25 See ECA special report 06/2017: "EU response to the refugee crisis: the hotspot approach".
26 See the operational conclusions of the solidarity platform pact of 1 December 2022.

27 See Commission Communication COM(2020)609 of 23 September 2020. About the new pact, see Thym, D., *Reforming the Common European Asylum System: Opportunities, Pitfalls, and Downsides of the Commission Proposals for a New Pact on Migration and Asylum*, Nomos, 2020; The European Commission's new pact on migration and asylum, horizontal substitute impact assessment, European Parliamentary Research Service, PE 694.210, 2021; *EU Pact on Migration and Asylum: state of play*, European Parliamentary Research Service, PE 739.247, June 2023.

Deciding which member states will benefit

Solidarity is intended to benefit those member states under 'migratory pressure', defined as 'a situation generated by the large number of arrivals of third-country nationals placing a disproportional burden on member states even on well-prepared asylum and reception systems, taking into account the overall situation in the Union and the specificities of the geographical location of a member state'. It is important to note that the identification of member states under migratory pressure is not based on figures such as population and GDP, as it was in the 2016 Commission proposal (see above). Instead, it is based on an assessment by the Commission. This assessment is based on a very large number of parameters, such as the number of asylum seekers, beneficiaries of international protection or migrants staying illegally, return decisions and returnees removed, and the number of people apprehended while attempting to cross the external borders irregularly. It also takes account of many other diverse elements such as the benefitting member states' needs assessment, capacity and preparedness measures, their level of cooperation in the area of returns and readmission, the geopolitical situation in relevant non-EU countries and root causes of migration, the results of Frontex's vulnerability assessments, and the scale and trends of secondary movements between member states.

This long list of elements to be considered by the Commission indicates that the choice has been made to evaluate the situation in the benefitting member states from a general point of view, rather than purely in terms of asylum. Moreover, the evaluation will cover not only the needs of the member states requiring solidarity but also the way they assume their responsibilities. This is evident in the way the principle of solidarity and fair sharing of responsibility provided for in Article 5 is defined in the Council's common position on the AMMR. The definition includes many elements relating to responsibility (efficient national asylum and migration management systems, prevention and reduction of irregular migration, correct and swift application of the Dublin rules and measures to prevent and reduce unauthorised secondary movements between member states) rather than solidarity.

The Commission will have huge discretionary power to decide which member states are under migratory pressure, through a European migration management report. In this report, it will assess the situation along migratory routes, leading to the adoption of decisions identifying member states under migratory pressure.

The determination of the share of member states

Based on this report, the Commission will adopt a recommendation setting up a solidarity pool by taking into consideration relevant qualitative and quantitative criteria such as the number of arrivals, the average recognition rate, and the average return rate as quoted by Article 7c(3) of the Council's common position. The pool must comprise a minimum of 30 000 relocations and €600 million for direct financial contributions.

Member states will pledge their contributions to the solidarity pool during a high-level migration forum bringing together their representatives. These contributions must be made using of a distribution key, based 50% on population and 50% on GDP. The Council of Ministers will eventually adopt the solidarity pool on basis of the Commission's recommendation.

Future - towards 'structural' solidarity?

If the solidarity mechanism is adopted as planned in 2024, time will tell whether the Commission will be able to use its discretionary power by building a climate of consensus between benefitting and contributing member states. Implementing the system in practice will also pose a difficult challenge. Implementing forms of physical solidarity such as relocation of asylum-seekers is cumbersome when it must be done against their will, creating the risk of secondary movements between member states persisting, which will in turn feed distrust among member states. It also remains to be seen how the heavy system of financial solidarity relying on intergovernmental agreements between benefitting and contributing member states will work in practice.

The key question will of course be whether enough solidarity will be established towards countries designated as benefitting member states under the New Pact on Migration and Asylum to enable them to face their enormous responsibilities of controlling EU land borders efficiently, screening migrants, implementing asylum and return procedures at the borders, and applying the Dublin system rigorously. In particular, it remains to be seen to what extent the additional costs will be covered by EU funding[28]. Though the target of 30 000 relocations per year is double the number achieved during 2015/2016 refugee crisis, it is very limited in comparison with the one million asylum applications submitted in the EU in 2022[29]. By contrast, the minimum amount of €600 million per year for funding solidarity projects seems more ambitious.

Finally, it will not only be about a question of the frontline member states' willingness to implement these policies, but also their capacity to do so. If the solidarity system fails, the EU will once again face the same risk of chaos as it did during the 2015/2016 crisis. This could lead to the collapse of the Schengen area, to more member states failing to abide by the principle of not returning refugees to countries in which they face danger ('non-refoulement'), and to a temptation for the EU to outsource its obligations under asylum law even more than it is doing at present. The alternative to such a dark scenario would be greater EU integration, with EU agencies gradually taking over member states' role in implementing border and asylum policies, funded by an increasing share of the EU budget[30].

---

28 See Goldner-Lang, I., *Financial aspects of the EU's new pact on migration and asylum: towards stronger EU-funded policy implementation?*, p.239.

29   EU Asylum Agency, *Latest Asylum Trends,* January – June 2023 Review, September 2023.

30   See Tsourdi, L., *The emerging architecture of EU asylum policy: insights into the administrative governance of the Common European Asylum System*, in: EU law in populist times; Crises and prospects, Cambridge 2020, p. 191.

How Europe's migration policies are contributing to the migration crisis

By Professor Heaven Crawley, United Nations University

No direct flight.

For migration policy making, as in other policy areas, data are key. But such numbers fail to reflect the human suffering that 'forcibly displaced persons', as the UNHCR, the UN Refugee Agency calls them, go through when trying to reach the safety of Europe. Whilst most people migrate to Europe legally, a lack of safe and legal routes for refugees mean that it is almost impossible for the poorest and most desperate to travel directly to Europe. Instead, the relatively small numbers who attempt the journey are met with short term measures which aim to prevent their entry to Europe rather than address the root causes that drive people leave their countries in the first place. Professor Heaven Crawley is Head of Equitable Development and Migration at the United Nations University Centre for Policy Research and holds a Chair in International Migration at Coventry University. Having published extensively on a wide range of asylum and immigration issues, including on the drivers of migration and migrant decision-making, she argues in her contribution that the ongoing migration crisis reflects an unwillingness or incapability of EU member states to step up to the European values they claim to hold, rather than excessive migration per se.

European policy saga in crisis mode

On 13 September 2023, the German government announced that it was suspending a voluntary deal to take migrants arriving from Italy, accusing Rome of failing to live up to its obligations on the EU's Dublin Regulations, which require that claims for asylum - an international system designed to protect those at risk of harm in their own countries – are assessed in the first country in which a person arrives. Just weeks earlier the Italian government had signed a memorandum of understanding with the Tunisian government giving them millions of euro to intercept people crossing to Italy from the country, in a deal that reminded me of the EU's deal with Turkey in 2016 which similarly aimed to stop the flow of irregular migration to Europe.

The German government's announcement is just the latest twist in a European policy saga that began in 2015 with arrival of more than 1 million people across the Aegean and Mediterranean Seas. Since that time, the countries of the European Union have struggled to find a solution to the so-called 'migration crisis', not least because there has been an increase in the drivers of migration to Europe associated with the Taliban takeover of Afghanistan in August 2021 and the Russian invasion of Ukraine in February 2022. Meanwhile millions of Syrian and other refugees continue to live in conditions of impoverishment, violence and hopelessness in the countries bordering the European Union, most notably Libya, Turkey and Lebanon, where there are increased pressures on refugees to return. The number of forcibly displaced and stateless people in Europe rose to 21.8 million by the end of 2022, including almost 12.4 million refugees, 1.3 million asylum-seekers, 7.2 million internally displaced people (IDPs) and 474,000 who were stateless. Over half of all refugees and other people in need of international protection come from these three countries.

In this brief article, I want to suggest that the 'migration crisis' in Europe is not a reflection of numbers – which pale into insignificance relative to the number of refugees in other countries outside Europe or to those moving in and out of Europe legally on student and work visas – but rather a crisis of political solidarity in the face of growing instability in some of the regions neighbouring Europe. After numerous emergency summits to agree a common response and, most recently, a New Pact on Asylum and Migration, EU politicians are still struggling to come to terms with the dynamics of migration to Europe, the complexity of motivations driving people forward, the role of different institutions, including governments, international organizations, NGOs and civil society, in facilitating the journey, and the ways in which social media is providing individuals and families with information about the options and possibilities that are, or are not, available to them.

EU's failure to respond appropriately

There are four main issues that undermine the ability of EU Member States to appropriately respond to the irregular movement of people.

Rapidly changing dynamics

Firstly, the migration policies which are being developed are out-of-sync with the rapidly changing dynamics of international migration. This gap is reflected in the dominance of certain assumptions about the reasons why people migrate irregularly to Europe, most notably the idea that people depart from their country of origin with a clear and fixed idea of the country in which they will arrive, their 'final destination'. In fact, there is no evidence to support the idea that large numbers of people are leaving their countries of origin with the intention of reaching Europe. Rather, for many people this decision arises from disappointment at the conditions in the neighbouring countries. Assumptions about the linearity of migration are reflected in simplistic ideas about the relationship between so-called 'push' and 'pull' factors and in policies that are directed towards 'tipping the balance' between the two, most often by removing rights and access to resources in destination countries.

In the context of European migration policy, this conceptualization between the two presupposes that people on the move know and understand the nuances of migration policy and practice across a wide range of EU member-states and that they understand the implications of often rapidly changing policies for their particular individual and/ or family circumstances. My own research shows that decisions about where to go are often based on a whole range of intervening variables and opportunities that arise on the journey. More than 70 per cent of all forcibly displaced in the world remain in countries and regions of origin. Those who decide to move onwards to Europe are most often those for whom security and opportunity remains elusive.

Source: Heaven Crawley

Temporary migrants' housing on Lesvos, Greece.

Refugees versus economic migrants

Secondly, there is an assumption underpinning European policy making in the area of migration that it is easy to differentiate between those who can be categorized as 'refugees' and those who are 'economic migrants'. Assumptions about categories underpin the Common European Asylum System and Europe's response to the 'migration crisis' in turn creating one of its own – namely the difficulty of processing large numbers of irregular arrivals in some of Europe's poorest and most under-resourced countries. Categories established to help policymakers, decision-makers and academics to make sense of movement are not necessarily a good reflection of what is actually going on. Indeed, they may actually serve to make the task of policy delivery more difficult.

Again, there is extensive research evidence which shows that the drivers and motivations of migration are mixed and often changing. Take, for example, the case of Afghans, who have consistently been one of the largest groups of refugees arriving in Europe, with more than 600,000 Afghan asylum applications in European countries over the past ten years, second only in number to Syrians. Afghan migration to Europe is a response to both the deteriorating security situation in Afghanistan and protracted displacement in countries hosting the vast majority of Afghan refugees, including Iran, where there is a well-documented lack of protection, rights, and opportunities. For Afghans and others living in situations of protracted displacement, mobility forms an important survival strategy. Harnessing this mobility by facilitating and supporting—rather than preventing—onward migration is the key to unlocking protracted displacement.

Failure to address the root causes

More than 20 years ago I argued that one of the main problems with European migration policy was the failure to address the root causes of irregular migration. At that time our research on the drivers of increasing migration to Europe showed that more than half of all asylum seekers entering the EU in the previous ten years came from just nine countries – the former Yugoslavia, Iraq, Afghanistan, Turkey, Romania, Sri Lanka, Bosnia, Somalia and the Democratic Republic of Congo. We found that the only factor linking the countries was conflict of one kind or another including civil war, human rights abuse and the discrimination of minorities.

As part of research on the European 'migration crisis' of 2015, we again analysed the situations and experiences of those crossing irregularly to Europe, and found that 84% originated from Syria, Afghanistan, Eritrea, Somalia, and Iraq—all countries experiencing conflict, widespread violence and insecurity, or highly repressive governments. More than three quarters (77%) of respondents explicitly mentioned factors that could be

described as 'forced migration'. The figure was even higher at 91% for those interviewed in Greece reflecting the significant proportion of Syrians in our sample. Respondents from Syria and Iraq described kidnapping by State and non-State agencies (including a range of militia groups) as a significant factor in their decision to leave their countries of origin. Those who had spent time in Libya also described the risk of kidnapping as a significant factor in the decision to move on. For Eritreans, Syrians and Afghans living in Iran, the risk / fear of forced indefinite conscription into the government army, militia or rebel force was a major factor underlying the decision to leave.

Then as now, a lack of safe and legal routes for those fleeing conflict and persecution to seek protection in Europe mean that many people have little choice other than to make dangerous journeys across land and sea. The experiences of the Afghans are again a case in point. Despite representing the third largest refugee population globally, only 271 Afghans have been resettled in Europe and other schemes, since the return of the Taliban to power in August 2021, to bring Afghans to safety have either failed to materialise or fallen well short of their targets. The thousands of Afghans let down by these schemes face huge obstacles in reaching lasting protection in the EU. These include a lack of transparent information on the safe pathways available, narrow eligibility criteria, often insurmountable requirements to prove their identity and vulnerability, and difficulties in physically leaving Afghanistan or neighbouring countries.

Migration seen as a threat rather than an opportunity

Finally, the EU response to migration over the past decade, reveals a topsy-turvy world of prejudices, misunderstandings and sheer political opportunism. The absence of an EU policy to cope with the flow of conflict refugees and others who are simply seeking a better life is shaming, yet at its root is a European mindset that sees immigration as a danger instead of welcoming it as an opportunity. This is despite evidence of a significant demographic deficit in almost all European countries, albeit to varying degrees. It is the job of politicians to communicate this fact to the public – while acknowledging that there is still some work to do if migration policies are to work for both migrants and host societies.

In the absence of a willingness to engage with the dynamics of migration in Europe and in the context of a lack of solidarity, the countries of Europe have, instead, turned to blaming one another for the 'crisis'. Germany's response to the far-right immigration policies of the Italian government is just the latest example going back to 2015 when Germany was accused of throwing open the doors to Syrian refugees, with consequences for the countries of Southern Europe and the Western Balkans through which migrants and refugees need to pass in order to reach its territory. In other member-states the geopolitics of Europe's 'migration crisis' have similarly been played out along existing lines of fracture and used to leverage political and public support at the national level. In the UK, for example, the government's most recent policy to 'Stop the Boats' is the latest in a very long list of policy measures which have been almost entirely ineffective in preventing irregular migration from France.

Living up to European values, also in migration policy

The problem is that many of the policies devised in response to increased migration are directed not at responding to the movement of people and addressing their needs but, rather, at managing the fears and anxieties of politicians and the public alike, which have become unmanageable because they are based on a lack of evidence and understanding of the reasons why people are on the move, allied with misinformation, prejudice and racism. Europe has backed itself into a political corner. By talking up the 'threat' of migration for more than a decade, it now finds itself ill-equipped to respond to the contemporary challenges of international migration.

If the EU's sense of control is based wholly or mainly on stopping people from entering Europe, then it is in trouble. There is too much at stake for refugees and migrants, and for the industry that has grown up around them, for that to be effective. There will always be ways around the fences or across the sea: the risks to individuals and families will simply increase proportionately.

In order to restore a sense of control, politicians and policymakers also need to talk about the issue of migration to Europe differently. They need to situate the irregular movement of people into its historical and geographical contexts and to acknowledge that the policies associated with the 'Fortress Europe' project over the past 25 years have run counter to the economic needs of Europe and have created an industry of smugglers and traffickers for whom the business opportunities are high. Most importantly, they need to create a new political narrative about the rights of migrants and refugees which not only rehumanizes 'Them' but, in turn, rehumanizes 'Us' by serving as a reminder that the values of the European project, forged in the wake of the Second World War which ripped Europe apart and set communities against one another, are values that are important to us individually and as part of our collective identity. If ever there was a time when the EU needed to take a deep breath and look at ways in which to revitalize its relationships internally and with the outside world, it is now.

Towards a new EU migration and asylum policy – where are we now?

By Lorenz Tripp, Secretariat-General/Private Office of Helga Berger, ECA Member

Traces of boat refugees in Greece.

> For many, thinking about EU migration issues will evoke images of boat refugees in the Mediterranean, or hundreds of people crossing borders on the EU's external eastern flank. Migration issues have been on the EU policy agenda for decades, and there have been varying degrees of success over the years when it comes to the humanitarian treatment of asylum seekers, management of border controls, or the integration of newcomers into local communities. Since the migration crisis of 2015/2016, the topic has also been high on the political agenda. Lorenz Tripp, a former colleague in the ECA's Information Security team, and currently a PhD student at the University of Graz, has taken a closer look at recent developments, which have the aim of finding a more common approach to the European asylum system, if not unity amongst member states. He also explains various initiatives, and provides some insight into the current state of play.

What's at stake?

In June 2023, a Libyan fishing boat smuggling migrants from the Middle East to Europe sank in international waters off the Greek coast[1]. The hopelessly overcrowded vessel was carrying several hundred people seeking refuge in Europe. Although 104 people were rescued, the rest were either reported dead, or were missing and presumed dead. This was not a single, tragic accident, but simply one of the latest appalling events in the long history of migrants drowning in the Mediterranean. It served as a reminder of the human dimension posed by the unsolved question of how to handle migrants crossing the Mediterranean to reach Europe, and it exposed once again the weaknesses of the EU's migration and asylum policy.

Proposals for reform of the Common European Asylum System

Managing the influx of migrants from Africa and the Middle East has been on the agenda of the EU for a long time. Following unprecedented numbers of migrants arriving in the EU in 2015, the European Commission set out its priorities for a reform of the Common European Asylum System (CEAS) in April 2016, followed by specific proposals in May and

---

1   https://www.theguardian.com/world/2023/jun/14/scores-drown-refugee-boat-sinks-off-greece

July of that year. These included: i) revising the standards for the reception of applicants; ii) turning the European Asylum Support Office (EASO) into a genuine EU agency for asylum; and iii) developing a structured EU resettlement framework. However, the reforms failed to get the support of the member states, and only the European Union Agency for Asylum (EUAA) came into being (see page 42).

In September 2020, the Commission proposed a New Pact on Migration and Asylum. This was a package of regulations and other policies with the aim of achieving a fairer and more efficient migration and asylum process in the EU. With the pact, the Commission proposed amending two existing regulations (on asylum procedures, and on the EU's asylum fingerprint database, EURODAC), and introducing new regulations (on general asylum and migration management that are based on an emergency driven approach[2], and on migrant screening at the EU's external borders). It subsequently published several other proposals including: i) strategies on combating human trafficking, and on voluntary return and reintegration; ii) an action plan to tackle migrant smuggling; and iii) a proposal for a regulation in response to the 'instrumentalisation' of migrants at the EU's external eastern border in 2021.

In June 2022, under the French Presidency of the Council of the EU, 21 European countries, including several non-member states, signed the Declaration on Solidarity which established the Voluntary Solidarity Mechanism (VSM). The VSM was a gradual step towards implementing the New Pact on Migration and Asylum, and aimed to support the Mediterranean member states, who had been particularly affected by migrant arrivals. The countries of the declaration undertook to provide support through the relocation of asylum seekers and refugees, or through financial contributions. The Commission's role in the VSM was to provide funding and help coordinate relocation.

In September 2022, the European Parliament and the five rotating Council Presidencies in place between January 2022 and June 2024 signed an agreement, confirming that the reform of CEAS and the implementation of the New Pact on Migration and Asylum was a top priority. They undertook to work together as closely as possible, and established a roadmap and timetable for negotiations on the relevant legislative proposals. Their explicit goal was to adopt the reform of the EU migration and asylum rules within the current legislative period, in other words, before the 2024 European elections.

The Council agreement of June 2023

The next significant development in the process of reforming the EU migration and asylum rules was on 8 June 2023, when the Council of the EU announced that it had majority agreement on a negotiating position on two key regulations: the Asylum and Migration Management Regulation (AMMR) and the Asylum Procedure Regulation (APR)[3] (see **Figure 1**).

Figure 1 – Development of EU migration and asylum policy

| **1999** Creation of the CEAS | **2016** CEAS reform package | **2020** New Pact on Migration and Asylum | **2022** Establishment of the VSM | **2023** Councill agreement on the APR and AMMR |

---

2   For a comprehensive analysis of this approach and follow-up literature see: Nicolosi, S., *Addressing a Crisis through Law: EU Emergency Legislation and its Limits in the Field of Asylum*, in: Utrecht Law Review, 2021 (pp. 19-30), Volume 17, issue 4.

3   For this and the following paragraphs see: Council of the EU press release 8.6.2023

Nonetheless, the agreement in the Council is only the basis for negotiations with the European Parliament and may still be amended. The content of the agreement is summarised below.

Asylum Procedure Regulation

The amended proposed Asylum Procedure Regulation (APR) would create a common procedure for international protection in the EU. This would mean common standards for the duration of the asylum application procedure and in relation to the rights of asylum seekers (such as being provided with an interpreter or having the right to legal assistance and representation). The amended regulation also sets out specific obligations of applicants to cooperate with the authorities during the asylum procedure so as to prevent abuse of the system.

However, this proposal also further develops the 'externalisation tendencies' in the EU's migration and asylum law[4]. By introducing mandatory border procedures for applicants at external border crossing points, the Council hopes the legitimacy of applications can be assessed quickly. Under certain circumstances, applications from migrants who are unlikely to be granted asylum could be rejected immediately and they could be returned to their home countries more easily.

Asylum and Migration Management Regulation

The proposed Asylum and Migration Management Regulation (AMMR) would replace the Dublin III regulation that determines which member state is responsible for an asylum application. The AMMR seeks to simplify these rules, for example, by replacing the current take back procedure with a take back notification. At the heart of the AMMR is a new solidarity mechanism[5].

This mechanism is based on the idea that migration and asylum are challenges of concern to all member states, and are also their shared responsibility. Nonetheless, due to their geographical location, some member states are clearly under more migratory pressure than others. Three different measures in the proposed AMMR are intended to help those member states: i) the relocation of asylum applicants; ii) direct financial contributions provided by member states; and iii) alternative solidarity measures such as providing staff or technical equipment.

While all member states are obliged to contribute some kind of solidarity measure, the choice of measure is up to them. No country can be forced to carry out relocations. However, there is a fixed minimum figure of 30 000 annual relocations from those member states under most migratory pressure to member states less exposed to such pressure. A minimum annual financial contribution is set at €20 000 for the relocation of each migrant that a member state says it cannot host. Both figures can be adjusted according to how migrant arrivals develop in a given year.

To prevent abuse and secondary movements by asylum seekers, the AMMR retains the obligation from the Dublin III regulation whereby asylum seekers should apply for asylum in the member state of first entry or legal stay. The rules determining which country is responsible for the asylum procedure remain largely the same, with minor changes on the duration of that responsibility and the timeframe for transferring it.

Hailed as a 'big leap forward'[6] by the Swedish Presidency of the Council of the EU, the 8 June agreement provoked different reactions all over Europe. Whether or not it was a real breakthrough was the topic of much debate. From 'dubious' (*Die Presse*, Austria), '[a] pragmatic step' (*De Tijd*, Belgium), to a 'masterpiece' (*Les Echos*, France), commentators have been rather ambivalent in their judgement[7].

---

4   For a critical assessment of the externalisation tendencies in European asylum law see: Csuk, A., *Aus den Augen, aus dem Sinn? Externalisierungstendenzen im europäischen Asylrecht*. In J. Bauer, V. Baumgartl (Eds.), 70 Jahre Genfer Flüchtlingskonvention – Altbewährt?, 2021 (pp. 149-171). Jan Sramek Verlag.

5   Part IV, Chapter I of the proposed regulation.

6   Council of the EU press release 8.6.2023

7   Press overview by Cicero 9.6.2023

The state of the negotiations

Both the APR and the AMMR are following the ordinary legislative procedure. This means that an original proposal from the Commission has to be adopted the European Parliament and the Council before any regulation becomes binding EU law. For the APR and AMMR, the Council used what is known as the 'general approach', in which it sends its amended proposal to the Parliament before the first reading in an effort to speed up the legislative process. Both regulation proposals are currently awaiting the Parliament's position in the first reading and are subject to negotiations between the Council and the Parliament. See **Table 1** for the last state of play.

Table 1 – State of Play overview (October 2023)

State of Play of the EU legislative proposals

PROPOSAL	PROGRESS
Asylum and Migration Management *To create a fairer, more efficient and more sustainable system for allocating asylum applications among Member States.*	The European Parliament adopted a negotiating mandate in April 2023. The Council adopted its mandate in June 2023. Trilogues between the Parliament, the Council and the Commission are ongoing.
Screening *To introduce a new health, identity and security check at all EU external borders.*	Trilogues between the European Parliament, the Council and the Commission are ongoing.
Asylum Procedures *To reduce differences in recognition rates, discourage secondary movements and ensure introduce a new border procedure.*	The Council adopted its full negotiating mandate in June 2023. Trilogues between the European Parliament, the Council and the Commission are ongoing.
Eurodac *To adapt and reinforce the Eurodac fingerprint database to facilitate returns and help tackle irregular migration.*	Trilogues between the European Parliament, the Council and the Commission are ongoing.
Crisis and Force Majeure *To set out the exceptional measures that can and should be taken to deal with crisis situations to allow Member States to act quickly and decisively.*	The Council adopted a negotiating mandate in October 2023. Trilogues will start soon.
Single Permit *To make the process of obtaining a single permit quicker and easier for applicants and employers.*	Trilogues between the European Parliament, the Council and the Commission are ongoing.
Qualification *To harmonise protection standards in the EU and put an end to secondary movements and asylum shopping.*	Political agreement reached. Ready to be adopted.
Reception Conditions *To harmonise reception conditions throughout the EU.*	Political agreement reached. Ready to be adopted.
Resettlement Framework *To align how EU Member States resettle recognised refugees from outside EU territory, such as those in refugee camps.*	Political agreement reached. Ready to be adopted.
EU Asylum Agency *To establish a fully-fledged European Union Agency for Asylum.*	Adopted.
Blue Card Directive *To assist employers in recruiting from outside the EU by making the process easier and more accessible.*	Adopted.
Return *To streamline return procedures and closes gaps by linking the issuance of a negative asylum decision with a return order.*	The Council adopted a negotiating mandate in June 2019. Work is ongoing in the European Parliament to adopt its negotiating mandate.
Instrumentalisation *To provide a set of temporary and exceptional measures to equip Member States with the means needed to respond to the extraordinary circumstances of migrants being used for political purposes.*	Each institution is working to adopt their negotiating mandate.
Long-Term Residents *To make it easier to acquire the EU long-term residence status by simplifying the admission conditions.*	The European Parliament adopted a negotiating mandate in April 2023. Work is ongoing in the Council to adopt its negotiating mandate.

Key: ● Adopted   ● Ready to be adopted   ● Trilogues ongoing   ● Not yet adopted

Poland and Hungary were the only member states that voted against the agreement in the Council on 8 June and did not support the Council's position on negotiations with the Parliament[8]. Vowing neither to take part in the relocations nor pay financial contributions, Poland announced that it would try to form a coalition in the European Parliament to block the adoption of the proposed regulations. The two member states also blocked the European Council from adopting conclusions regarding migration and asylum during the meeting of EU leaders on 30 June 2023. The reform proposals have also caused controversies in other member states. For example, in Germany, the leaders of the Green Party, who are part of the German coalition government, received an open letter from over 700 party members urging them to stop the reform of the migration and asylum rules[9].

In the end, it is the 705 Members of the European Parliament (MEPs) will vote on the APR and the AMMR. It is hard to predict whether the regulations will get a majority. There was cautious optimism about the agreement in the Council, especially by MEPs in the Renew Europe and European People's Party political groups. Critical voices have been heard in the left-leaning groups of Social Democrats and of the Greens[10]. Nevertheless, according to their social media posts on the day of the Council agreement, MEPs did agree on one thing: negotiations with the Council would be both extensive and intensive!

The most recent development in negotiations on the reform of the CEAS came in the Council on 28 September 2023, and concerned a regulation for crisis situations and *force majeure* in the field of migration and asylum, proposed by the Commission in September 2020 as part of the migration pact. This regulation complements the AMMR by allowing member states to adjust the AMMR's new solidarity mechanism in situations of crisis. There was lengthy discussion in the Council, particularly by a group of governments that had contested the proposed methods of relocation under the solidarity mechanism in the weeks immediately preceding the Council meeting. They had described these relocations as 'mandatory', despite the fact that member states can decide whether or not to be part of the contributing group, and this lack of unity had led the European Parliament to suspend negotiations on two parts of the EU's migration pact on 20 September 2023[11]. However, with the agreement reaching in the Council on this aspect in early October 2023, the trialogue negotiations on the new Pact between the Parliament, the Council and the Commission were resumed shortly after.

A chance for change

Regardless of the outcome of the present negotiations, migration and asylum are likely to remain controversial topics for the EU in the future. With the European elections just around the corner, actually adopting the proposed regulations in the New Pact on Migration and Asylum would send a clear signal to the electorate that the EU is able to take action in complex areas. While several questions remain open, especially implementation on the ground at the EU's external borders, the APR and AMMR offer a unique chance of fundamental reform in the EU's migration and asylum policy. Given the current situation, where migrants are regularly, if not increasingly, risking their lives on their way to Europe, and often end up being passed around from one member state to another, the need for change is arguably clearer than ever.

---

8   Euractiv 12.6.2023
9   Euractiv 9.6.2023
10   Social media overview from EPNewshub 4.7.2023
11   France 24, 29.9.2023.

'You can only manage migration together!'

Interview with Ylva Johansson, EU Commissioner for Security and Migration

By Gaston Moonen

Ylva Johansson

One of the eight priorities the von der Leyen Commission presented in 2019 concerned 'Promoting our European way of life', with as key component migration and asylum. Within the Commission College Ylva Johansson is responsible for this policy area and she took it up with vigour: in September 2020 she proposed a new Pact on Migration and Asylum, presenting a whole set of regulations and policies to create a fairer and more sustainable migration and asylum process for the EU as a whole. With the Pact she aims to manage and normalise migration for the long term, providing certainty, clarity and decent conditions for people arriving in the EU. Below she explains her efforts and approach to arrive at a common EU approach, based on solidarity, responsibility, and respect for human rights, to be adopted within this Commission's mandate.

A portfolio that is indisputably European

Ylva Johansson has been an EU Commissioner since 2019, and as her mission letter states, she is responsible for two pillars: internal security and migration. This is no small task, as she explains: 'Yes, I am responsible for the fight against organised crime, the fight against sexual abuse against children, the fight against terrorism, I am responsible for policy cooperation, for the fight against corruption, for everything that is related to borders, both the protection of our external borders, and the functioning of the internal borders in the Schengen area. And in terms of migration I am responsible for both legal migration and asylum. I am also responsible for five agencies, including the biggest one ever – Frontex. But also for Europol, which is also quite sizeable and very important. And likewise for the EU Agency for Asylum.'

She describes with great enthusiasm how she did not have to think twice when she was invited for this portfolio. 'What I like about it is that – and this is also the reason why I wanted this portfolio – I have never heard any voice saying that these issues would

be better solved at national level. So from the content it is already clear to everybody that we should deal with these issues on a European level. ' She adds that very few people think that the fight against organised crime, terrorism, protection of borders, or migration, would be better managed at national level. 'So, I have encountered very little resistance, but instead great acceptance that these are EU issues.'

> *… from the content it is already clear to everybody that we should deal with these issues on a European level.*

Ylva Johansson highlights two major dimensions of migration, the first is legal, and the other, irregular. Legal migration addresses an important demographic need for many member states, which is the need for people to contribute to EU society. 'The two dimensions go hand in hand with each other. We need to prevent irregular arrivals but on the other hand invest in better legal pathways to the EU . Because the majority of people entering the EU irregularly are not in need of international protection. They are searching for better economic opportunities. And it is important that we invest in better opportunities for them.'

> *We need to prevent irregular, illegal arrivals but on the other hand invest in better legal pathways to the EU.*

She explains that she presented a package on legal migration in spring 2022. 'And I will come with new proposals this year on a talent pool. We are also working on the *Talent Partnership* pilot project with partner countries. We need to see this in a broader context. Legal migration to the EU is about 3 million people per year, which is quite a lot. Approximately half of them come for labour purposes and half of them for other reasons. The number of people that *leave* the EU is about 1 to 1.5 million per year.' So the EU is growing by 1 to 1.5 million people per year. 'And we need that. Most of the legal migration, especially labour migration, is a national competence. Which I don't want to change. But I see the need for more cooperation in this area because the labour market areas where the needs are big are more or less the same in different member states.'

She mentions the care sector, including healthcare, as an example. 'There is a huge need for a greater work force, so I think it could be a win-win situation if we could find a platform for more cooperation. Not in terms of changing the competence of decision-making, I am totally fine with member states deciding on how many people to have. But member states could really benefit from more cooperation, such as by creating common platforms, because then we can better work together with third countries and prepare, such as through "upskilling", enabling training in the partner country itself.' She is aware of possible differences in the necessary qualifications between different member states.

Ylva Johansson thinks it is important to bring more information to non-EU countries on what kind of labour skills are needed in the EU in order to stimulate legal migration and avoid irregular migration. She refers to a recent experience she had when she visited Bangladesh. 'There for example, we financed migration information hubs locally, where people can get information on how to come legally to the EU. This is a good idea which we should develop further. And clearly something not for each member state to do alone, but jointly, benefitting all much better with less effort. Because it is clear that demographic developments are not going to go away. We are going to get older and older in Europe.'

Lessons learned – rebuilding trust

When discussing and comparing the 2015/2016 migration crisis with the 2022 migrant flows resulting from the war in Ukraine, Ylva Johansson does not have to think for long. 'We are doing much better now. We are much better prepared - we also have agencies in place that are different to what we had earlier.' Another key issue that has improved relates to something less tangible. 'We have also learnt the lessons needed to build trust. Because the failure to properly handle the 2015/2016 crisis in the EU also cost us a lot. Because that left us in a situation where member states were totally divided . And that had a huge cost because you can only manage migration *together*.' She emphasises that since she took office her main priority for migration has been rebuilding trust. 'To be able to work together. That is why we are now close

> *… the 2015/2016 crisis in the EU also cost us a lot. Because that left us in a situation where member states were totally divided. (…) you can only manage migration together.*

to actually achieving the conclusion of the Pact on Migration and Asylum. Of course, fingers crossed, negotiations are still ongoing. But it is possible.'

In her opinion, trust was also the main reason why she managed to get a unanimous decision from the Council in March 2022 to activate the Temporary Protection Directive. 'For the first time ever. It had been in place for 20 years but had never been used.' She feels that this directive should have been activated in 2015, which did not happen. 'Perhaps there was not enough trust to do so. But now there was! If a few years ago anybody had said "on top of the challenges you already have in terms of migration, could you manage another four million refugees?" people would have had big question marks. But we managed, with challenges, but we did manage.' In her opinion this shows the EU was so much better prepared. 'But yet not well prepared enough because we also need the new legislation in place. But still, we are much better prepared.'

For the Commissioner it is clear that the various reports the ECA has published on the issues of asylum and migration have helped her and her staff be better prepared, also in terms of managing refugees following the start of the war in Ukraine. 'The ECA report that was produced just before I took office, on asylum, relocation and return[1], that was really helpful for me to reform how we finance emergency assistance. That report stimulated reforms enabling us to better handle the 2022 situation. This was a direct consequence of some ECA reports, also relating to emergency assistance. When discussing what she would like to see covered by future ECA reports, she mentions an issue which she feels is often discussed in the Council of Ministers. 'It relates to the risk of our EU funds being used to facilitate radicalisation or even terrorist financing. Of course, our money should not go there, and we have various procedures to prevent this. But I think it would be very interesting to see how well this actually works because many organisations are involved that benefit from EU funds.' She is aware of a special report the ECA produced on this some years ago[2], but considers it an issue which needs regular attention regarding the actual outcome of the regulations and procedures in place.

> " *The ECA report (…) on asylum, relocation and return, that was really helpful for me to reform how we finance emergency assistance. That report stimulated reforms enabling us to better handle the 2022 situation.*

Another key difference she identifies is that, in 2015, the EU only started responding once the Syrian refugees started entering EU territory. 'But the war started in 2011. So it is important not to wait until you have a refugee crisis. You have to act much earlier, to reach out also to partner countries, to support others, along the routes. This is also a new approach that we are having.' She refers to the way the EU dealt with the government change in Afghanistan when the Taliban took over about two years ago. 'Various people started to think how to act on our border. But I said: "No, they are not at our borders now, they are in Afghanistan, and they need help." So together, with all 27 member states, we thought out these massive humanitarian corridors to Afghanistan to give them shelter. It is really important not to wait until we have people in distress at our borders, but to act much earlier.'

> " *It is really important not to wait until we have people in distress at our borders, but to act much earlier.*

For Ylva Johansson, another important difference is that the EU can work together with the Ukrainian government and authorities in terms of the refugees from Ukraine. 'Let's face it: it is very seldom the case that you can have such close cooperation, which helped a lot, dealing with this crisis *together* with the Ukrainian government. Usually, you cannot do that when people are fleeing their country.'

Preventing irregular departures

Discussing building relationships with partner countries outside the EU also brings up agreements with non-EU countries that also cover migration. Ylva Johansson stresses that the partnership with Tunisia is based on a lot more than just migration. 'That partnership with Tunisia is not simply "you have this partnership and you stop migration." It relates to five pillars in relation to Tunisia – on climate, green transition, on energy, on other things. And *one* of those is migration.'

---

1   Special report 24/2019 Asylum, relocation and return of migrants: Time to step up action to address disparities between objectives and results.
2   Special report 13/2018 Tackling radicalisation that leads to terrorism: the Commission addressed the needs of Member States, but with some shortfalls in coordination and evaluation.

Regarding this issue, the EU sends support to Tunisia in order to prevent departures. 'Because actually many people are sent to their deaths. They are risking and also losing their lives. So it is important that we *prevent* these dangerous departures.' For Ylva Johansson, stopping irregular departures from third countries is the main way of preventing the tragedies that we regularly witness, such as shipwrecks, whose victims perish before they reach EU territory. 'We have to prevent such departures in the first place. That is why we need to invest in legal pathways, safe ways, to arrive in the EU, both for refugees and for economic migrants.' She adds that it is clear to her that it will not be possible to completely stop such departures, but legal solutions and cooperation with partner countries to prevent people entering these dangerous vessels is essential.

> *… it is important that we prevent these dangerous departures. (…) we need to invest in legal pathways, safe ways, to arrive in the EU, both for refugees and for economic migrants.*

'Another element in the partnership is that Tunisia promised to take back their own citizens more swiftly – those who are not eligible to stay in the EU.' Other aspects of the partnership relate to procedures for legal migration., but also increasing EU support for the voluntary return of third-country nationals from Tunisia to their country of origin. 'This is already ongoing, we do it together with the UN. But we see more people now that would like to get that support, and we will act on this.'

Ylva Johansson moves on to the Commission's Search and Rescue instrument, which she stresses that is first and foremost in the competence of member states. 'They decide when there is a boat in need of rescue. What we can do – and have done – is setting up and working through a rescue coordinating group. They meet regularly with the member states that are particularly affected.' She also points to the support which Frontex provides with surveillance, for example, the tracking of boats in distress. 'But setting out in these boats is not the proper way to get to the EU. The majority of people arriving in the EU as migrants and asylum seekers actually arrive by plane, with over three million arriving legally each year.'

> *The majority of people arriving in the EU as migrants and asylum seekers actually arrive by plane…*

Finalising the EU Pact on Migration and Asylum…and more

On 8 June the Council reached agreement on the new EU Pact on Migration and Asylum. Ylva Johansson and many other policymakers consider this a big achievement. 'This is what the previous Commission did not manage to do – reach an agreement in the Council. And this relates to, as I started to say, to building trust, to rebuilding trust between member states on migration.' It is clear to Ylva Johansson that these efforts have paid off, and she stresses that there was near unanimity on 8 June. 'Only two member states voted against, which is pretty unique.' She believes that the Council's position in the agreement is not far removed from her 2020 proposal, and neither is the position of Parliament. 'They are on different sides of my proposal, that you can say. But it is absolutely possible to find an agreement in the trialogue. And we started the trialogue the week after the Council agreement. Actually, *trialogues*, because we are talking about two proposals.'

She is optimistic about the progress of these discussions between Parliament, the Council and the Commission, which continued in September. 'The Pact contains 11 legislative files, and currently five of them are already closed.' She is very much aware of time pressure in terms of the adoption of the Pact. 'Of course, it is going to be difficult. But it is absolutely possible . And I think the political will is there. Many member states realise that migration cannot be managed by one country alone, that we need to solve this together and every member state needs to understand what it is like to be in the other member states' shoes. Every country faces challenges regarding migration, but the challenges can be different depending on the country's location. But we can only properly address them together.'

> *[regarding the new Pact] Of course, it is going to be difficult. But it is absolutely possible.*

For Ylva Johansson it is essential that the European Parliament and the Coucil finalise and adopt the Pact before breaking up for the elections in spring 2024. But there is another key topic she wants to address in her current mandate as EU Commissioner. It is a very different topic, but one she considers to be just as important, if not more so. It relates to her security portfolio on the sexual abuse of children. 'We need a regulation that allows us to continue to detect these hideous crimes which are ongoing and shared online involving the sexual abuse of children. Last year a company specialised in detecting these crimes reported 5.2 million pictures, videos, abduction attempts, half of them involving very small children who were victims of sexual abuse and severe sexual violence. And this crime also occurs in the child's immediate surroundings – the family or somebody very close to the child.' She explains that it is difficult to rescue the children who are victims of such crimes. 'And the perpetrators send all this to other paedophiles online, they share it in private communications with others. With companies detecting and reporting it to us, the police can start an investigation and rescue the children.'

As EU Commissioner, Ylva Johansson has proposed new legislation which she believes is absolutely essential. 'If the legislation I proposed is not adopted during this mandate, then all the detection of child pornography that occurs today will be forbidden. And that means if my legislation is not adopted, then all these children will be left alone without the possibility, or only a limited possibility, of being rescued. And this issue is something that is very close to my heart and extremely important. This has to be done at EU level because the regulation for monitoring this environment is an EU regulation. So amendments have to be done at EU level.' She emphasises that a lot of effort has gone into this issue. She refers to a recent report by the Internet Watch Foundation, which found that offences in category A, the worst category of child sexual abuse, has increased in three years from 10 % to 20 %. 'If you consider pictures and videos that relate to small children between zero and two years old, it is horrendous. 81 % of category A relates to sexual violence.' With a sigh, she concludes that this issue is her priority. 'One child out of five is a victim of sexual violence.'

> *[regarding sexual abuse of children] If the legislation I proposed is not adopted during this mandate, then all the detection of child pornography that occurs today will be forbidden. (…) One child out of five is a victim of sexual violence.*

And my second key issue is concluding the new Pact on Migration and Asylum. Both issues need to be adopted before the European Parliament breaks up next year for elections. We will be very busy with the negotiations to conclude on both topics. I am hopeful we will manage!'

Frontex – 'Instead of a supplier of resources, a real partner for member states!'

Interview with Hans Leijtens, Executive Director of Frontex

By Atessa Duman and Gaston Moonen, Directorate of the Presidency

Source: Frontex

Hans Leijtens

Intensified migrant flows are most evident at EU's external borders, which are managed by EU member states with increasing support from the European Border and Coast Guard Agency – Frontex. Frontex has grown exponentially over the last five years and has been visible in the news in terms of managing migration at EU borders. Atessa Duman, a recent intern in the Directorate of the Presidency, and Gaston Moonen interviewed Hans Leijtens, Executive Director of Frontex since March 2023. Frontex contributes to key aspects of European integrated border management, and Hans Leijtens aims to gear its activities more towards the needs and effects envisioned by the member states as they manage the EU's external borders.

An increasingly *operational* Agency

Migration and border control are very topical issues. At the same time, Hans Leijtens puts this into perspective: 'Migration has been there always. We have to divide the factual changes on the one hand and the political narratives in countries on the other hand, they are sometimes not completely aligned.' He sees it as part of his professional role to voice what an organisation like Frontex is seeing all over Europe. 'We are in a unique position in that we can interact with member states, Schengen states and all third countries we are working with. So we can aggregate the information and provide intelligence for decision-making on all three levels – tactical, operational and strategic. And really support member states, which is our main objective. However, this changed with the new 2019 Regulation, which sort of *re-tasked* Frontex. Before we were more of an information hub, doing coordination and having some deployments coordinated along the way. Now we are increasingly becoming a fully-fledged operational Agency, although we are not there yet.'

The growing importance of migration as an issue for a common EU policy is also reflected in the fact that Frontex has become the biggest EU agency. 'This reflects that both the member states and the Commission agree that we should address border and migration issues at the EU level.' A development which was in the making after the 2015/16 migration crisis, leading to the 2019 Frontex Regulation. For Hans Leijtens, the new Pact on Migration and Asylum focuses more on asylum than on border management. 'Often it is said that migration starts at the borders, but that is not true. We try to reach out to third countries, countries of origin, to transit countries…Not because we think we can stop migration but at least we can see how we can manage migration.

Box 1 – Frontex – European Border and Coast Guard Agency

Frontex supports EU Member States and Schengen associated countries in the management of the EU's external borders, sharing intelligence and expertise in EU and non-EU countries affected by migratory trends and cross-border crime. It has a standing corps, EU's uniformed law enforcement service, being an operational arm of the EU. Established in 2004, Frontex had initially a facilitating and coordinating role. In 2019 EU Regulation 2019/1896 increased Frontex's powers towards also an operational role. This involved an exponential increase in resources, introducing a standing corps of 10.000 operational staff by 2027 and a budget of €754 million for 2022.

> *… part of our job is also to facilitate legal migration, authorised migration.*

And that is also along the lines that a part of our job is also to facilitate legal migration, authorised migration.'

The stated aim of the Frontex Regulation is to support the member states. 'Meaning that we cannot just go and do things. With the member states we have already a legal basis, so we can agree on an operational plan.' Hans Leijtens defines three different types of support. The first is through joint operations, using aerial, maritime or land-based equipment and resources. The second relates to return operations. And the third is what he calls multi-purpose aerial surveillance. 'That we have been doing now for quite a while but it is becoming more important. We deploy it mainly in the central Mediterranean. It means that member states can ask us to provide them with situation awareness. And pre-frontier, so not deploying in the area they already cover, but in this case, for example, the region of the central Mediterranean Sea between Libya, Tunisia, Italy and Greece, so international waters.' In this surveillance work, Frontex uses planes, drones, helicopters, and satellite images. 'What we deliver to member states is close to real-time monitoring.' The area Frontex covers is substantial. 'The size of France or Spain, and we just fly patterns, and whenever we see something – either in terms of law enforcement, such as possible unauthorised water crossings, but also with search and rescue – we can provide the same situation awareness.'

This cooperation with member states is also visible in the set-up of the Frontex workforce and its cooperation modes. The Frontex workforce has three categories: Frontex employees, including its own uniformed staff, officers from member states seconded to Frontex, and member state resources deployed for specific operations as needed. 'The moment that category two or three officers are deployed, the local commander is responsible for that deployment. But I remain responsible for their professional and personal behaviour while deployed through Frontex. I am responsible for enforcing the standards, including when it comes to human rights provisions.' He is fully aware of this responsibility for armed officers with possibly lethal consequences in certain situations, which is, however, not new to him, considering his previous responsibilities as Commander of the Dutch national military police force, the *Marechaussee*.

> *I am responsible for enforcing the standards, including when it comes to human rights provisions.*

Transparency and accountability – conditions for becoming a trusted Agency

For his daily work, the Frontex Director considers it essential to keep in touch with operational activities. 'But I am not the type of leader who wants to have all kinds of reports on his desk every morning. However, I am in a line of business where small mistakes can have huge impacts. Both for migrants, for human lives, but also for credibility, for legality, for trust. You have to develop an understanding of issues which sound like something minor, but might just be very important. So I talk a lot with people, to understand what is really happening.' He gives an example relating to a recent ruling of the European Court of Justice in Luxembourg regarding Frontex's responsibilities for the relocation of a Syrian family to Türkiye in 2016. 'Apart from the briefing note, I also wanted to talk with the lawyer, hear about the atmosphere in the courtroom. In this case, legally we were proven right. But that is only legal. It does not mean that there is a different impact on society. Politically even it might just erupt like a volcano.'

His approach of talking with people also involves a lot of travelling, holding discussions both with border guard management and with ministers. 'Trying to understand and be understood on what we are, what we can deliver. To avoid any expectation gaps there.' He also spends a lot of time in Brussels talking openly with the Commission, Council members and European Parliament about the many Frontex activities. 'For us it is very important to change the focus towards the effects and impact of Frontex. A lot of talk about Frontex is about our size – 10 000 officers, our budget moving towards 1 billion euros, about fundamental rights. But not about what you expect us to do, about the end result, the effect you want us to deliver. I am increasingly asking this, and not only at an organisational level. I want the member states to be vocal about what they expect us to do. Also, because if you, the ECA, audit us, you will ask "You spent money, used resources, but does it really deliver something tangible?"'

> *I want the member states to be vocal about what they expect us to do.*

According to the Frontex Director, the success of Frontex should not be defined in terms of how big it is but in terms of what it delivers. 'Is that in accordance with the needs of member states? Is it up to the standards of effectiveness, and also regarding human rights, for example? That is still rather implicit. Also from a process model, if you are not aware of the output and the outcomes, how can you evaluate, improve, and actually learn what you do with the input?'

Hans Leijtens admits that his interest in this goes well beyond audit and ties directly into the issue of trust. In many public statements he has highlighted that he wants to be open, transparent and accountable on what he does and what Frontex wants to deliver. 'And how we do it. On very technical operations we perhaps cannot give every detail. We should inform civilians, travellers, migrants on what we do, why we do it. It might even have a preventive effect if you do so.' Likewise for checking borders. 'There should be no secrets on where and how we check. Migrants should assume that they will be checked somewhere somehow.' Regarding cross-border crime, he explains that he has to be more prudent in sharing information. 'Although I think it is also good.' He has noticed that media interest goes beyond numbers to talk about certain phenomena and share specific Frontex knowledge. 'So not just the figures but also the type of criminals we are talking about. And without being alarmist, just being factual on what we see: this type of criminal does it this way, in these numbers and with that effect. I think there is not that much I cannot share.'

Regarding trust, Hans Leijtens explains that in his line of business there are three aspects that are very important and are too often neglected in the dialogue with both politicians and the media. 'To start with: we need to be effective, do we really add something in managing EU borders, both in facilitating and securing borders?' The second issue for him is legality. 'Of course, you should expect from a law enforcement agency that it obeys the law. If there are wrongdoings, you have to react, it should have consequences, for me, for every one of my people. We should also be accountable for that, ultimately including for court. What is there above that in terms of accountability?' His third element relates to legitimacy and trust. 'Legitimacy is not just following the law. It is more than that. On top of that it is working according to standards, in how you engage, in what you do. It relates to authority, built up also by how transparent you are, how open you are, whether people can know you or not.'

While all these aspects are very important, legitimacy and trust are top of his list. 'Because if you are not trusted, you can still brandish the law, but people may say "You use it when you think it is appropriate, but you are not sort of accountable for it yourself". If you talk about effectiveness, people may not trust the effect you're engaging at.' He points out that transparency is not just a slogan for him. 'It is actually vital for a good law enforcement agency to invest in, but also to be very active, if not be proactive on this.' He explains that after a number of discussions with the European Parliament, his reaction was: 'Instead of asking for such information every time, we will give you a dashboard. What do you want to know? We owe it to the public to tell them what we are seeing and doing.'

> " *We owe it to the public to tell them what we are seeing and doing.*

He observes that this outreach should not stop at EU borders. 'Actively providing information to third countries, whether transit or origin countries for migrants, is important so that potential migrants know more about what they can expect, what is required and what is not possible. Europe as a whole should invest more in informing people, without doing warfare stories, aimed at presenting terrifying stories and how they may be treated along the way by people smugglers and criminal gangs in the hope they won't come.'

Nevertheless, he expects that there will always be a market for smugglers, and gives the following advice: 'Don't trust them, they are lying, trust me.' He continues, 'There will always be migration, and for us border management officials, the question is: how can we do this? Right now, the issue starts at the border. But of course, migration starts somewhere in the country of origin, with root causes. Because of poverty, insecurity, because of natural disasters or demography, and it is important to include that in the narrative regarding migration.' In his view, the difficulty is that there is often a mismatch. 'Both in terms of what we need on the EU labour market and the skills of migrants presenting themselves at EU borders. It is not in my remit and not my responsibility, but perhaps instead of just waiting for them we have to look for them and facilitate authorised, so wanted border crossings.'

Aiming for dialogue – including on the new Pact

While part of an executive agency, Hans Leijtens is convinced that his job includes clarity on what can and cannot be done. 'Adding to the discussion the right information, but also managing expectations on what is feasible to do. Political decision-making also shapes our operational environment, and we need to talk to the decision-makers about that environment. Dialogue is particularly important on a topic like migration, where you risk losing each other halfway, including on the perspective of what can be delivered, with the risk that the political narrative overtakes the fact-based narrative.'

> " *Dialogue is particularly important on a topic like migration, where you (…) risk that the political narrative overtakes the fact-based narrative.*

As to the Council's 8 June agreement on its negotiation position regarding the new Pact for Migration and Asylum, the Executive Director expects this to influence Frontex operations as well, albeit to a lesser extent than, for example, the EU Agency for Asylum (EUAA). 'We are not really in asylum procedures as such. However, new operational concepts influence decisions on whether people will receive our protection or not. For example, on the return of people who are not or will not be protected by the EU. We may be asked to beef up these return operations.' He explains that returns are part of the migration cycle, including the integration of migrants in their home country. 'For a long time, we have been ready to enhance our contribution to return operations in Europe. So far, one of the issues is that there are not enough returnees to really use that capability.' He underlines that the largest proportion of migrants are economic migrants, while the percentage of genuine asylum seekers is much smaller. 'But those who request asylum and are refused should be returned. Because in terms of both closing the circle and having a sustainable migration policy, we should do this. Otherwise, the irregular proportion becomes bigger and bigger.'

> " *… those who request asylum and are refused should be returned. (…) Otherwise, the illegal proportion becomes bigger and bigger.*

Such gaps are also known to asylum seekers. 'We know that there are accounts on social media, where migrants can inform themselves on where to go, depending on

their preferences. I think there is an important role for the EU institutions, and also the EUAA and Frontex, to be more than a supplier of resources, but also a partner, trying to establish standards. On operations but also on fundamental rights. And engage with member states to persuade and support them in trying to use different and hopefully better processes.' He gives the example of registration of migrants. 'Such registration is pivotal, because if you don't and they are intercepted somewhere in the EU and there is no registration… they may tell us "I crossed that border, I asked for asylum." Were fingerprints taken? And if not, why not? Such findings create distrust in the system. If the external borders do not work, then the rest of whatever migration is, is built on quicksand.'

Border control and fundamental rights – far from mutually exclusive

The new Executive Director has declared several times that pushbacks are not allowed and that his fundamental rights focus is really to prevent them. 'This is not only our legal obligation but even more so related to the trust we spoke about. Without running away from my responsibilities, I also need to highlight that I can only be held responsible for the actions of my own people. Nevertheless, I can have a position on how our cooperation partner is doing their job and whether that is an environment that is fit for an organisation like ours, being European, being tasked with high standards for human rights, so the famous Article 46 of the Frontex Regulation.'

Hans Leijtens also underlines the organisational dimension of pushbacks. 'They mean for me – I take this very seriously – first of all I have to talk with my own people. To tell them: this is the standard. So we brief, we explain. It has been in every operational plan since 2019. We have assessments from our fundamental rights officers, monitoring in the field, we have checks and balances – dating also from before I came. For me, the main point is not securing borders OR fundamental rights. No, it is securing borders AND fundamental rights. We all took the oath, saying "we promise to serve and protect". It is not protecting the nation-state but also protecting the civilians. So it should be in our DNA. And the standard for that is it is also fundamental rights.' For Hans Leijtens, the Frontex mandate starts with protecting borders. 'And whilst doing that we have to live up to the standards which are there both in Europe and universally. You must be absolutely clear on this.'

> " *… it is securing borders AND fundamental rights. (…) we have to live up to the standards which are there both in Europe and universally.*

For him this means that his people have to behave within these boundaries. 'But even – and that is of course more difficult – to report, to signal when others do not. As hierarchy we also need to empower our people, not only saying but living up to "I will support you if you report". You should do if you see something which is not up to our standards.' Arguably this may be difficult, certainly in the hierarchical structure many of his officers are used to. 'Coming often from a police culture, which can be a rather closed culture. This requires a constructive attitude within our organisation, instead of a doubting one. We need to interact on this also with the host country, with the police force concerned.' He adds that the latter means you have to rely on national institutions. 'On an ombudsman, on judges, on prosecutors, on commanding generals, whether they really do something, or not. One of my tasks is also to tell the member states: it cannot be that this is not reported, and you tell me that this did not happen. That cannot be. No doubt we try to be the good guys, but we do make mistakes.' In his view, this also requires politicians to really support their commanders in enforcing the standards. 'Because if they convey a mentality that they will not accept mistakes, these commanders will not report.'

Performance and trust – essential in transforming Frontex's capacity to add value

With his focus on performance, it may be no surprise that Hans Leijtens is keen to see the ECA helping his organisation to enhance its performance. 'Of course, we need to comply with every single regulation there is. I don't want to play that down. But for the future of Frontex, what we do on top of that, how we really satisfy the needs of the member states, that is becoming increasingly important. So any help in terms of enhancing the understanding of how performance looks – in terms of how we agree on

tangible objectives, on things we can measure, on improving understanding of how law enforcement performance works, is needed.'

He observes that if you can agree on the assumptions that define the relationship between outcome and output you are doing fine. 'If there is no causality then impact is difficult to improve. That's why I am looking for guidance and direction on the intended end results and effects.' He points out that he has done some scientific work himself on this in the past. 'The assumption that law enforcement is just like any other type of business – that does not fly. Nevertheless, how do you define success in terms of being effective? Even more important than efficiency. Because in the end you don't want to have the cheapest police force, but you want to have the best police in terms of effectiveness.' He also underlines that, as an EU law enforcement agency supporting the member states, anything to improve the understanding and working of that ecosystem would be helpful for him.

When Hans Leijtens started this job, he recognised the importance of bringing back trust in the ecosystem in which Frontex operates. 'This remains essential, and I think we are gaining trust from different sides.' Besides trust and becoming more effective, however, he has even higher aims for when he leaves his post as Executive Director of Frontex. 'The most important would be that we have become, instead of a supplier of resources, a real *partner* for member states. This is not just a word. It means that we should have a different dialogue with member states in terms of not just doing what they want but trying to understand what they really need. That is perhaps the biggest challenge because that means we have to do our work, especially our work with the member states, and in combination with the Commission, differently from how we are doing it right now, and accommodate more proactively to their needs.'

… we should have a different dialogue with member states in terms of not just doing what they want but trying to understand what they really need.

EU Agency for Asylum – an essential tool for building the world's only multinational asylum system

Interview with Nina Gregori, Executive Director of the European Union Agency for Asylum

By Kiara Borg and Gaston Moonen, Directorate of the Presidency

Source: EUAA

Nina Gregori

> The solution to the EU's goal of a more unified asylum policy lies not only in drafting common legislation but also in applying the rules in a harmonised way. With that in mind, the European Union Agency for Asylum (EUAA) has set up several platforms on which experts can meet, and it is providing practical support on the ground with matters ranging from dealing with procedures to offering technical support. Nina Gregori, the EUAA's Executive Director, is keen to share what the agency does. In this interview by Kiara Borg, recently intern in the Directorate of the Presidency, and Gaston Moonen, she also draws on her wide experience of migration issues to discuss what it will take to achieve a common approach to asylum in the EU.

Offering help and support at all stages of the asylum procedure

When interviewing Nina Gregori it quickly becomes clear that issues of migration have always been central to her professional life. 'Migration policy is very dynamic and has had my interest since I was a student.' She has worked in the area since 1999, when, as a Slovenian civil servant, she helped her country adjust to the break-up of Yugoslavia and prepare for accession to the EU in 2004. 'I was then part of the team responsible for the alignment of legislation on justice and home affairs. And in 2007 Slovenia became a member of the Schengen area. I worked in the Ministry of Interior, seeing migration from the practical perspective.' She rose to become Director-General in the Ministry with responsibility for various issues, including migration policy. 'I think it can be an advantage when you come from a smaller country, drafting policy but also seeing how your work then affects beneficiaries under international asylum legislation.'

Since 2019 Nina Gregori has been Executive Director of the European Union Agency for Asylum, having previously been a member of the EUAA's Management Board. She explains that, since the establishment of the EUAA's predecessor, the European Asylum Support Office (EASO) in 2010, the agency has grown significantly. 'The EASO was, at

the beginning, a solidarity mechanism, aiming to bring member states to a level of a common asylum system, offering guidance and bringing together practices and experts in the field of asylum and reception. By creating this information on common principles, the idea was that these experts would act accordingly, creating a space of safety for people seeking international protection. The EUAA is in fact a huge tool to contribute to building up a common EU asylum system.'

"
The EUAA is in fact a huge tool to contribute to building up a common EU asylum system.

> **Box 1 – European Union Agency for Asylum (EUAA)**
> The EUAA supports member states in applying the package of EU laws that govern international protection and reception conditions, known as the Common European Asylum System (CEAS). While the EUAA acts as a resource for member states to provide practical, legal, technical, advisory and operational assistance, it does not replace national asylum or reception authorities. Its ultimate aim is to arrive at a harmonised approach to asylum in all member states so that similar applications in any of the member states will always produce the same result. And so that, no matter in which member state they seek asylum, applicants will enjoy the same rights, obligations and reception conditions. The EUAA is based in Malta, where it employs around 540 staff; it also deploys about 1 400 people in other countries as necessary, mostly in other member states.

She explains that the first area of commonality is the legislation itself. 'The first set of legislation was directives, which may mean differences when countries transpose them into national legislation.' Other differences may occur as a result of the implementing authorities procedures. She believes that the new Pact the European Parliament, Council and Commission are currently working on will bring changes to the regulatory approach. 'In a way we are coming closer to codification. This would bring new dynamics in the creation of a common EU asylum system.'

Nina Gregori observes that the developments leading to the Pact go back to 2015/2016, when the EU had to deal with large migration flows. 'Our agency then directly supported relocation actions in Italy and Greece. Since I joined as Executive Director, I have signed operating plans with many other member states – and now, as EUAA, we are operationally present on the ground in 13 countries. This relates of course to the consequences of the situation in Ukraine, the developments in Belarus and the

"
… we are operationally present on the ground in 13 countries.

fall of Kabul.' She explains that member states are now more aware that the EUAA is working for them, and that they can ask for support, based on a needs assessment and an agreed operating plan. 'But we definitely do not take decisions when it comes to concrete asylum cases. That is the sovereignty of the member states. We offer support and help, in all stages of procedures.' This can mean, for example, providing information, registering applicants and preparing files. 'In the end, the member states issue a decision, their decision!'

Getting to grips with migration – how it could work

Nina Gregori explains that 2022 has been an exceptional year for EUAA activities. The reasons include, but are not limited to, the flow of refugees fleeing the war in Ukraine. 'On 4 March 2022, the Council unanimously activated the Temporary Protection Directive – the TPD – for the first time in 20 years of its existence, giving those fleeing war in Ukraine the right to temporary protection. Then our agency got an additional role to play in the implementation of this directive. We did not have the tools, the training, the guidance in view of this novelty, with this directive bringing new procedures, new workflows, new registration practices.' Part of all this was a fast-track procedure based on 'prima facie' registration, with tasks sometimes attributed to authorities with no previous experience of asylum work. 'Ranging from local authorities to the police. We needed to embark on new work and a new environment. We very quickly developed training materials for member states, as well as information materials for beneficiaries of temporary protection, covering all 27 member states, including translations in Ukrainian.'

Given its aim of convergence among asylum practices, the EUAA's networking function is key for Nina Gregori; it is highlighted by the agency's activation of multiple thematic networks in which it works with member states on topics like reception, vulnerability, and the development and provision of guidance on, for example, how to organise private accommodation for persons displaced from Ukraine. 'This is how the common

EU asylum system should be built. The EU has the world's *only* multinational asylum system. It is unique! Its output is convergence in the asylum process, and you cannot have that by preparing guidance while nobody is using it. So first you have to listen to the member states' needs, involve them in the inclusive process of preparing this guidance. And then of course they have to use this.'

" The EU has the world's only multinational asylum system. It is unique! Its output is convergence in the asylum process…

She observes that the new regulation that is part of the Pact currently under negotiation is very important for the creation of a common system. 'As agency we prepare country-of-origin information and guidance. This serves as a basis for assessing the individual claims of asylum seekers. If a person comes from this or that region in Afghanistan, then the information we objectively produce can serve as basis for everybody in the EU.' She explains that there is not a common list of safe countries of origin or safe third countries. 'We published an analysis of this in December 2022. Most member states have lists – but not lists of safe third countries.' She stresses that 2022 was unprecedented in that five million people had never before come directly over the borders of the EU. 'Which included at least one million people coming from other countries than Ukraine. We help on the spot to implement asylum procedures. Our biggest operation now is in Greece, also when it comes to human resources: we have around 450 people there.'

" We help on the spot to implement asylum procedures. Our biggest operation now is in Greece…

One crucial aspect of the EUAA's operations in member states is that it needs to be invited. 'We can only work upon invitation, which is a sovereign decision of the member state.' She cites the Czech Republic, a country not far from the EU's eastern border. 'We came to help with implementation of the TPD, in particular regarding reception conditions. This is also the case for other member states at the external border.' She adds, however, that the agency is not only there for EU border countries. 'Belgium and the Netherlands had various issues with their reception capacity. For the first time our agency was asked to support them, and we have agreed operating plans with them, such as for the setting-up of additional capacity for housing. We are offering them housing units.'

Addressing different recognition levels and more…

How can the Dublin Regulation, which establishes which member state is responsible for handling each asylum application, be reconciled with the Schengen rules, which allow migrants to move freely between member states and, for example, favour those with a higher asylum recognition rate? In discussing this, Nina Gregori refers to the 2023 EUAA report. 'From this and other reports you can read that recognition rates indeed vary. There continues to be a large variation in national practices to grant protection to specific citizenships or citizens coming from particular countries. Afghanistan is a good example. Member states are aware of this situation, as they are of the consequences, namely secondary movements.' She underlines that asylum seekers are aware of it too, but for them various other factors contribute to secondary movements. 'For example strong diasporas, or decisions from the national courts with which the administration needs to comply at second instance level.'

On this last aspect she explains that her agency too tries to connect to the judiciary, since the courts play a very important role in convergence towards a common asylum system. 'Our agency has a dedicated sector dealing with training for the members of courts and tribunals, and we reach out to their rather strong European associations to promote convergence at this second instance.' She observes that, for the EU as a whole, there are always around half a million pending cases at first instance, where member states are still deciding, and almost the same number at second instance. 'Meaning that the decisions taken by national courts substantially influence the overall situation.'

" Our agency has a dedicated sector dealing with training for the members of courts and tribunals (…) the decisions taken by national courts substantially influence the overall situation.

Return policies are another area where, in her view, harmonisation is important and contributes to efficient, objective and fair border procedures. 'An important factor in the management of migration, not only in Europe but in the world. But we are not dealing with that as it is not in the agency's mandate.' What the EUAA does address is resettlement the

transfer of vulnerable refugees from host countries to EU member states and associated countries where they will be admitted and granted the right to stay. Nina Gregori refers to two tools in this connection. 'We have created in Turkey the Resettlement Support Facility, offering member states which are resettling refugees from Turkey tools like office space, computers, technical equipment and interpretation. Here they can do their interviews for asylum eligibility. We also cooperate with the UNHCR, so as not to duplicate their work. The second tool is the Resettlement and Humanitarian Admission Network, which brings member states and relevant international organisations together to exchange best practice and address challenges together'.

Audit as an important part of good governance

When Nina Gregori took over as EUAA Executive Director in 2019, she was appointed to strengthen the agency's oversight of recruitment, procurement and internal controls in the wake of allegations against her predecessor. She stresses that she is a strong believer in audits and external scrutiny, and refers to the ECA's audit reports, which have regularly raised issues regarding internal management and internal controls, including in relation to the EUAA. 'This is part of a system, and implementing good governance means having transparent procedures. Accountability is the basis for our work.' She attaches considerable importance not only to the ECA's specific annual reports on the agency's activities, but also to more cross-cutting reports highlighting overall accountability issues – for example special report 24/2019 on asylum, relocation and return. 'That was really overarching and very interesting for us when you take as auditor the procedure from the beginning to the end. Also for the member states because of the key role they play. Such a report gives a different perspective.'

> *… implementing good governance means having transparent procedures. Accountability is the basis for our work.*

When it comes to assessments of the agency itself, she emphasises that the picture given by audit is highly relevant, including making visible how audit findings have been taken up. 'For example, we have created our own evaluation capacity in our agency, assessing our performance. We try to coordinate this with bigger and overarching audits from the ECA or others, such as from the Commission.' She is proud to report that, of the 15 ECA recommendations that have needed follow-up, the more significant ones have all been closed. 'I have seen the draft now for the ECA's 2022 reporting on the agency's activities and management, and I see how our investment in training and governance is paying off. It is also a matter of awareness-raising – that is nothing out of the ordinary when working in the public field and making yourself available to public scrutiny.'

> *…we have created our own evaluation capacity in our agency, assessing our performance.*

An opportunity to balance solidarity with responsibility

For Nina Gregori it is clear that the new Pact on migration and asylum offers a great opportunity to achieve a common EU asylum system. 'We were clearly not part of the process in these negotiations, that is not our mandate. But we contributed with our knowledge when asked. Such as to prepare simulations on the screening and border procedures in terms of human resources and other resources, to see what is possible and feasible, also from a performance point of view.'

> *…[we] prepare simulations on the screening and border procedures in terms of human resources and other resources, to see what is possible and feasible…*

She observes that the Pact contains two main pillars: solidarity and responsibility. 'These two need to be balanced. I think that, although it is a very complex legal framework, there are tools, also offered by our agency, to help ensure fast and efficient asylum procedures.' She gives a concrete example. 'The draft pact speaks about a swift screening procedure and a mandatory border procedure, which requires capacity to be effectively secured for frontline member states. For these fast border procedures, rules and guidance are important from the perspective of capacity and assurance.' In this context she mentions

the value of safe country lists and faster screening. 'All this would speed up the process, but all needs to be in line with fundamental rights requirements. If this works out well, the message we need to bring out to people wanting to come to Europe is who is eligible for international protection and who is not. Avoid their arriving without sufficient knowledge.'

… the message we need to bring out to people wanting to come to Europe is who is eligible for international protection and who is not.

In this respect, she thinks the full range of communication channels needs to be explored. But that is not all. 'We may need to create clearer legal pathways for migrants that member states want to accept and offer opportunities for a life and work in the EU. I understand the Pact to encompass such elements, and it would be a missed opportunity not to, because it is a step forward towards the creation of a functional asylum system. One that offers safety and protection for those who really need it and opportunities for those who don't need protection but have skills that are needed. Because the EU's foundation is that we are a society of values, also when it comes to opportunities.'

Obtaining a Council position on the new Pact – 'Now or never'

Interview with Maria Malmer Stenergard, Swedish Minister for Migration

By Gaston Moonen

Source: Ninni Andersson/ Government Offices of Sweden

Maria Malmer Stenergard

Several Presidencies have had the reform of the Pact on Migration and Asylum on their agenda as a key policy issue to tackle. When the news came on 8 June 2023 that the Council had reached an agreement on key asylum and migration laws, defining its position regarding the Pact proposed in 2020, many people in the EU institutions and member states realised that a big hurdle towards the adoption of this Pact had been cleared. Without doubt, a big success for the Swedish Presidency. It was Maria Malmer Stenergard, Sweden's Minister for Migration, who had led the discussions and announced the agreement reached in Council, underlining the need for solidarity and for responsible adherence to the rules agreed. We asked her about the path towards this agreement, its key components and the main challenges that in her view still need to be addressed to achieve adoption.

A pact that suits both net contributors and net beneficiaries

Your country has had the Council Presidency for the first half of this year. One of the main issues on the political agenda has been to reach a Council agreement on its position towards a new Pact on Migration and Asylum, which you managed to pull off on 8 June. What was the game changer in your view to get to this agreement, which for several experts still came unexpectedly?

Maria Malmer Stenergard: The successful conclusion of the negotiations in the Council was due to a number of factors: the progress that previous presidencies had achieved, not least France and the Czech Republic; the constructive input from the representatives of the member states; the strong and effective cooperation with the General Secretariat of the Council and the Commission; and, last but not least, the feeling of 'now or never' due to the fact that the mandates of the Commission and the European Parliament expire next year. It was all in all great teamwork. In this context, I would like to take the opportunity to thank my Swedish colleagues in Stockholm snd Brussels who worked day and night to make this happen.

One of the key aspects relating to the new Pact concerns the introduction of a new solidarity mechanism. What is the key difference with what was there before and why do you think this new mechanism will work well?

Maria Malmer Stenergard: The current legal framework does not provide for a mandatory solidarity mechanism. The solidarity provided to member states under migratory pressure today is only voluntary. I believe the new mechanism will work better for three reasons: first, it is mandatory; secondly, it is sufficiently flexible to allow member states to contribute in a way that suits both net contributors and net beneficiaries, but not by mandatory relocation; and, thirdly, there is a genuine feeling among the member states that the new system must work.

> *… there is a genuine feeling among the member states that the new system must work.*

Ylva Johansson, the EU Commissioner responsible for this policy area, has said that there is no dispute whatsoever within the EU over the need for a common EU migration policy and implementation. Why is it so difficult to achieve such a pact if all the key players are convinced that it is an issue that needs to be addressed at EU level?

Maria Malmer Stenergard: Commissioner Ylva Johansson is right in that there is a general agreement that the new Pact is of great importance. However, I think it is only natural that the needs and interests of member states vary depending on their geographic location and whether or not they are destination countries of secondary movements.

A paradigm shift in Sweden

You have been working as a Member of Parliament in Sweden for several years, and since 2022 as Minister for Migration. What do you consider to be the key challenge for your country, not being located at the EU's external border, when it comes to migration and asylum issues? Can you explain what kind of a paradigm shift you envisage for your country?

Maria Malmer Stenergard: Although located far from the external border, Sweden has over a period of many years received more asylum seekers per capita than most other member states. To a significant extent, this has been due to generous legislation on, for instance, access to permanent residence, social benefits and citizenship. The current situation in our society shows we need considerably lower volumes over several years. This is what the paradigm shift is about. We plan to adapt our legislation to the minimum thresholds set by EU and international law.

> *We plan to adapt our legislation to the minimum thresholds set by EU and international law.*

You have indicated that the adoption of a new EU Pact on Migration and Asylum will facilitate more sustainable immigration to Sweden. Can you elaborate on that and, with your Presidency experience, on what you expect the new Pact to mean for countries on the EU border, such as Malta?

Maria Malmer Stenergard: I believe the new Pact will result in more controlled, orderly and sustainable immigration to all member states. In particular, the swift border procedures will ensure that those who are unlikely to be in need of international protection do not overburden the ordinary asylum procedures. The asylum procedure is for those in need of protection. Those looking for work rather than protection should use the procedures for legal migration. I also want to stress the importance of the external dimension, closer cooperation with countries of origin and transit countries, and full use of the mechanisms available to the EU.

> *… ensure that those who are unlikely to be in need of international protection do not overburden the ordinary asylum procedures.*

What would you identify as another key success for the Swedish Presidency, besides the 8 June agreement?

Maria Malmer Stenergard: As regards other key successes in the field of migration, I would like to mention the general approach to the revision of the Single Permit Directive. Another key success is the agreement on the digitalisation of the Schengen visa procedure. Here we managed both to complete the negotiations in the Council and to reach an agreement with the European Parliament during the six months of our

Presidency. Important progress was also made in the external dimension, in particular relating to the application of Article 25a of the Schengen Visa Code[1] and concerning returns and readmission.

Legitimacy of the global asylum system

One of the issues with former EU arrangements on migration and asylum is that while political agreements were made, implementation proved to be quite challenging, including in view of changing circumstances. What role do you see for public auditors, be it at national or EU level, for contributing to a better migration and asylum policy? Is there a specific topic on which you would very much welcome their assessment?

Maria Malmer Stenergard: This is a very important issue. Problems in the implementation of the current legal framework are one of the reasons why the Asylum and Migration Management Regulation contains a specific provision on implementation plans. I think public auditors can play an important role by assessing the efficiency of these plans and in particular the functioning of the mandatory solidarity mechanism, including its financial component.

> *Problems in the implementation of the current legal framework are one of the reasons why the Asylum and Migration Management Regulation contains a specific provision on implementation plans.*

What are in your view the main issues to tackle to achieve a final agreement between the Council, European Parliament and European Commission and get the new pact adopted before the European Parliament breaks up in June 2024? Do you think adoption is feasible, also in view of the recent discussions in the Council regarding an agreement on the Crisis Regulation, which actually triggered the European Parliament's suspension of further discussions?

Maria Malmer Stenergard: Now that the Council has agreed on a general approach to the Crisis Regulation, I believe the likelihood of the adoption of the Pact has increased significantly. Difficult hurdles remain in the negotiations between the Council, the European Parliament and the Commission regarding in particular mandatory border procedures, legal assistance and the solidarity mechanism. Perhaps this limited timeframe and the sense of urgency are our best friends here.

> *Perhaps this limited timeframe and the sense of urgency are our best friends here.*

Several civil society groups have argued that the new proposals on migration and asylum are not necessarily good for the position and circumstances of asylum seekers themselves. What would you consider to be the 'human face' of the proposals currently being negotiated, what particularly is in it for refugees seeking asylum?

Maria Malmer Stenergard: The Pact doesn't change the right to asylum or the right to an individual assessment. What it does is to introduce more clarity and order in the system, in particular by separating those who are likely to be in need of international protection from those who are not. While this might be to the detriment of those using the asylum system for economic migration, it should actually be in the interests of those fleeing persecution and war. In the long run, this serves to uphold the legitimacy of the global asylum system.

> *The Pact doesn't change the right to asylum (…) it should actually be in the interests of those fleeing persecution and war.*

---

1   In 2019, the EU's Visa Code was amended to include an article (25a) on 'Cooperation on readmission', tying the cost and processing time of visas, as well as the availability of multiple entry visas, to third countries' performance in areas seen to support readmission.

Guiding principle should be policy implementation, not policy talk – including when auditing EU migration policy

Interview with Bettina Jakobsen, ECA Member and Dean of the External Action, Security and Justice Audit Chamber

By Gaston Moonen

Bettina Jakobsen

> While migration and asylum issues relate to many policy aspects, much of the funding related to EU action in this field comes from the EU budget for external action and security. Within the ECA, the External Action, Security and Justice Audit Chamber carries out most of the audit work in this area. After several years in this audit chamber, ECA Member Bettina Jakobsen has dealt with audits on migration not only in her role as Dean, but also as rapporteur for various reports relating to EU migration issues. In this article, she explains the ECA's audit approach for this key policy area, the possibilities and constraints when auditing this complex topic, and which aspects the ECA will cover in upcoming years.

Various audit topics competing for limited audit resources

When discussing how migration relates to the overall tasks of the External Action, Security and Justice Audit Chamber, Bettina Jakobsen explains that migration issues have been a topic of attention, including within the ECA, since the 2015 refugee crisis. 'Since then, the situation has evolved, with COVID also having had a big influence on our work, but as the ECA 2021-2025 strategy states, mass migration is considered "a newly arising challenge" in the priority area of European security and values.' At the same time, she underlines that migration has to compete, from an audit perspective, with various other relevant topics the audit chamber is responsible for, leading to fewer reports on migrant issues for the time being. 'We make a selection of audit topics based on aspects like maturity, the amount of expenditure, risk assessment and audit coverage, as we cannot audit the same policy area all the time. We have to spread our resources. From my perspective it is important that we look at whether a topic is "auditable" and mature.'

… it is important that we look at whether a topic is "auditable" and mature.

She underlines that if ECA stakeholders have a specific interest, the ECA may not necessarily jump into the topic straightaway. 'It might be on the "waiting list" for some time to become more mature. A significant part of our audits relates to the examination of funded projects, where we would like to see that some activities have taken place, in order to assess the performance of the implementation and the sustainability of the projects.' She adds that migration topics compete with topics such as cyber security, defence issues, EU external actions and development aid. 'It is all a question of how our chamber and the ECA overall prioritise. The war in Ukraine is becoming a big topic also, from an audit perspective. There is simply a lot of demand on our resources.'

> *The war in Ukraine is becoming a big topic also, from an audit perspective. There is simply a lot of demand on our resources.*

Since migration touches upon many policy aspects, our audits typically focus on a particular dimension of the policy area. 'For external border issues, we have had the border control audit, our audit regarding Frontex and the audit assessing Europol's actions regarding migrant smuggling. And of course, support to cross-border cooperation in the neighbourhood. All different elements but falling within the same "heading", that is external borders on the EU's doorstep.' In this respect, other headings relate to issues such as root causes or reception facilities, relocation and return of migrants.

Data are key, including when implementing migrant policy

When asked about the key findings in all these reports touching upon different aspects of migration, she indicates that they frequently relate to insufficient needs assessments, lack of operational capacity, insufficient coordination and the availability and use of reliable data to steer actions. 'It is crucial to get the right data, at the right time and in an appropriate fashion. But the European Commission may reply that the system is not designed to deliver data on issues such as cost-efficiency, as the relevant systems have been set up for different purposes. Another issue is documenting the reasons for decisions. In several reports we note that a new initiative was to a large extent a politically motivated decision. In such cases, ensuring the subsequent documentation that the decision was justified and supported by good reasons, based on needs, has proven difficult at times.' She mentions the European Trust Fund for Africa as an example: 'The reasons and needs for setting up a huge new fund rather than using already existing tools could have been better documented. Sometimes the "symbolic act" of creating a new big thing can seem almost more important than clearly establishing its objectives. But money alone does not always solve the problems.'

> *It is crucial to get the right data, at the right time and in an appropriate fashion. (…) Another issue is documenting the reasons for decisions.*

> *… money alone does not always solve the problems.*

Referring to special report 19/2021 on Europol support to fight migrant smuggling, she identifies another key issue, which is that of intra-operability, also highlighted in special report 20/2019 on information systems for border control. 'Sometimes the system at EU level and national level, and even between different EU bodies, were not linked. The systems could not talk to each other. Data protection rules also turned out to be an impediment for efficient cooperation between EU bodies acting in the same areas but unable to share information.' She refers to Europol and Frontex and their exchanges, where it would be logical to have more cooperation regarding migrant smuggling. 'But our audit found that there were various legal restrictions on data sharing.'

Project maturity as a criterion

For the ECA, as the EU's external auditor, the timing of when to look at a policy area is important. 'I spoke about the maturity of projects. We recently published our special report 21/2023 on the Spotlight Initiative on violence against women. The Spotlight Initiative had actually been on our "good ideas" audit list for a couple of years, but we had to wait for the initiative to become mature so that we could really examine advanced projects and assess their achievements in terms of improving the situation for women and girls.' Another reason she gives for postponing or speeding up an audit may be an expectation of a new legislative decision.

Bettina Jakobsen underlines that maturity mainly relates to the implementation, not the political discussion of the topic. 'For example, take the politically sensitive topic of pushbacks in migration. We can only look into it if there is EU expenditure involved. For some policies it is the member state that is responsible, and there it is the national audit institution that can undertake audit action.' When asked if this may trigger possibilities for cooperation between national audit institutions and the ECA, Bettina Jakobsen replies that, in her experience, such cooperation works best when it focuses on knowledge-sharing via networks such as the Contact Committee of the EU's supreme audit institutions. 'The EU Financial Regulation requires the ECA to provide its audit reports within a certain time limit. This can be rather difficult if we have to cooperate with national audit institutions, as the required coordination takes time. This is one constraint for such cooperation.' She adds that other constraints might be differences in audit mandate and audit capacity.'

> *… take the politically sensitive topic of pushbacks in migration. We can only look into it if there is EU expenditure involved.*

The envisaged new Migration and Asylum Pact, now under discussion also with the European Parliament following agreement in the Council in June, sets out increased expenditure levels regarding migration and new instruments. The Dean underlines that this may indeed have an impact on the ECA's audit activities, but it is too early to tell. 'The agreement is not there yet, but once it is, we will analyse its consequences for our work. We will also continue to cover compliance in migration expenditure in our annual Statement of Assurance work.'

> *The agreement [the new Pact] is not there yet, but once it is, we will analyse its consequences for our work.*

She points out that a prudent audit analysis would also have to be made for any agreements concluded between the EU and non-EU countries on the reception of migrants, such as the recent agreement with Tunisia. 'As auditors we look backwards, after the expenditure has occurred. We carried out an audit on the Facility for Refugees in Turkey, published in 2018, and we are currently doing an extended follow-up on that audit. The agreement with Tunisia has a different basis with more elements of macro-economic assistance and it needs to be reviewed on its own aspects and merits.'

Another topic linked to migration, currently being audited, relates to the integration of migrants into the EU. 'My colleague Viorel Stefan is responsible for an audit in this area, but it is in the early stages. Here we also looked at the topic's maturity, waiting for some time because there was not that much visible progress in implementation, also due to proposals being frozen, etc.' Other audit chambers may also touch on migrant issues. 'For example, my colleagues in the audit chamber assessing cohesion expenditure are currently examining whether member states deployed EU FAST-CARE funds (Cohesion's Action for Refugees in Europe) effectively to support refugees fleeing from Russia's invasion of Ukraine.'

Auditing aid to address human tragedy

The current European Commission wants to address the situation that leads to tragic images of boat refugees suffering on the Mediterranean Sea, including through its search and rescue coordination activities. For Bettina Jakobsen, the ECA could come into play if significant EU expenditure is involved. 'We need to see EU expenditure spent on actual activities, and not just an expressed commitment to act. This complimented by identified risks and the potential value an ECA audit might have to its stakeholder. These are basically the same criteria as for any other audit we might do.'

> *We need to see EU expenditure spent on actual activities, and not just an expressed commitment to act.*

The ECA Member points out that the ECA is currently doing an audit which also involves human rights issues, a topic she finds very important. 'We are currently doing an audit on the EU Trust Fund for Africa, looking at human rights, a core value of the EU. My colleague Hannu Takkula is responsible for this audit. Our stakeholders in the European Parliament requested this aspect to be covered, which we have taken on board.' She adds that this audit directly relates to addressing root causes for migration, a key issue in the whole migration challenge. 'Look at what happens in the US, people not only

coming from South America on foot to cross the border, but even from Afghanistan and Syria, keen to cross the ocean. It is a long and often dangerous journey for a migrant.'

Bettina Jakobsen also refers to another upcoming audit in her audit chamber that indirectly relates to migrant issues, including possible root causes. 'We will soon start an audit on whether the European Commission's delivery of humanitarian aid under remote management, through its Directorate General ECHO, is well justified, effective and efficient. This can also relate to places migrants regularly come from and the reasons why they flee.'

The aspect of human suffering can make the issue of migrant policy and its implementation a difficult topic to audit. 'If you are auditing issues relating to emergency aid, you need to have a thick skin as well as sensitivity. Our auditors may visit refugee camps and other places where human suffering is very visible. The deathly earthquake in Turkey earlier this year affected projects that we had planned to visit in the course of our follow-up audit of the Facility for Refugees in Turkey. In that situation we needed to give the relevant actors the time and the space to manage the immediate emergency, before going on-the-spot to assess the impact of the earthquake on EU funded projects.'

> *If you are auditing issues relating to emergency aid, you need to have a thick skin as well as sensitivity.*

Bettina Jakobsen expects other hardship encounters for ECA auditors, for example when assessing EU expenditure and its implementation in Ukraine. 'There we will also see what war can do to a country. And the amounts predicted to help the country recover are enormous, also in relation to the EU budget.'

Migration to remain on ECA audit programme

As to the new Migration and Asylum Pact, once there is an agreement on the table, the ECA may be asked to provide its opinion, as it has for other draft legislation. 'For the various opinions we have provided so far, for example relating to the proposals on the Recovery and Resilience Facility or to the ongoing work relating to the proposed 'Ukraine Facility'[1], we have usually been invited to do so. Proposals linked to issues such as how you manage the EU budget, on accounting issues, financial regulations, for those an ECA opinion is mandatory.'

She explains that this is also the case for the opinion on the Ukraine Facility. 'I think it is important that we are invited to provide an opinion on proposals that may affect our work or where we have relevant expertise to offer. But we should be prudent in terms of providing opinions on issues where we have not been asked for one, as we are not a political institution.' She adds, 'We have only a limited number of auditors, so we need to be careful how we use them.' Future years' work programmes are thus likely to touch on many different topics, including some linked to migration.

> *… we should be prudent in terms of providing opinions on issues where we have not been asked for one (…) We have only a limited number of auditors…*

---

1   For the ECA opinion on the Ukraine Facility see: https://www.eca.europa.eu/en/publications/AR-2022

ECA audits of migration in the EU: staying ahead of the game

By Leo Brincat, former Member of the European Court of Auditors

Leo Brincat retired as the Maltese Member of the ECA on 1 October 2022. For several years before that he was responsible for presenting the ECA's findings on migration issues in the EU. We asked him which key audit findings he feels to have been most relevant to the current debate on migration and asylum in the EU – those the Union would do well to consider when finalising a migration deal on the basis of the Council agreement of 8 June 2023. In this article he looks back at some core aspects of migration which the ECA touched upon during his term of office, and which he deems crucial to mitigating the risk of a future migration crisis.

Council deal on migration puts the ECA's audit findings in a new light

During my time at the European Court of Auditors I was tasked to serve as reporting Member on various topics linked to migration. These ranged from Frontex's support for external border management (special report 08/2021) to EU readmission cooperation with third countries (special report 17/2021), and to migration management in the EU with particular reference to the 'hotspots' in Italy and Greece (special report 24/2019). During the period of time covered by these special reports, the prospect of an EU migration deal was still a work in progress at best and, at worst, no more than a mirage. The inevitable setbacks triggered by the COVID-19 pandemic made a critical situation worse, triggering delays that affected our audit work – for example when Frontex's own HQ shut down temporarily due to the pandemic.

On 8 June 2023 the EU Home Affairs ministers agreed on how to handle irregular arrivals of asylum seekers and migrants, in a breakthrough after almost a decade of bitter feuds on this sensitive subject. Now the delicate process of the EU targeting a final agreement before the European Parliament elections in 2024 is starting to unfold, with many still speculating about what comes next, when and how. Against this background, one highly pertinent question arises about the ECA's recent audits on these subjects. How relevant are those audits, and particularly the recommendations to which they led, now that the framework for an EU migration deal has surfaced and is the focus of institutional scrutiny and negotiation?

Presenting achievable recommendations despite persistent challenges on the ground

In my humble view, the recent developments have made the ECA's special reports even more relevant and topical, since they were fact-based and their findings can be used to benchmark any tangible results achieved so far in the complex, convoluted and, sometimes, controversial and impassioned field of migration. In this policy area in particular, divergent views remain the order of the day in different EU capitals and among different political groupings.

One of the main benchmarks we used was to ascertain whether migration management to date has met the EU objectives or fallen short of them. And whether so far there has been enough synergy among the key players. Our auditees agreed to almost all of our recommendations, which is a good indicator of the added value of our work. Their agreement suggests that our recommendations are achievable despite the high targets set, as long as greater efforts are made and better coordinated all round.

Looking, for example, at migrant processing centres in front-line countries, we found that, despite increased asylum processing capacity, long handling times and procedural bottlenecks were doing nothing to ease the desperate situation on the ground. We cannot completely put behind us the experience of unprecedented migration pressures in recent years. These peaked in 2015 and were a key factor in the increasing number of asylum applications in the countries we audited. And there is some tendency to gloss over the fact that even the concept of a 'hotspot' has been somewhat distorted, since these were originally intended as 'temporary' relocation facilities.

Source: vverve /Depositphotos

Greece, 2 March 2020: Refugees and migrants disembark at the island of Lesbos after crossing the Aegean from Turkey.

Auditors all have opinions, but these should in no way impinge on the conduct of their audits. They must base their conclusions only on their findings – and this is exactly what struck us most. That there was a huge disparity between the objectives with which most member states seemed to agree and the reality on the ground.

Doubts had even surfaced regarding the actual level of EU support in helping relocation schemes achieve their targets. The ECA is not a policy-making body; however, as the guardian of the EU's finances it has a direct interest in establishing whether EU funds are being used effectively and efficiently. This is true whether gauging the effectiveness and swiftness of asylum or return procedures. It was with the same critical but objective eye that we looked for operational weaknesses in both these processes.

Frontex – delivering on the promise to be key to EU border management?

In our audit of Frontex, which has since been transformed, we found that the agency's support for external border management was not sufficiently effective at the time.

Now, on the eve of a probable new migration policy in the EU, it is appropriate to see what corrective measures have actually been taken on board and implemented. Our audit was most timely, as it took place following the start of Frontex's new mandate for the European Border and Coast Guard 'standing corps', an upgrading of its duties and operations which led to the doubling of its permanent staff and allowed it to purchase its own equipment for deployment in border operations.

Frontex needs to be kept under constant watch for the simple reason that, since its establishment in 2004, its powers and responsibilities have expanded significantly. Four amendments to its founding regulation (in 2007, 2011, 2016 and 2019) have progressively grown the agency's mandate, functions and budget. It is now explicitly tasked with ensuring European integrated border management at the EU's external borders.

As EU auditors we had to, and did, keep in mind that Frontex's resources had been increased significantly in 2019. The new standing corps of 10 000 operational staff – to be fully deployed by 2027 – could count on an average annual budget of €900 million to cover its upgraded tasks and functions. This reflected the ambition of the EU co-legislators and the Commission itself: to obtain a strengthened and fully operational European border and coast guard 'in order to address citizens' concerns regarding security and safety for the Union'.

Frontex, the European Border and Coast Guard Agency.

Although the ECA had audited other aspects of Frontex in the past, not least through our annual financial audit, this assessment was the first time we had looked at how Frontex performed its key activities as defined in the 2016 Regulation. The report will remain timely until there is a follow-up audit of the agency. All the more so since, at the time of the audit, the most recent external evaluation had been published in July 2015, and the 2019 Regulation was later approved without an impact assessment.

Our audit focused on whether Frontex carried out selected key activities in such a way as to implement European integrated border management and support member states in preventing, detecting and responding to illegal immigration and cross-border crime. We reviewed four out of six key activities, namely:

• situation monitoring;

• risk analysis;

• vulnerability assessments;

• operational response (covering joint operations and rapid border interventions).

The audit covered the period from end 2016 (when new responsibilities came into force) until February 2020. We focused on Frontex's level of preparedness to fulfil its new extended 2019 mandate, but excluded looking into return support (covered by another audit) or the agency's respect for and protection of fundamental rights (we felt that this would require a separate in-depth analysis).

During the audit we visited Frontex, as well as the Polish and Italian border authorities. We also met a number of Members of the European Parliament, from all political groups, at various stages of the audit – targeting those with a keen interest in border management topics – for a better understanding of their different perspectives in parallel with our work.

The new framework for a migration deal, which EU ministers recently approved at Council level, makes our Frontex report even more timely and objective. This is particularly so given our finding that, although a functional information exchange framework was in place to support the fight against illegal immigration, it did not function well enough to provide accurate, complete and up-to date-situational awareness of the EU's external borders.

EU needs to speak with one voice to strengthen readmission practice

This brings us to what was arguably our most topical and sensitive migration audit, and one that was most directly linked to the new migration deal: on EU readmission cooperation with third countries (see also page 67).

Our main conclusion in our special report 17/2021, published in late 2021, was that EU action to enhance readmission cooperation with third countries was relevant but yielded limited results. When auditing such a sensitive subject it is crucial at all times to be absolutely clear about the reasons for the audit, the audit topic and the concrete findings.

What triggered the audit initially was that our special report 24/2019 on migration had identified eight reasons for low return rates. Some of these were internal, such as weaknesses in asylum and return legislation, or in member states' systems, procedures and resources. But there was one external factor: readmission cooperation with third countries. So special report 17/2021 focused on this – particularly since effective and well managed returns are always an essential part of a comprehensive migration policy.

We examined whether the EU had made progress in concluding readmission agreements or reaching similar arrangements with third countries, and whether EU action had made it easier for third countries to meet their readmission obligations effectively. We focused on the ten countries with the highest absolute numbers of non-returned irregular migrants during the 2014-2018 period.

Our findings showed that:

- the EU's cooperation with non-EU countries was not efficient in terms of ensuring that migrants illegally present on EU territory returned to their countries of origin;

- the results of negotiations with third countries were unsatisfactory due to insufficient synergies with member states and between policies;

- limited progress had been made at EU level to create structural incentives for third countries to implement their readmission obligations;

- EU action had not been streamlined enough to ensure that third countries complied with their readmission obligations in practice;

- with the exception of the previous point, the EU has not always 'spoken with one voice' to non-EU countries, and the Commission has not always involved key member states in facilitating the negotiation process;

- completeness and comparability shortcomings in the available data did not allow the comprehensive monitoring of readmissions for all member states.

We then made four recommendations to the Commission that I consider still highly relevant and topical:

- to pursue a more flexible approach when negotiating readmission agreements;

- to create synergies with member states to facilitate readmission negotiations;

- to strengthen the incentives for third countries to cooperate on readmissions;

- to enhance data collection on the sustainability of readmissions and reintegration.

ECA findings that need to feed into the New Pact on Migration and Asylum

It is beyond the remit of the ECA to delve into policy-making for any new migration and asylum pact. However, I trust, as we did when finalising the reports mentioned above, that their findings will feed into the debate on the New Pact on Migration and Asylum. Not least because a comprehensive EU migration policy needs to draw on all available information. It nevertheless remains up to the policy-makers to make whatever use they consider opportune of all such elements to strengthen the legislative framework for the proposed new pact.

Auditing EU migration policy – assessing its different angles

By Jiri Lang, Directorate for External Action, Security and Justice

Source: Dimaberkut/Depositesphotos

Refugees arriving in Greece from Turkey, 2015.

In 2015, migration flows to Europe reached a record high of over one million irregular entries. Since then, EU efforts to enhance migration management have been at the forefront of public attention. The ECA has monitored the implementation of the EU's migration policy by auditing various aspects of this multidimensional area and a variety of parties involved, and by providing an annual statement of assurance on the EU funds used. The EU's budget allocation for migration and border management for 2021-2027 has nearly doubled when compared to the previous financial period, to about €26 billion (at current prices). Following the mid-term review of the MFF in June 2023, the Commission proposed increasing it to €28 billion, an amount that makes scrutiny of financial management in this policy area even more important. Jiri Lang, Assistant to the Director for External Action, Security and Justice, has participated in several performance audits dealing with migration. He takes stock of recent ECA special reports on the subject, identifying three different angles the ECA has audited or is currently auditing, and highlights some recurring findings and recommendations.

External dimension: the root causes of migration

It is no surprise that special report 09/2016, the first in a series of special reports on migration, dealt with migration outside the EU where migration flows originate. It focused on EU spending in southern and eastern neighbourhood countries that were either countries of origin or transit for the majority of migrants. Its conclusions mainly highlighted the imprecise objectives of EU migration funds, poor coordination between the various parties involved, and the lack of an overview of EU spending. In addition, weaknesses in monitoring and inconsistent use of indicators appear as a common factor in nearly all the reports listed in **Table 1** below.

Table 1 - Examples of ECA reports on migration, grouped by theme

External dimension: The root causes of migration		
EU external migration spending in Southern Mediterranean and Eastern Neighbourhood countries until 2014 Special report 09/2016	**Facility for Refugees in Turkey** Helpful support, but improvements needed to deliver more value for money Special report 27/2018	**European Union Emergency Trust Fund for Africa** Flexible but lacking focus Special report 32/2018
External borders: On the EU's doorstep		
EU information systems supporting border control A strong tool, but more focus needed on timely and complete data Special report 20/2019	**Frontex's support to external border management** Not sufficiently effective to date Special report 08/2021	**Europol support to fight migrant smuggling** A valued partner, but insufficient use of data sources and result measurement Special report 19/2021
Reception facilities, asylum, relocation, and return of migrants		
EU response to the refugee crisis The 'hotspot' approach Special report 06/2017	**Asylum, relocation and return of migrants** Time to step up action to address disparities between objectives and results Special report 24/2019	**EU readmission cooperation with third countries** Relevant actions yielded limited results Special report 17/2021
Reports planned for 2024		
Facility for Refugees in Turkey – II *Objective: To follow up on the SR 27/2018 recommendations and to assess the results of the development strand under the first tranche of the Facility.*	**European Union Emergency Trust Fund for Africa – II** *Objective: To assess whether projects achieved their intended results while respecting basic human rights*	**Integration of migrants in the EU** *Objective: To assess whether projects funded by the Asylum, Migration and Integration Fund were efficient and achieved effective integration of third-country nationals.*

To a certain extent, these conclusions were also mirrored in special report 32/2018, which found the EU's Emergency Trust Fund for Africa to be 'lacking focus'. Established outside the EU's budget, the trust fund was meant to 'address the root causes of destabilisation, forced displacement and irregular migration' in Africa. By the end of its mandate in 2021, it had channelled over €5 billion (predominantly redirected from the EU budget) to 27 African countries. However, there was no clear justification for the use of the EU Trust for Africa, and its comparative advantage over other pre-existing funding instruments was not demonstrated. In 2023, we are following up this 2018 report and re-examining the trust fund to assess not only its operational efficiency but also the results achieved.

In the context of the war in Syria which led to the wave of migrants to Europe in 2015, we audited the Facility for refugees in Turkey that provided support worth €6 billion to over 3.5 million Syrians and their Turkish hosting communities. Special report 27/2018 found that the Facility provided a swift response in a challenging context. Nevertheless, it did not fully achieve its objective of coordinating that response effectively. The report also assessed direct 'cash assistance' in Turkey, a tool that has progressively gained ground among humanitarian donors, and recommended ways to increase its efficiency.

Moving beyond refugees' immediate needs, in 2023 we are assessing whether the same Facility also reached its long-term objectives (providing education, health, and socio-economic support) while ensuring that its results remain sustainable. The ECA will also check whether the infrastructure projects financed by the Facility comply with standards to address to natural disasters such as this year's devastating earthquake.

External borders: on the EU's doorstep

The abolishment of border checks within the Schengen area – which already has 23 EU members and four associate countries – reinforced the importance of effective control and surveillance of the EU's common external borders. To help border guards monitor its borders, the EU has set up several information systems. Our special report 20/2019 found that although border guards were increasingly relying on generally well-designed systems, their use could have been more systematic.

The decisions that border guards take on the basis of these systems affect Europeans' safety. However, a survey carried out as part of the audit revealed that more than half of the border guards consulted had at some point allowed people to cross borders without checking the systems. In addition, some data were incomplete or entered late into the systems. We made a number of recommendations, such as the need to improve data quality and reduce the time required to correct the weaknesses revealed by regular Schengen evaluations.

Building upon these findings, in 2021 we assessed whether Frontex effectively contributed to implementing European integrated border management. Special report 08/2021 concluded that the agency's support for member states and Schengen-associated countries in fighting illegal immigration and cross-border crime was not sufficiently effective. The weaknesses we found concerned Frontex's main activities relating to information exchange, risk analysis, vulnerability assessment, and operational response.

In addition, although Frontex had not fully implemented its revised 2016 mandate, its powers were significantly extended in 2019 to launch – for the first time ever – an EU uniformed standing corps, meant to number 10 000 staff by 2027. We highlighted several risks linked to the agency's new mandate, including the fact that a member state hosting a joint operation would need to explicitly authorise Frontex staff to carry out tasks such as border surveillance, identity checks, and entry authorisation.

Frontex is also one of the main partners of Europol (the EU's agency for law enforcement cooperation) in the fight against migrant smuggling. This topic was the focus of special report 19/2021, which assessed whether Europol effectively supported EU member states in dismantling criminal smuggling networks. Facilitating illegal entry into the EU is not just a threat to Europe's security but, above all, endangers the lives of migrants. It is also one of the most profitable forms of organised crime, with estimated illicit profits of billions of euros every year.

We found that Europol's partners, including the member states, appreciated its work. However, the agency, as Europe's criminal information hub, had faced continuous challenges to make full use of external information sources. In addition, the results of Europol's support were not systematically measured, and were thus difficult to evaluate.

Reception facilities, asylum, relocation, and return of migrants

EU-financed activities relating to the reception of migrants on European territory and follow-up procedures (asylum, relocation or return) have also not escaped ECA scrutiny. In 2016, as soon as the EU's 'hotspots' were set up on a number of Greek islands and in Italy, our auditors visited these first reception centres that bring national authorities together, assisted by relevant EU agencies.

Special report 06/2017 concluded that, in both countries, the hotspot approach ensured that most migrants were properly registered and fingerprinted, and their data checked against relevant security databases. However, despite considerable support from the EU, the reception facilities in both countries were still not adequate at the end of 2016. We also drew all stakeholders' attention to the predicament of unaccompanied migrant children.

Two years later, we checked whether the hotspots channelled migrants into the appropriate follow-up procedures, i.e. processing asylum applications by national authorities, relocation to another member state, or return to the country of origin. Special report 24/2019 re-confirmed that these procedures were often too slow. Firstly,

our auditors highlighted the fact that emergency relocation schemes failed to reach the target number of asylum seekers. Secondly, even though the capacity of the Greek and Italian authorities had increased, asylum procedures continued to be affected by long processing times and bottlenecks. And thirdly, as in the rest of the EU, returns of irregular migrants from Greece and Italy remained far lower than the return orders issued.

In actual fact, between 2008 and 2019, EU member states issued an average of around 500 000 return decisions per year. However, only one third of the migrants who were ordered to leave actually did so. The Commission recognised that this low rate made the EU's migration and returns management less efficient[1].

Among the main reasons for the low level of returns, as noted in report 24/2019, are difficulties in terms of cooperation with the migrant countries of origin – which brings us back to the *external dimension* discussed earlier. Special report 17/2021 looked at how to improve readmission cooperation with third countries. Our work revealed that flexible, informal arrangements were often more successful than fully-fledged readmission agreements. However, the EU had not sufficiently explored synergies with member states and across other EU policies (such as trade incentives, development, and legal migration). We also assessed whether EU projects in third countries were successful in reintegrating migrants upon their return. The projects' results were uneven, and shortcomings in data – in particular about the long-term sustainability of reintegration – prevented us from assessing their overall impact.

Recurring ECA findings and recommendations

In summary, the ECA has audited the issue of migration, assessing EU policy and its implementation in this area, from three different angles (external dimension; external border management; and reception facilities, asylum, relocation and return of migrants), with various audit reports published since 2016. When analysing the key issues and recommendations highlighted in the reports presented in **Table 1**, the following aspects stand out:

- needs assessment: lacking in various cases, e.g. regarding needs to be addressed by the EU's Emergency Trust Fund for Africa;

- lessons-learned exercises that make it possible to take stock and improve impacts. This requires increased efforts in terms of ex-post evaluation;

- operational simplification, meaning that EU action is sometimes hampered by the complexity of implementing rules;

- insufficient operational capacity, including that of implementing partners;

- better coordination between implementing partners is needed to avoid overlaps and maximise synergies between different streams of EU action; and

- weaknesses in monitoring and inconsistent use of indicators appear in nearly all of the reports referred to above. We repeatedly underlined the need to have data available for managing, monitoring and steering EU action.

Lastly, integration of migrants within the EU is yet another angle of this policy area that the ECA plans to assess in 2024. In this audit (see **Table 1**), we will look at whether projects funded by the Asylum, Migration and Integration Fund have succeeded in achieving the social and economic integration of third-country nationals that are legally authorised to stay in the EU. This will complete the ECA's already comprehensive picture of EU migration policy that we have audited from different angles.

---

1   A European Agenda on Migration, COM(2015) 240 final, page 9.

Auditing the EU Emergency Trust Fund for Africa: then and now

By Emmanuel-Douglas Hellinakis and Aurelia Petliza, External Action, Security and Justice Directorate

The three EU Emergency Trust Fund for Africa regions and the total amounts of funding approved by region since the start of the programme in 2015.

With demographic pressure from growing populations mounting on the EU's external borders, it became essential to consider not only short-term solutions but also to look into the long-term causes of migration, ranging from humanitarian crises to economic development. Addressing the root causes for irregular migration forms part of the EU's policy initiatives, and one example of this was the creation of EU trust funds – multi-donor trust funds for emergency, post-emergency or thematic actions. One of these funds is the European Union Emergency Trust Fund for stability and addressing the root causes of irregular migration and displaced persons in Africa, the 'EUTF for Africa'. Emmanuel-Douglas Hellinakis and Aurelia Petliza are both ECA Principal Auditors. Emmanuel was the Head of Task for the ECA's first audit on the EUTF for Africa in 2018, and Aurelia is the Head of Task for the current audit of the same fund. Below, they look back at the main findings of the first audit and present some of the key aspects to be covered in this audit.

The context behind the creation of the EU Trust Fund for Africa

In 2014, the number of migrants attempting to reach Europe through its southern borders increased dramatically, prompted by instability in Syria, Iraq, Libya, Eritrea, and Afghanistan, as well as across the Sahel and Lake Chad regions. On the 11 and 12 November 2015, as a response, the Valletta Summit on Migration brought together European and African Heads of State and Government to strengthen cooperation and to address the challenges and opportunities created by migration. An action plan was agreed and the European Union Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa was born (see **Box 1**).

> **Box 1** - **The emergence of EU trust funds**
>
> Prior to 2012, the EU's participation (with the EU represented by the European Commission) was limited in that it was only able to participate in certain multi-donor trust funds created by e.g. the UN or the World Bank, for emergency, post-emergency, and thematic actions. This resulted in two challenges for the ECA when it came to auditing such multi-donor funds. Firstly, the funding was mostly pooled, meaning that it was therefore difficult to trace and assess the effectiveness of the actions financed by the EU. Secondly, the trust funds fell under the auditing 'jurisdiction' of their creators, namely the UN, the World Bank, etc. Their auditors' work was often organised differently or followed a different methodology from that of the ECA. Therefore, we had limited access to documentation and could not fully rely on their work.
>
> But, for the first time, in January 2013, the new Financial Regulation applicable to the EU budget (Article 187) allowed our auditee, namely the Commission, to create and manage EU trust funds in the field of external action. The first two EU trust funds were created in 2014: the Bêkou EU trust fund (€108 million), focusing on the stabilisation and reconstruction of the Central African Republic, and the Madad EU regional trust fund in response to the Syrian crisis (€2.2 billion). The EUTF for Africa was established in November 2015 (€5 billion at the end of 2021) and signed by the Commission, 25 member states as well as Norway and Switzerland. Finally, the Colombia trust fund (€95 million), was established in 2016 to support the post-conflict process.
>
> In our special report 11/2017 'The Bêkou EU trust fund for the Central African Republic: a hopeful beginning despite some shortcomings', we assessed the justification underpinning the fund's creation, its management and the achievement of its objectives so far. This report was followed by special report 32/2018 'European Union Emergency Trust Fund for Africa: Flexible but lacking focus', which examined whether the EUTF for Africa was well-designed and well-implemented. A follow-up of this report is underway, and is scheduled for publication in 2024.

Aside from trying to constantly keep up with the relentless migratory waves and addressing the situation facing migrants when they first arrive in Europe, it was also important to try to establish the root causes of migration and tackle these issues to find a longer-term solution to the problem. The EUTF for Africa was created to address the root causes of instability, forced displacement, and irregular migration, and to contribute to better migration management.

However, fundamental development issues arise with any attempt to address the root causes of migration, and the factors that influence a decision to migrate. A lack of infrastructure, poor education, poor health, the absence of security, corruption, etc., are all development-linked factors which force people to migrate in search of better conditions. The EU has a great deal of expertise in development, based on its experience in trying to tackle these issues over many decades.

But then a legitimate question crops up: if we are to tackle development, why should we use a trust fund rather than continue to use the traditional implementation instruments and aid channels? This was one of the questions we tried to answer in our first audit of the EUTF for Africa – to find where the trust fund had a comparative advantage compared to traditional ways of providing aid. We found that compared to traditional instruments, the EUTF for Africa was faster when it came to launching projects. This was because the EUTF allowed for a flexible approach by directly selecting implementation partners, without involving national authorising officers in recipient countries, as is required under the European Development Fund (EDF) for example. However, this carried with it the risk of potentially not selecting the most suitable implementing partners and projects. Moreover, during the implementation stage, similar delays and challenges arose, just like those associated with traditional instruments.

We examined whether the EUTF for Africa had been well-designed and well-implemented. When auditing the design part of the EUTF for Africa, we discovered that the trust fund did not include a risk management framework. Additionally, while acknowledging the trust

fund's flexibility, we criticised the lack of definition in terms of its areas of intervention and its broad objectives (combined with the absence of baselines and targets). This made measuring results and reporting on the added value of the trust fund practically impossible.

Going on the spot under difficult circumstances

The trust fund supported activities in 26 countries across 3 African regions: the Sahel and Lake Chad, the Horn of Africa, and North Africa. We decided to have two regions (Sahel and Lake Chad, and North Africa) in our sample and we selected one country from each region for our on-the-spot visits, namely Niger and Libya. Both countries had the highest fund allocation and spending in their regions. However, it soon became clear that we would be unable to visit Libya due to political unrest and civil war. In fact, at the time, all of the trust fund operations in Libya were being managed from neighbouring Tunisia, so we decided to go there for our on-the-spot visit.

EUTF work in Libya was making headlines at the time, as one of the funded projects allegedly failed to respect human rights. Not being able to go there on the spot considerably restricted our first-hand knowledge of the facts surrounding this project. Nevertheless, it is important to note that an in-depth investigation of human rights abuses was excluded from the scope of our audit. In the current follow-up audit of the EUTF for Africa (see below) we have included a specific part on human rights in the scope.

Among other projects, we visited the migrant transit centre and 1 of the 15 established migration observatories in Agadez (Niger). We also held interviews with police investigators who were involved in dismantling human trafficking networks. The migration observatories monitor the local impact of migration and identify potential mitigating actions. The observatories function on many different levels, from facilitating discussions involving local groups, young people, or the authorities, to trying to understand why people feel driven to migrate. They try to understand how to tackle these issues, sponsor events to motivate and educate young people, and provide them with job prospects. Another of the observatories' roles is to monitor populations, incoming migrants, and migrants who are *en route* to somewhere else. Some of these projects are explained in more detail below.

Source: Emmanuel-Douglas Hellinakis

In Niger, we took a small plane to Agadez for some of the trust fund projects that we had to audit on the spot, and were happy to land safely.

At the migrant transit centre, we had the opportunity to discuss not only with the centre's management, but also with the migrants themselves. Listening to migrants' stories of hardship and pain, of broken dreams and destroyed livelihoods can be a sobering experience. It takes you out of your comfort zone, makes you question and re-evaluate your role as merely a cog in the EU machine, and ultimately strive to do everything you possibly can to play a tangible part in improving the situation. These are not merely projects that we visit to tick a box, or to include in some report that will be lost on the endless conveyor belt of studies, audits, and discussions on migration. In reality, it becomes far more meaningful, because we can see and understand the human suffering that lies hidden behind the statistics and the long public speeches.

Migrant centre in Niger.

Source: Emmanuel-Douglas Hellinakis.

From Trust Fund impact to… audit impact

We visited projects that worked to incentivise young people to remain in their country. Some of these projects went astray, returning questionable results. Others managed to engage young people in activities that genuinely offered them prospects and gave them a reason not to risk their lives attempting the ordeal of illegal migration. But often it just comes down to individual efforts and private sector initiatives that lack the support of local authorities and government.

According to Frontex figures, the global number of illegal migrants crossing international borders into the EU peaked overall in 2016, followed by a drop in 2017. It was not clear to what extent the EUTF contributed to this decrease, if at all.

Our special report 32/2018, published in late 2018, was very well-received by all stakeholders. As a result of our audit, the EUTF for Africa adopted a risk management framework, the Commission committed to creating a 'lessons learned mechanism' for the trust fund and, among other adjustments, in April and September 2018, the EUTF for Africa Board agreed to further revise its objectives. While many of its projects are still ongoing and are only scheduled to conclude in 2025, the EUTF for Africa stopped contracting funds at the end of December 2021, after having funded actions amounting to a total of €5 billion.

ECA's ongoing follow-up audit on the EUTF for Africa

The ECA included the performance audit on the EUTF for Africa in its 2022 annual work programme. Among other things, the ECA's first audit of the EUTF for Africa (special report 32/2018) recommended revising the EUTF's objectives to make them more focused and achievable. It also recommended changing and documenting the selection procedures to adhere to predefined criteria, and demonstrating the comparative advantage of contracting projects through the EUTF rather than other, traditional EU financing instruments.

The second audit's objective is to assess whether the Fund focused its support to achieve its aims, paying due attention to human rights. To answer this question, we will address three sub-questions:

- Were the EUTF's design and selection procedures revised to focus support? This consists of a follow-up of the implementation of the recommendations made in our special report 32/2018.

- Did the EUTF take due care of human rights when providing EU support? We will assess how the respect of human rights was taken into account when providing EU support. We will also check whether EUTF procedures exist to be able to respond to alleged human rights violations. We have therefore decided to include border management projects in our sample.

- Do the reported results demonstrate that the EUTF achieved its intended aims, including those relating to sustainability? To answer this question, we will assess the project's results and the EUTF's reporting system. Our previous special report covered the 2015-2018 period. There had been a steady decrease in the numbers of migrants coming to the EU from African routes, but recent figures have shown an increase in the number of refugees and illegal immigrants who have arrived since 2021. It is therefore an ideal moment to assess the EUTF's achievements.

Assessing overall achievements at the end of the EUTF for Africa's lifespan

The Commission claimed that many monitoring missions and evaluations of EUTF projects had already taken place. Given that the figures produced by the 'Monitoring and Learning System' are presented both in the EUTF annual report and to all stakeholders, and to avoid repetition, our audit will also check the accuracy of the reporting system. Furthermore, as the aim of the EUTF is to address the root causes of instability, irregular migration, and internal displacement, it would be reasonable to expect results that are sustainable in the long-term.

By December 2022[1], and across more than 26 countries, the EUTF had contracted €4.9 billion, and paid €4.1 billion. To check results and because project implementation is managed by different teams (there is one EUTF manager for each one of the three EUTF regions), we have decided to visit a sample of projects on the spot, and cover at least one country in each of the three geographical regions (Sahel and Lake Chad, the Horn of Africa, and North Africa). Due to the current volatile security situation in many African countries, we cannot always go where the highest amounts of spending occur. Although the audit is complex, work is progressing well and we hope to publish a special report on this topic towards the middle of 2024.

---

1   EU Emergency Trust Fund for Africa Annual Report 2022.

Has the EU effectively enhanced cooperation on readmission with third countries?

By Karel Meixner, 'Investment for Cohesion, Growth and Inclusion' Directorate

An effective and well-managed return policy is an essential part of a comprehensive migration policy. However, the difficulty of cooperating with migrants' countries of origin is one of the reasons for low returns of irregular migrants. Karel Meixner, until recently in the External Action, Security and Justice Directorate and serving as head of task for the audit on EU readmission cooperation with third countries (published as ECA special report 17/2021), provides his insights into auditing this complex topic.

Previous ECA audits as a starting point

Migration to Europe saw a sudden increase in the total number of arrivals, first in 2014 and even more sharply in 2015, when over 1 million people made the perilous journey across the Mediterranean to Europe as irregular migrants. Following this 2015 "migration crisis", the ECA launched a series of audits on the topic of migration, performed by the ECA's audit chamber responsible for the areas of EU external action, security and justice. I participated in these audits as an auditor for the ECA's special report 06/2017 *EU response to the refugee crisis: the 'hotspot' approach*, and then as quality reviewer for the special report 24/2019 *Asylum, relocation and return of migrants: time to step up action to address disparities between objectives and results*. In the latter audit, we identified the difficulty of cooperating with migrants' countries of origin as one of the reasons for low returns of irregular migrants from the EU (see **Figure 1** on the effective return rate at the time special report 17/2021 was drafted). Other reasons included internal challenges such as weaknesses in asylum and return legislation, and in EU member states' systems, procedures and capacities.

Figure 1 – Effective return rate (EU-27)

Source: ECA, based on Eurostat data.
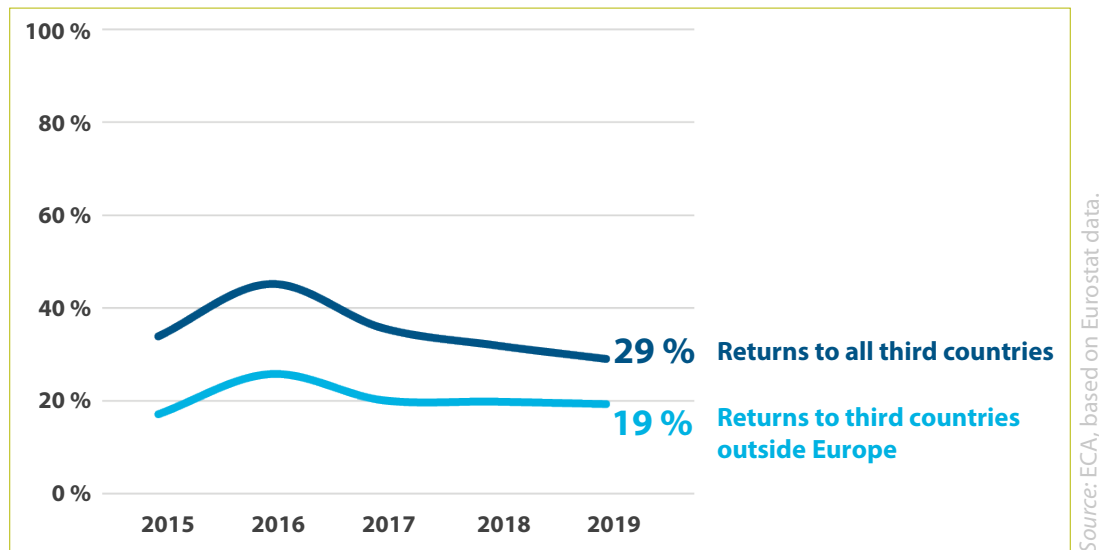
Given the importance of the topic, we decided to propose an audit task which would investigate readmission cooperation between the EU and third countries in greater depth. This audit proposal was included in the ECA's 2020 work programme, and we started work on the audit in February 2020.

Wide range of auditees and stakeholders

The EU was granted powers in the area of visas, asylum and immigration – including the power to conclude readmission agreements – when the Amsterdam treaty came into force in 1999. This power is shared between the EU and the member states ("shared competence").

The returns process is mostly in the hands of national authorities. However, cooperation with third countries on readmitting irregular migrants is required at various stages of the returns process, in particular for migrants without valid travel documents. The European Border and Coast Guard Agency (Frontex) can support member states during this process (see **Figure 2**).

Figure 2 – The returns process, step by step

Source: based on a document from Frontex
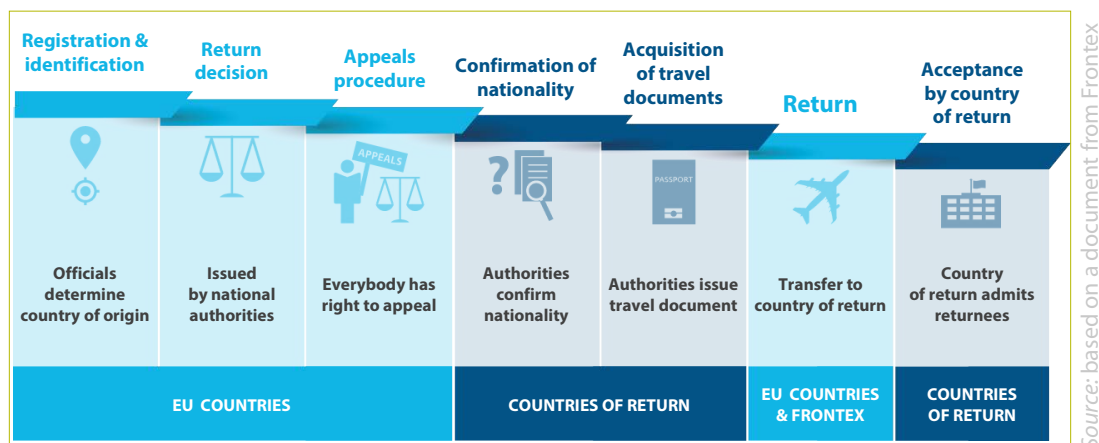
Our main auditees were the European Commission (with DG Migration and Home Affairs in charge, but also the Secretariat-General, DG European Neighbourhood and Enlargement Negotiations, and DG International Partnerships), the European External Action Service, and Frontex. We also consulted the Council secretariat, national authorities in Germany, France and Spain, representatives of relevant member states' networks, and several external stakeholders.

COVID-19 pandemic as a major challenge

It was only weeks after our audit started that the EU member states, and the European institutions, began implementing lockdown measures due to the rapid spread of the COVID-19 pandemic. This proved to be a major challenge for our audit. Not knowing how the situation would evolve, we had to continue adapting our audit approach as we went along.

First, we frontloaded a large part of the audit work concerning the Commission and the European External Action Service, and replaced planned audit meetings by video-conference calls. This was challenging in the early days of the pandemic, as the EU institutions did not yet have adequate IT systems in place and we also faced connection and bandwidth issues. A further challenge was combining teleworking with childcare because schools had been closed. It was not unusual for 'little helpers' to appear in our calls.

As the situation evolved, it became clear that we had to cancel the planned audit visit to Pakistan and replace further audit visits with videoconferences, but we still hoped to be able to consult at least the national authorities in Germany, France and Spain in person. However, the windows of opportunity that opened in summer 2020 were too short – and the various national restrictions too strict and varied – for us to be able to organise the visits. The only exception was our visit to Germany, which went ahead at the end of the summer. Equipped with FFP-2 masks, we managed, together with reporting Member Leo Brincat and his head of private office, to hold a full day of meetings with the national authorities.

Cooperation with auditees and stakeholders

When I suggested the audit on readmission cooperation with third countries, I expected that most of the issues hindering cooperation would be technical in nature. This assumption turned out to be wrong, as we increasingly discovered during the audit that the main challenges were political. Indeed, to say that the whole topic of returns was politically sensitive not only for the EU member states but also for third countries would be an understatement.

Luckily, we managed to establish very open and constructive cooperation with our auditees, as well as with other stakeholders. This was based on the understanding that we would consult our auditees and stakeholders about the information we intended to publish in our report, and that we would not publish any confidential information that could be detrimental to EU interests and ongoing negotiations with third countries.

The Commission even shared a classified document with us: it was released only following the adoption of a Commission decision, and was then physically transported to the ECA by a Commission courier. This also involved logistical organisation on our part, as I had to come personally to the ECA building (which was closed to staff at the time because of COVID-19 restrictions) to take delivery of the document.

Challenges faced by practitioners in member states

Although cooperation with auditees and stakeholders went smoothly despite the COVID-19 restrictions, we also came to appreciate the value added by the audit visits we carried out in person. It was during these visits, which took place in the preparatory phase of the audit and then during summer 2020, that we were able to truly understand the various stages of the returns process, and comprehend the challenges faced by practitioners in the member states.

In most cases, third countries do not formally contest the readmission of their nationals. However, they can obstruct both the readmission process and effective returns in various ways, in particular for irregular migrants without valid travel documents (see **Figure 3**). Furthermore, a number of internal bottlenecks affect the returns process in the member states, as we noted in special report 24/2019.

Figure 3 – Involvement of third countries in the readmission process, and potential challenges

CHALLENGES

Identification *(confirming nationality/identity)* **based on:**
- documents (valid or expired)
- biometric data
- interviews by consulates
- identification missions

- Restrictions in types of accepted documents
- Long delays *(insufficient administrative capacity or lack of willingness to cooperate)*
- Nationality confirmed only in limited number of cases *(primarily for voluntary returns)*

Acquisition of travel documents issued by:
- Consulates
- Authorities in third country
- EU Member States *(European travel document)*

- Long delays in issuing documents, resulting in increased risk of absconding
- Travel documents issued with short validity, or even only for specific day of return
- Refusal of European travel document for returns

Acceptance of transfer of returnee *(transfer, admission)*

- Visa requirements for escorting officers *(even if not leaving plane/airport)* and obstructive procedures for issuing visas
- Quantitative limits *(number of flights per month, or returnees per flight)*
- Restrictions on accepted means of transport *(limiting use of ferries, boats, charter flights, or airline companies)*

Support provided by the EU, and its effectiveness

The EU and the member states have been trying to address challenges in readmission cooperation with third countries by means such as:

- negotiating readmission agreements and arrangements, and improving their implementation in practice;

- creating networks to pool national resources; and

- increasing Frontex support (see **Box 1**).

These actions were relevant, but yielded only limited results. We found that:

- the results of EU negotiations with third countries were suboptimal due to the insufficient use of synergies with member states and across policies. Limited progress has been made at EU level to create structural incentives for third countries to implement their readmission obligations;

- the contents of the EU readmission agreements and arrangements that were concluded have addressed most of the common obstacles to easing readmission. However, the recurring nature of some of the issues encountered in practice showed that there were limits to the effectiveness of these agreements and arrangements; and

- EU networks in the area of returns have been successful in pooling national resources, and have been appreciated by participating countries for their results. With the successive extensions of its mandate, Frontex has progressively been taking over activities from the networks (see **Box 1**).

Box 1 - Frontex support

Since 2015, Frontex's mandate has been reinforced twice (see Regulation 2016/1624[1] and Regulation 2019/1896[2]). As a result, Frontex has been increasingly involved in assisting member states with pre-return activities and return operations to third countries.

In terms of pre-return activities, Frontex has been providing member states with operational support (e.g. by deploying return specialists), and tools for improving cooperation with third countries (best practices, consular workshops, videoconference identification, and identification missions). In the latter case, we found that the difficulties member states had had in locating irregular migrants, preventing them from absconding, and ensuring that they attended interviews were a major source of inefficiency in the identification missions.

In the case of return operations, Frontex has been providing financial and operational support (e.g. by organising flights, and deploying escorts and monitors). Traditionally, Frontex has mainly supported returns by charter flights (it estimated that most such flights involved its assistance at the time of our audit); however, since 2017 it has also increasingly supported returns by commercial (scheduled) flights.

Audit outcome and follow-up

Our audit report attracted considerable attention. In the first three weeks after publication, it was referred to in 614 news articles and 421 social media posts. Our reporting Member Leo Brincat gave several press interviews on the report, and was invited to present it to bodies such as the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, the Vienna Migration Conference, and the Belgian House of Representatives.

I myself presented the report to the Council's Working Party on Integration, Migration and Expulsion. During the meeting, the member states' representatives welcomed the report, and supported our conclusions and recommendations. In the months that followed, I was approached by several other stakeholders to discuss the topics covered by the report. For me personally, this was the best possible recognition of the efforts that the whole audit team had put into its work. I also hope that our findings and recommendations will contribute to the final version of the New Pact on Migration and Asylum, which has come significantly closer to being adopted since the member states reached a political agreement at Council level in June 2023.

---

1   Regulation (EU) 2016/1624 of the European Parliament and of the Council, of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC.

2   Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.

Auditing IT systems for EU border security and migration management

By Piotr Senator, External Action, Security and Justice Directorate

Collecting fingerprints for registration in European Dactyloscopy (Eurodac).

The abolition of border checks within the European Union – at least in the Schengen countries – made effective control and surveillance of the Schengen Area external borders even more important. The EU has set up numerous systems to help border guards to receive, process and share personal data, all of which are essential for dealing with asylum requests and preventing illegal migration, including migrant smuggling. How are these systems used, which data are included, which information is shared, and how does Europol support member states in reducing and dismantling migrant smuggling? These were key questions for Senior Auditor Piotr Senator when he was working as head of task on two ECA performance audits to assess EU information systems supporting border control and reviewing Europol support for fighting migrant smuggling. Below, he shares some key insights not only as regards capabilities but also the quality and timeliness of data, including how data are shared, all of which aspects are essential for support to have any real impact.

IT systems have become crucial for securing EU borders

In 2015, the European Union experienced an unprecedented arrival of migrants. It is estimated that over one million migrants entered the EU illegally between 2015 and 2016. According to Europol, the EU's agency for law enforcement cooperation, most of them used networks of migrant smugglers.

Migratory pressure has become an important item on the political agenda for European leaders. The special meeting of the European Council in April 2015 decided to focus EU migration management on four pillars: strengthening the presence at sea, fighting traffickers, preventing illegal migratory flows, and reinforcing internal solidarity and responsibility. Using IT systems to assist law enforcement agencies is crucial for fulfilling those objectives and securing Europe's borders.

Although the Schengen Area is often cited as one of the main achievements of the European project, it also requires increased cooperation between police forces and border control authorities. EU agencies, such as the European Border and Coast Guard Agency (Frontex) and Europol, support member states with information sharing and shaping the European response to the challenges of migration management. Several

EU-wide information systems were created to support this cooperation. The EU budget provided over €600 million to cover the cost of setting up the EU-level components of border control systems, the annual cost of which is estimated to be over €60 million a year.

The ECA carried out an audit of EU information systems supporting border control in 2019, and another audit in 2021 on support for fighting migrant smuggling. The reports, which were published as special report 20/2019 and special report 19/2021, contributed to the discussion on the EU's efforts to combat migrant smuggling and strengthen the control of external borders.

Several systems support border security

The use of information systems does not start at the border. Frontex operates a common framework for exchanging information, known as EUROSUR (European Border Surveillance System). It provides information about events occurring at and beyond the EU's external borders with a view to building up shared intelligence and providing a picture of the situation at European level.

The EU also supported the creation of national systems to collect Passenger Name Record (PNR) data, the information from airlines which allows national authorities to detect and investigate serious crimes. The information obtained in member states can be exchanged by national bodies, and is checked against the main EU-wide information systems.

At border control points, border guards use their national system with access to EU central systems for specific checks. During our audit, we took a closer look at three systems: SIS II, VIS and Eurodac. SIS II (the Schengen Information System) is the main IT system for the Schengen Area. It contains alerts on missing persons, vehicles, firearms, and identity documents. In 2022, the database contained over half a million alerts on third-country nationals who should be refused entry into the Schengen Area.

VIS (the Visa Information System) allows identity verification of a Schengen visa holder anywhere within the Schengen Area. It enables border guards to verify that a person presenting a visa is its rightful holder, as it includes biometric data. The system has also been designed to curb visa shopping (applying to another country if a first application has been refused).

Lastly, border guards use Eurodac (the European Asylum Dactyloscopy Database) to take fingerprints of asylum seekers and people attempting to cross a border illegally. The system allows guards to verify if an individual's fingerprints have been recorded in another country, and to assign a country where the asylum application should be processed.

IT tools for border control work well, but only if used consistently

In our special report 20/2019, we concluded that border guards are increasingly using and relying on these systems when performing border checks. We found that although they were generally well designed to facilitate verification, the checks need to be regular, and the systems must be reliable.

Our anonymous survey of border guards revealed that, at least on one occasion, over half of those surveyed had been unable to consult the systems before having to take a decision about letting a person in. This might be due to connectivity issues at certain border crossings, but it certainly indicates a weakness. This is further confirmed by discrepancies between the number of visas issued by certain countries and the number of visa checks they have carried out.

This issue is also relevant given the application of the 'Dublin II' Regulation, which is the agreement between member states that asylum applications should be processed in the country where an applicant first declares their intention to seek asylum. At the height of the 2016 migration crisis, the number of asylum applications by individuals who had already applied for asylum in another member state grew significantly. As shown in **Figure 1**, most applicants tried to seek asylum in France or Germany, having initially arrived in another EU member state.

Figure 1 – Asylum seekers with a previous application in another member state

Source: ECA, based on data from eu-LISA.
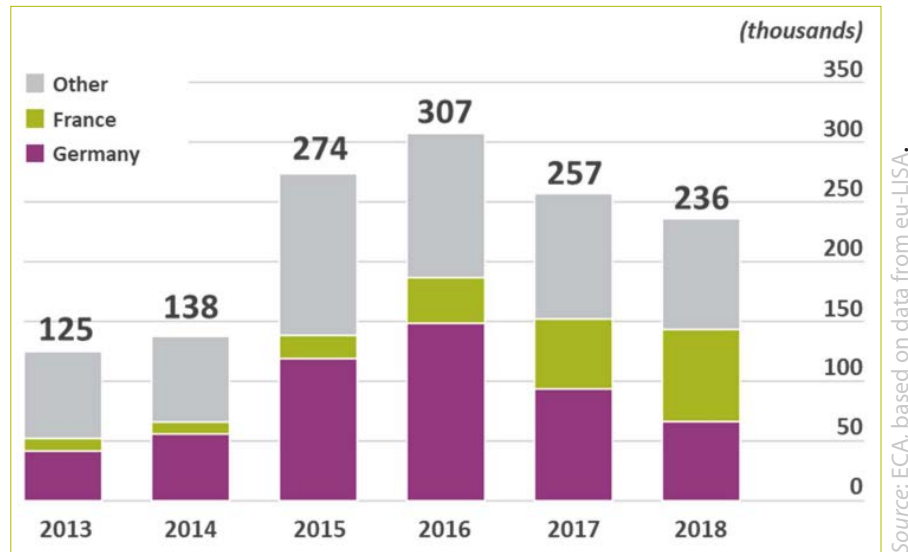
Technical and procedural problems at borders are usually detected by the evaluations carried out by experts on a regular basis. Although the checks are thorough and methodical, it sometimes takes a long time for member states to take corrective action.

Another issue we identified was delays in data entry. The data in the system should also be complete and correct, and our final report identified opportunities for improving data-quality checks. The Commission accepted all our recommendations, and the last two issues – which were part of our recommendations in special report 20/2019 – were addressed in the updated European Border and Coast Guard Regulation that improved the way Eurosur functioned.

The EU continues to develop systems and mechanisms to make border controls effective and efficient. Since our audits, work on two additional systems has progressed: one to record crossings at the EU's external borders by non-EU citizens (EES – Entry/Exit System) and another to carry out advance checks on visa-exempt travellers (ETIAS – European Travel Information and Authorisation System). Efforts to make all the systems interoperable continue with the development of the European Search Portal and the Common Identity Repository.

Anti-migrant smuggling actions depend on the quality and proper sharing of data

Strengthening border controls deters illegal migration. However, although it makes such migration more difficult, it also makes facilitating it more enticing for criminals. Illegal migration is one of the most profitable types of organised crime. Europol estimated that at the height of the migration crises in 2015, migrant smuggling networks across the EU made a profit of around €5 billion[1].

Responsibility for law enforcement activities to fight migrant smuggling lies with the member states. The EU's role is to assist them in that fight, and the main player here is Europol. In 2016, the EU established a dedicated body – the European Migrant Smuggling Centre – to assist member states in dismantling criminal networks involved in organised migrant smuggling.

As Europol does not have executive powers and so cannot make arrests, it provides operational and strategic support for criminal investigations. Information systems therefore play a crucial role in allowing Europol to fulfil its role. Europol operates two databases: one supporting an analysis system and another for checking whether information on a certain person or object of interest is available in other member states.

---

1   Migrant smuggling is clandestine by nature and therefore very difficult to measure. According to a 2017 publication by Europol (*European Union serious and organised crime threat assessment*; page 50), networks across the EU made between €4.7 billion and €5.7 billion in 2015 alone.

The information is shared between European law enforcement agencies and Europol using a secure electronic messaging system.

The number of exchanges about migrant smuggling is constantly increasing. However, the extent to which member states feed Europol's databases varies. Some member states use an automated system to feed the databases, while others enter data manually. The main platform for securely exchanging sensitive and restricted information between law enforcement agencies and Europol is SIENA (the Secure Information Exchange Network Application). However, exchanges between national law enforcement agencies are often not reported to Europol, and so lack a broader European dimension. (see **Figure 2**)[2].

Figure 2 – SIENA messages about migrant smuggling sent by EU member states but not copied to Europol
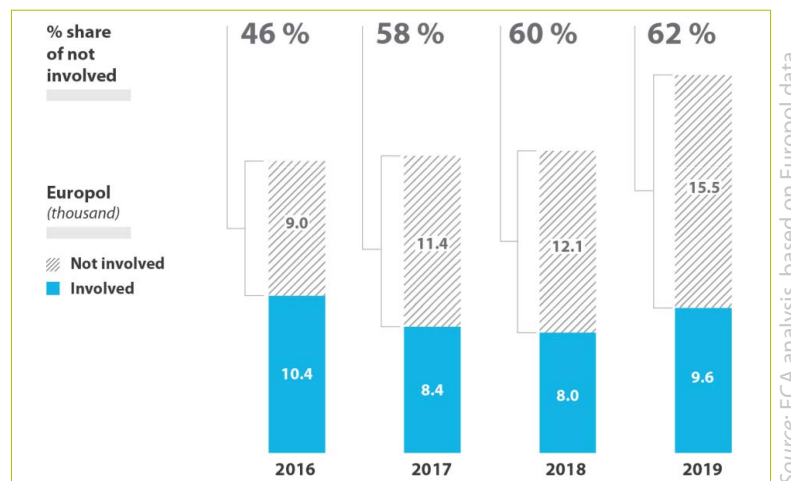
Europol is very active in instigating various cooperation initiatives, thus building trust among stakeholders and improving data sharing in the future. Europol brings together liaison officers who are seconded to Europol's headquarters from the member states and non-EU countries in a joint liaison task force on migrant smuggling. It has established an information clearing house to enhance the intelligence picture on criminal networks that facilitate illegal immigration, bringing together partners such as Frontex and Interpol.

Our report also highlighted the limits Europol was facing in obtaining information from private parties, such as banks or telecom operators. We found that Europol had no access to some existing European databases, or was not taking full advantage of them. For example, despite having access to the Eurodac system, Europol never consulted it due to legal constraints. Similarly, legal constraints hampered the exchange of information with Frontex.

From integrated border management to smart border management

Our audits have shown that protecting the EU's external borders requires constant cooperation between member states and a clear legal framework. The focus should not only be on the capabilities of the systems but also on the quality and timeliness of data. It is crucial to ensure that systems have an impact and are complete, even though this may appear to be primarily a technical issue.

There is no doubt that EU systems will continue to develop and incorporate new technologies. Artificial intelligence can be used in migration monitoring, biometric identification, or algorithmic profiling. Such solutions entail multiple challenges, such as respect for fundamental rights. The right to a private life or the protection of personal data will need to be considered. However, as the concept of integrated border management is being replaced by the concept of smart borders, it is clear that technology will remain a crucial part of an efficient and sustainable migration system.

---

2   There are often valid operational or legal reasons for not sharing information with Europol. Investigators might not have authorisation from a prosecutor to share sensitive data in the early stages of an investigation, and some information may lie beyond Europol's remit.

Assessing implementation of a policy area with strong political and social significance

Interview with ECA Director Bertrand Albugues

By Atessa Duman and Gaston Moonen, Directorate of the Presidency

Bertrand Albugues

How can we audit a policy area that is constantly in the political spotlight and can change overnight due to external factors beyond the control of the EU and its member states? What does it take to properly audit the various aspects of migration policy and how it is implemented, and how much EU funding needs to be scrutinised by the EU's external auditor? Atessa Duman (until recently an intern in the Directorate of the Presidency) and Gaston Moonen interviewed Bertrand Albugues, the ECA Director responsible for auditing External Action, Security and Justice. He explains some of the particularities and challenges that are intrinsic – but not necessarily exclusive – to auditing this versatile, and occasionally unpredictable, policy area.

Three key aspects covered by ECA audits on migration

You have been director of External Action, Security and Justice since December 2020, and are also responsible for asylum and migration issues. Of the various audit reports published on the subject in the last few years, which ones stand out for you?

Bertrand Albugues: Our audit chamber has produced several special reports over the last few years on various aspects of migration and asylum. These fall into three main categories: the root causes of migration; 'External borders - At the EU's doorstep'; and reception facilities, asylum, relocation, and return of migrants.

Special report 17/2021 on EU readmission cooperation with third countries was particularly relevant, with recommendations covering a broad range of issues: pursuing a more flexible approach when negotiating readmission agreements; creating synergies with member states to facilitate readmission negotiations; strengthening incentives for third countries to cooperate on readmissions; enhancing data collection on readmissions and the sustainability of reintegration. What I found interesting is that this report paved the way for further audit work on development aid. Specifically, one recommendation focuses on strengthening the incentives for third countries to cooperate on readmissions.

This is a key driver for partnership policies with third countries, for example on trade. Our 2023+ Annual Work Programme also includes a performance audit on the 'EU Aid for Trade' programme.

In addition to our audit work on the Statement of Assurance, we have several reports planned for publication in 2024. These include the Facility for refugees in Turkey – which is our second audit on this topic after special report 27/2018, and the EU Emergency Trust Fund for Africa, which is also a second audit after special report 32/2018. For both audits, the projects financed by the EU have reached sufficient maturity for us to examine their implementation. We may consider performing other 'second' audits in the future.

Lastly, we will continue our work on migration by launching an audit on integrating migrants into the EU through the Asylum, Migration and Integration Fund (AMIF). The Multiannual Financial Framework, the MFF for 2021-2027, allocated almost €10 billion to AMIF, an increase of 30 %. Integration is a long-term process that has no precise starting or end point, and may begin even before a third-country national arrives in the EU, for example via a pre-departure measure. Since this is a long-term process with different stages, it requires long-term, targeted support. The aim is not only to find a technical solution to a problem, but also to change attitudes and deeply entrenched values.

Your directorate covers various policy fields, including external action, security, justice, migration and neighbourhood policy. From an operational point of view, how much of your directorate's capacity is spent on migration issues? And what would you identify as a common denominator – if there is one – in your findings in this area?

Bertrand Albugues: Our directorate splits its resources almost equally between work on the Statement of Assurance (SoA) and on performance audits. The time our chamber's staff spend on migration issues combines their work on the SoA work for Multiannual Financial Framework Heading 4 'Migration and border management' and their work on special reports. For performance audits, our capacity and the importance of selecting audit topics with the right maturity mean that we do not carry out an audit every year, as these audits usually take more than a year to complete.

Overall, the key recurring recommendations we make in our special reports relate to needs assessments, operational capacity, coordination (also because many stakeholders are involved), and data for steering the various measures. These are similar to findings in other audit areas.

> *… the key recurring recommendations we make in our special reports relate to needs assessments, operational capacity, coordination (…) and data for steering the various measures..*

Increasing the amounts of EU funds at stake

How is migration expenditure covered in your financial and compliance work, and what scale of expenditure are we actually talking about? What errors do you typically find in this area?

Bertrand Albugues: Given the increasing importance of migration and border management, the EU has established Heading 4 'Migration and border management' of the 2021-2027 Multiannual Financial Framework (the MFF) specifically for these policy areas, with funding of about €26 billion for the period in question. Following the mid-term review of the MFF in June 2023, the Commission proposed, among other things, increasing Heading 4 of the MFF by €2 billion in order 'to address the needs related to migration pressures, to strengthen global partnerships and to respond to emergencies'.

Chapter 8 of our 2022 annual report, which we have just published, presents our findings for Heading 4 and Heading 5 together. For Heading 4, the payments made in 2022, totalling €3.4 billion, accounted for 1.7 % of EU budget spending. The main spending for Heading 4 (66 %) was for the Asylum, Migration and Integration Fund (AMIF) and the Border Management Visa Instrument (BMVI) and their predecessors. The rest (33 %) was funding for three decentralised agencies: the European Union Agency for Asylum (EUAA); the European Border and Coast Guard Agency, known as Frontex; and the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice, known as eu-LISA. The management of most AMIF and BMVI spending is shared between the member states and the Commission.

In recent years, we have audited an average of 17 transactions for Heading 4, where our work on the 2022 SoA found eight errors[1]. Most of the cases we found involved eligibility and procurement issues, but we also regularly report on ineligible VAT. Projects addressing emergency needs, such as the provision of emergency accommodation for asylum-seekers, seem to be particularly risky from a financial management and legality/regularity point of view[2]. For shared management, we also audited the work carried out by the national audit authorities in the member states we sampled. In our 2021 annual report, we reported the most serious issues in one member state, Bulgaria, relating to the Internal Security Fund[3]. Due to the weaknesses we identified in this audit authority's work, the Commission examined 10 % of the amount requested by the member state[4].

In 2021, the ECA published a major audit report on Frontex, assessing its support for external border management. The report attracted a lot of attention in the media. Since then, Frontex's role, size and budget have only increased, making it the largest EU agency. What does the ECA do on a yearly basis regarding Frontex's work, and is anything planned from a performance point of view?

Bertrand Albugues: Our special report 08/2021 *Frontex's support to external border management: not sufficiently effective to date* was published just before Frontex obtained additional resources. We drew attention to the risks, and recommended, among other things, that the challenges posed by Frontex's new mandate should be addressed. The report noted in particular that the exponential increase in the resources made available was agreed without a needs-and-impact assessment for member states, and without an evaluation of Frontex's activities since 2015. In addition, we examine Frontex's accounts every year, and deliver a statement of assurance on the reliability of the accounts and on the legality and regularity of the transactions underlying them.

> *[Regarding the ECA report on Frontex] The report noted in particular that the exponential increase in the resources made available was agreed without a needs-and-impact assessment.*

The ECA's policy for following up the implementation of recommendations made in its special reports is quite flexible: the principle here is one of follow-up after three years, i.e. in 2024. This means we may perform a 'traditional' follow-up next year. However, extended follow-up or even a second audit, as has been the case for two of the three ongoing audits I mentioned earlier, is also possible.

Auditing migration – business as usual?

Over and above these two aspects of auditing migration, how can you audit a subject that is so political – a minefield in many ways – and most probably the most difficult subject to audit in Europe?

Bertrand Albugues: You are right when you say that migration has strong political and social significance. Our stakeholders – the European Parliament and the Council – are keen for us to do audit work in this area, and they often suggest audit topics. As I said earlier, migration also has financial significance, and our audits are necessary to ensure that EU funds are well spent. A key factor in what we could audit is the maturity of the topic. For political or technical reasons, implementation might be placed on standby, and this results in a lack of progress in terms of implementation or clear legislative decisions. Until there are such decisions, and sufficient progress has been made on implementing the programme, the time is not right for us to start an audit.

> *A key factor in what we could audit is the maturity of the topic.*

---

1   The audited transactions do not constitute a representative sample, and the ECA does not give a specific assessment or an estimated error rate for this heading.
2   For more details, see the 2021 annual report, Box 7.1 (page 215) and the 2022 annual report, Box 8.1 (page 285).
3   For more details, see the 2021 annual report, boxes 7.2 and 7.3 (pages 218-219).
4   For more details, see the annexes to the 2022 Annual Activity Report of the Commission's Directorate-General for Migration and Home Affairs (pages 108 and 136 (item 11)).

What is particularly difficult about – if not different from – other policy areas you audit, when you assess EU migration policy? Do auditors need any special skills to work in this area? Are any particular security aspects involved when performing audits in third countries, for example when assessing hot spots?

Bertrand Albugues: First of all, we always examine the feasibility of the audit ideas that we propose or that our stakeholders suggest. This examination takes place well before they are adopted as audit tasks by the ECA. Feasibility includes not only checking that the proposed audit falls within the ECA's remit, but also that the auditors will have access to audit evidence to answer audit questions, and that the timing of the audit is optimal.

When performing performance-audit work in third countries – i.e. outside the EU – at the audit planning stage, we also examine the issue of security: our auditors travel across the world, sometimes to fragile states and (close to) unstable regions. This is why, in order to carry out missions to some third countries, the auditors in our chamber have to complete a specific course on 'Hostile environment awareness training' (HEAT).

We also receive advice from the ECA's security service, which works closely with the European Commission and the European External Action Service (EEAS) for this purpose, and from the ECA's medical officer. Naturally, we also liaise with the EU Delegation in the country concerned, whose staff generally accompany our auditors when they visit projects on site, and we monitor the local situation with them. For instance, a couple of years ago, we cancelled an audit mission to a country in Africa when civil unrest spread to the capital city where the auditors were due to travel a few days later.

From a methodological perspective, we plan and carry out performance audits in the area of migration as we do for other audits: by collecting the evidence that enables us to answer our audit questions and to deliver sound conclusions and recommendations. In our work, we use our usual audit tools such as questionnaires, document reviews, interviews, and on-the-spot visits. When dealing with migration and its emergency component – e.g. providing emergency accommodation for asylum-seekers – it can be difficult to secure a full audit trail.

> *When dealing with migration and its emergency component (…) it can be difficult to secure a full audit trail.*

There is evidence of policy outputs, but more information and evaluation are needed to assess their impact

You have been involved in various migration audits. Where do you think that external auditors, whether at EU or national level, can provide added value when it comes to migration issues in the EU?

Bertrand Albugues: The same is true for migration as for any other area: external auditors provide added value by selecting the most relevant audit topics and delivering sound conclusions and relevant recommendations. We have already seen that migration has strong political and social significance. The external auditors' added value lies in the robustness of their analyses of the programmes and projects that are implemented.

As for migration, the context in which the EU acts is complex and constantly changing. The EU attempts to adapt to new challenges as they appear. Many approaches have to be handled together with member states and other international stakeholders. I note that, overall, the ECA has assessed that EU action has largely produced the intended outputs, albeit in many instances delayed or incomplete, sometimes due to complex operational factors. The Commission and other auditees repeatedly fall short of identifying actual needs and the potential for coordination with other stakeholders, and do not manage to set up robust monitoring and evaluation mechanisms or to document certain decisions. These last two issues raise concerns about accountability. This means that it is frequently not possible to assess whether outputs match actual needs and objectives,

> *…it is frequently not possible to assess whether outputs match actual needs and objectives, even when they have been properly identified from the start. There is room for more systematic needs assessments…*

even when they have been properly identified from the start. There is room for more systematic needs assessments, and better focus and coordination with all stakeholders, which would also increase the impact of EU action.

The Finnish authorities should work together more closely to integrate work-based immigrants better

By Sari Hanhinen, National Audit Office of Finland

Source: Somppu Kopisto

> While many people will associate asylum and migration issues with displaced people in distress, a large proportion of migrants come to the EU to work. Demographic developments play a large role in this, not only from the migrants' country of origin but also in the receiving country. One example of this is Finland: its population and the number of workers can only increase as a result of immigration. Since 2003, Finnish government programmes have promoted work-based immigration as a means of improving the demographic dependency ratio, bolstering the economy and alleviating the situation in sectors suffering from labour shortages. Sari Hanhinen, an Audit Manager at the Finnish National Audit Office (NAO), provides insight into the audit work her institution does on integration, the conclusion being that various areas can be improved, ranging from settling-in services to electronic registration, not least by means of better cooperation and harmonisation.

Still room for improvement in terms of effectiveness and customer orientation

In 2022, the National Audit Office of Finland conducted a performance audit entitled *Work-based immigration - Effectiveness and customer orientation of the immigration administration and recruitment of foreign labour in the health and social services sector*. The starting point for our audit was the fact that the Finnish population and the number of people in employment are only growing because of immigration. The dependency ratio in Finland is rising at a significantly higher rate than in other Nordic countries.

The number of work-based immigrants has been increasing year on year. In 2022, a total of 20,960 applications for a first work-based residence permit were submitted, compared with 15,012 in 2021. Last year, the Finnish Immigration Service received 13,534 applications for a residence permit for the purposes of employment (2021: 8,529), while specialists submitted 2,594 first residence-permit applications (2021: 1,605). Specialists, such as IT experts, received a total of 2,358 positive residence-permit decisions (2021: 1,293). The specialists' most common countries of origin were Russia, India and Turkey.

The previous coalition government set the target of doubling work-based immigration from its current level by 2030. In government programmes, promoting work-based immigration has been seen as an instrument for improving the demographic dependency ratio, boosting economic growth, and easing the situation in sectors facing labour shortages. Macroeconomically, immigration also has a positive impact on innovation, investment, and commodity markets. A diverse and skilled workforce attracts international investment. The topic is also significant from the perspective of central government finances, as a shortage of skilled labour is a serious obstacle to growth. Finland is the OECD country that is facing the most serious shortage of highly educated labour.

Our audit found that numerous strategic development targets have been set at government level to promote work-based immigration over the last 20 years. While the authorities' actions have consistently been steered towards achieving these targets, the process has been hampered by slow progress and interruptions. Problems have been caused, among other things, by the fragmented administrative structures for official action and variation in different authorities' commitments to targets. In 2020, the administration of work-based immigration was transferred to the Ministry of Economic Affairs and Employment. Although this has improved overall steering and target achievement, there is still room for improvement as regards the effectiveness and customer orientation of immigration management. This applies both to the permit process and to the integration of working immigrants into Finnish society. Our audit revealed that services that promote integration are a 'pull' factor for Finland, and encourage working immigrants and their families to stay in Finland. Other studies have shown that integrating immigrants is an excellent investment for society.

The whole family must be supported when a work-based immigrant settles in Finland

More and more immigrants are applying for an extended work-based residence permit in Finland. Citizens of Ukraine, Russia and India have been granted the largest number of work-based extended residence permits. At the same time, it must be noted that global competition for talent is fierce. According to the study, Finland is the 22nd most attractive country for international workers.

In 2018, the Parliamentary Audit Committee drew attention to the fact that the integration services that municipalities provide are rarely offered to work-based immigrants. Our audit showed that work-based immigrants are still left without integration services because municipalities take the view that they lie outside the scope of the Act on Immigrant Integration. Immigrants' knowledge of services is also limited. We found that, instead of integration, large cities have promoted settling in Finland by placing official services under one roof at immigrant guidance and advisory points. The reform of the Integration Act aims to correct problems with integration. For the first time, the law will regulate how to promote the way work-based immigrants settle in. In practice, this would mean, for example, facilitating necessary dealings with various authorities during the initial phase of immigration.

Settling-in services make it easier to start everyday life after moving to Finland. An important factor is the integration of family members. Work-based immigrants contact Finnish embassies to enquire about the availability of English-language schools and early childhood education services even before they enter the country. English-language upper-secondary education in particular is insufficiently available in Finland. In big cities, the need for English-language early childhood education and basic education is recognised. However, at the same time, local authorities are considering how to support Finnish-language schooling for immigrants' children, as this would offer them more options for further study and facilitate their integration into Finland.

During our audit, we found that as many as 66 % of respondents to the survey we sent to companies completely or partially agreed with the statement that 'work-based immigrants adapt well to Finland'. In the survey on projects relating to work-based immigration, opinions were more divided, and fewer respondents agreed with the statement. According to representatives of companies and projects, factors that encourage immigrants to stay in Finland included employment for spouses, English-speaking schools in their locality, smooth official processes, multilingual guidance and counselling services, functioning integration and settling-in services, and a tolerant atmosphere.

According to the studies, the most common reason for the failure of work-based immigration is that spouses do not adapt. We found that 66 % of the companies and project operators that responded to the surveys disagreed or partially disagreed with the statement that 'spouses of work-based immigrants have easily found employment in Finland'. Only 24 % of respondents felt that the spouses of work-based immigrants had received support for employment in Finland. Employment for spouses has been supported in large cities and by several projects.

In the light of the audit, one of our conclusions was that the integration of work-based immigrants could be enhanced by specifying more clearly the names and roles of bodies responsible for settling-in services, and by improving cooperation between state and municipal authorities. We recommended that the central government, local governments, and businesses should also work together to improve immigrants' language and professional skills. Integration could also be promoted more efficiently if fragmented resources were allocated to actions and structures that ensure that the authorities follow established practices, rather than to individual projects. In addition, the beginning of the integration process could be facilitated by means of electronic registration.

Electronic registration in the country of origin would speed up settling in Finland

The aim set out in the 2018 immigration policy programme that the settling-in process could already start in the country of origin has not yet become a reality. Official services require strong identification, which in turn requires a personal visit to an official service point in Finland. Substantial improvements in administrative efficiency can only be achieved if electronic identification is introduced in all immigration-related services. According to companies' own experiences, employees may have to wait for their personal identity codes for up to two months. As a result, opening a bank account and wage payments are also delayed.

In the *Virtual Finland* project, which takes place between 2021 and 2025 and is led by the Ministry for Foreign Affairs, the aim is to create a digital immigration-service infrastructure for Finland that would make it easier for entrepreneurs, employees and students to enter the country and settle there. A total of €4 million has been allocated to the project by the European Recovery and Resilience Facility (RRF). Finland is also providing €2 million for the project from national funds.

In autumn 2022, Parliament was considering Government proposals for legislation on digital identity. One aim of the proposals was to ensure that foreigners can log into electronic services on an equal basis, thus facilitating electronic registration. The last parliamentary term was not sufficient for parliamentary committees to consider the proposals, meaning that the next government will decide how to move the proposals forward. Based on our audit findings, we believe that the reforms would help to make the administration of work-based immigration more efficient, and streamline the entry of work-based immigrants into Finland.

Finland's new government is tightening immigration regulations

According to the new government that was formed in mid-June 2023, work-based immigration is very important for Finland's economic growth and the securing of services. The new government has emphasised that in Finland, work-based residence permits are based on the right and obligation to work. The government will supplement the labour force primarily from the EU and the European Economic Area. Work-based immigration from third countries will focus on people with higher education, as well as on employees in sectors that can be genuinely identified as suffering from a labour shortage, such as the social and health-care sector. The aim is to focus recruitment efforts on specific groups of experts in target countries, i.e. India, the Philippines, Brazil and Vietnam.

Our audit noted that slow permit processes have been a significant reason for the low number of foreign employees recruited by Finnish companies. The new government aims to process work-based residence permits within a maximum of one month, and strives to process permits for professionals earning more than €4,000 per month within

a maximum of one week. This would be a significant improvement compared to the situation at the end of 2022, when the time varied greatly between different groups. Permits for specialists and growth entrepreneurs were processed within two weeks. However, the average processing time of residence permits for employees was 68 days, while the corresponding figure for entrepreneurs was 85 days. Employees' permits to enter the country do not apply to their families, which makes family reunification slow, expensive and uncertain for employees. As employers cannot promise potential employees that they can bring their families with them to Finland, it is difficult to attract employees by targeting campaigns at them. Specialists' family members usually receive a residence-permit decision more quickly and at the same time as their sponsor (see **Figure 1**).

Figure 1 – Average processing times for residence-permit applications submitted on the basis of family ties (in days) in the 2018-2022 period (until 31 May 2022)

Residence permit applications	2018	2019	2020	2021	2022
Application for the first residence permit					
Employment	102	134	109	69	69
Family members of a specialist (including specialists granted the Blue Card)	29	49	34	21	13
Family members of a start-up entrepreneur	48	53	80	48	27
Other family members of work-based residence permit holders	149	189	144	99	114
Application for an extended permit					
Employment	64	87	75	67	72
Family members of a specialist (including specialists granted the Blue Card)	23	42	32	35	22
Family members of a start-up entrepreneur	-	-	72	32	42
Other family members of work-based residence permit holders	89	112	99	85	94

Source: Finnish Immigration Service

Despite speeding up the permit processes, the new government will tighten immigration in many ways. For example, all income limits for work-based residence permits will increase, with the minimum income level being no less than €1,600 per month. In addition, work-based residence permits will be tied more closely to work. This means that a holder of such a permit must leave Finland if the holder's employment relationship ends and the holder has not entered into a new employment relationship within three months. It remains to be seen how stricter immigration guidelines will affect the number of work-related immigrants and the integration process.

Czech Supreme Audit Office reports unclarity on how funds spent on migration policy has helped

By Lukáš Topinka, Supreme Audit Office of the Czech Republic

Refugees Ukraine children family people Regional Assistance Center in Olomouc, Czech Republic in March 2022.

In many EU member states the governments have a prime responsibility for, registering asylum seekers, granting residence, providing accommodation and ensuring integration into society. Such work involves not only substantial public funds but also considerable planning, action and coordination by several government authorities. Lukáš Topinka, Director of the Department of Defence and Security Audit, at the Supreme Audit Office of the Czech Republic, provides insights on how his institution has carried out performance audit, assessing various aspects of the Czech government's actions, including whether the necessary framework was in place to assess performance, and reconciling targets set and effectiveness achieved.

Managing quickly rising migration numbers

Migration is a natural phenomenon that has always been with us, and it is also an opportunity. It benefits a country's economy in various ways, though it also brings security threats. For this reason, national migration policies should strengthen the positive aspects while, as much as possible, limiting the associated negative phenomena and risks. The Czech Republic's migration policy is anchored in the common policies of the European Union, and its implementation results from the EU's common legal instruments. Before 2022, the Czech Republic was less affected by migration than some other EU member states, but the number of foreign nationals in the country has recently soared (see **Figure 1**).

Figure 1: Number of foreign nationals in relation to the total population of the Czech Republic

Source: Czech Supreme Audit Office.
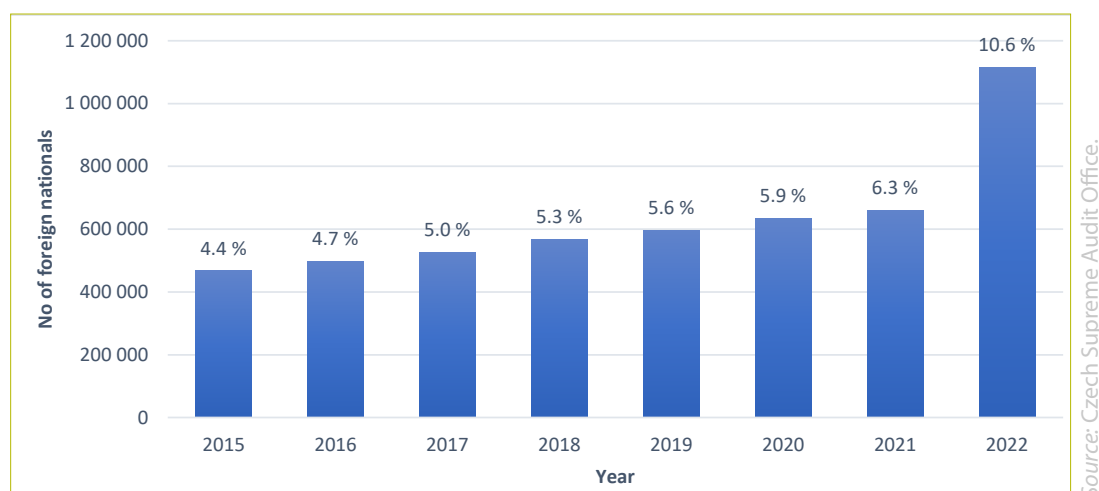
The Czech Ministry of the Interior (MoI) is responsible for managing migration in the country. To this end, it can draw on both national resources and resources from EU funds earmarked for internal affairs spending. During 2017-2019, migration support payments amounted to approximately CZK 2 billion (€84.8 million[1]) per year. The main provider of integration services in the Czech Republic is the Refugee Facilities Administration of the Ministry of the Interior (RFA). The RFA's activities include managing and operating centres for foreign nationals and providing assistance and support through programmes that promote integration, in particular into the labour market, the education system and society at large.

Auditing assistance to refugees and actions to prevent large-scale migration movements

In 2020, the Czech Supreme Audit Office (SAO) carried out a performance audit of the efficiency and effectiveness of funding from national and EU migration programmes in the Czech Republic in 2017-2019. National migration policy is a socially important topic that attracts considerable public interest. The SAO therefore considers it to be a priority for audit, and so regularly monitors and evaluates government measures and support in this area. We had previously made similar audits of migration policy in 2011 and 2015. Thus, when preparing our 2020 audit, we were able to start from the risks it had identified in previous years, such as the over-generalisation of conceptual and programme documents, the non-measurability or non-assessment of the results of individual projects, and any failures to achieve expected benefits.

The fact that the EU's 2014-2020 programming period ended in 2020 gave us further justification to assess migration. We reported to the public on how efficiently and effectively the state had spent both national budget funding (from the State Integration Programme and an MoI programme to assist refugees in their regions of origin and prevent large-scale migration movements) and funding from the EU, specifically through the national programmes for the Internal Security Fund (ISF) and the Asylum, Migration and Integration Fund (AMIF).

In our audit we focused on four thematic areas presented in the Strategy of Migration Policy of the Czech Republic:

- the free movement of persons in the EU;

- Schengen cooperation;

- integration; and

- asylum and external migration.

---

1   €1 = CZK 23.60.

The Strategy formulates general goals that the country hopes to achieve in the four thematic areas at national and EU level and establishes which tools are to be used to that end. The projects and activities selected for audit from the four programmes mentioned above were aimed at protecting the EU's borders, support for the asylum system, the social integration of foreign nationals, and assistance for states facing increased migratory pressure. These accounted for total expenditure of CZK 556.6 million (€23.6 million) in 2017-2019. We audited the MoI, RFA and five selected beneficiaries, starting our work in May 2020, and publishing our report in June 2021. In 2022 the MoI submitted information on the implementation of measures to remedy the shortcomings identified by our audit, and below I provide the key elements of the impact of our audit.

Conceptual documents did not contain measurable and thus evaluable objectives

The MoI put together a coherent set of conceptual documents to support migration policy and achieve its goals. However, it did not always set measurable objectives with target values that would allow it to evaluate the success of the migration policy. Regarding the integration of foreign nationals, for example, the objectives were 'support non-conflictual coexistence with foreign nationals' and 'ensure the safety of all Czech residents'; one objective in relation to external migration was 'combat illegal migration'.

Absence of result indicators made it impossible to assess the efficiency of projects

Progress towards the migration policy goals was measured in terms of programmes checked and projects implemented. The goals of the ISF national programme were namely to support a common visa policy and to strengthen protection of the external borders of the Schengen area member states. The AMIF national programme goals were, for example, to contribute to the effective management of migration flows, support the social integration of third-country nationals, and implement the common asylum policy. The SAO found, among other things, that the MoI had set non-measurable objectives for some ISF and AMIF projects and monitored projects using output rather than result indicators[2]. These gave little information on the achievement of the set objectives (see the example in **Box 1**).

Box 1 – Achievement of objectives?

The objective set for the National Document Control Centre Specialised Facility (project ISF/10/01) – 'increasing the ability of the Czech Police to detect irregular documents during external border checks' – was found not to be measurable. Progress towards the objective was assessed using a monitoring indicator. However, this was only the output indicator 'number of border protection (control and surveillance) infrastructure elements established or modernised with the help of the fund', which increased from an initial value of 0 to the target value of 1, i.e. it merely indicated that the project was implemented. Since there was no other monitoring indicator that would better reflect outputs and tie into the project's expected benefits, the SAO evaluated the project's efficiency as no more than limited.

Diminished efficiency and effectiveness in ISF and AMIF projects selected

In **Figure 2** we have charted the efficiency and effectiveness of seven ISF projects and twenty AMIF projects. The shortcomings relating to efficiency included, for example, the lack of measurable objectives, the poor informational value of monitoring indicators and the absence of a statement of target values. Regarding effectiveness , the main shortcomings concerned insufficient justification of the level of support, the implementation of partial activities that were not necessary to meet the project objectives, and failure to monitor spending on key activities.

---

2   Output indicators are intended for the monitoring and evaluation of the measures and activities that characterise a specific action. Result indicators have a direct link to project objectives and serve to demonstrate whether they have been achieved. They include information on the medium-term changes resulting from outputs.

Figure 2: Evaluation of the efficiency and effectiveness of selected ISF and AMIF projects

Source: Czech Supreme Audit Office.
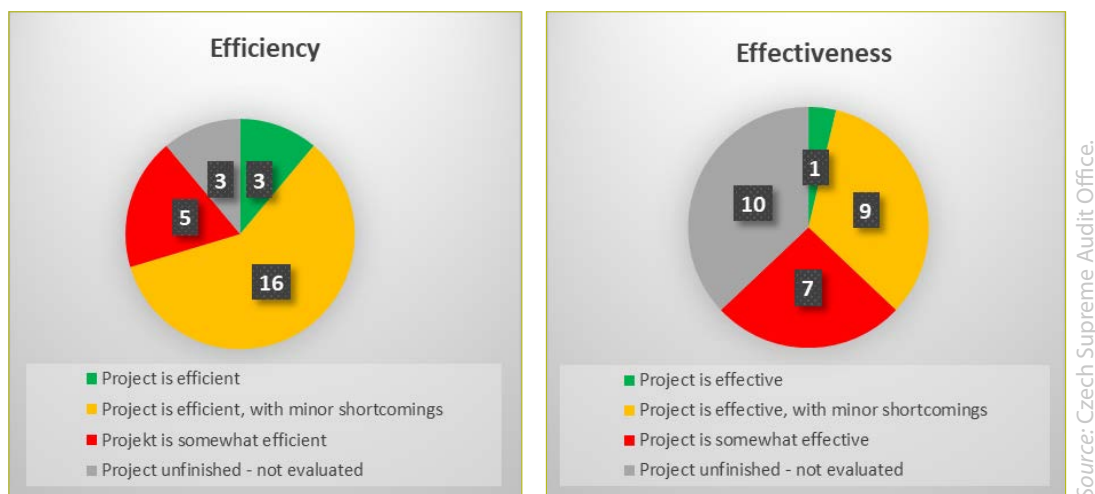
The SAO found some projects to be limited in terms of both efficiency and effectiveness – see examples in **Box 2 and 3.**

Box 2 – Project monitoring vehicles	**Box 3 – Creating accommodation capacity**
The objective of the 'Monitoring vehicles with thermal imaging' project was to buy two vehicles specially equipped with thermal imaging technology to increase the preparedness of the Czech Police to tackle illegal migration. The vehicles were to be used to protect international airports and implement operations coordinated by Frontex. We found that both vehicles were used exclusively for Frontex operations in 2018-2020, i.e. for only one of the above stated purposes of purchase. In any case, the purchase was not needed for the protection of international airports, as the Czech Police used five older vehicles during this period, with a considerably low utilisation rate– each vehicle for an average of only two days a month.	The objective of 'AZ Havířov – purchase and renovation of a building extension' project was to create accommodation capacity for people who had applied for international protection. During our audit we found that the RFA had not sufficiently justified the need for the project in the aid application or shown why more capacity was needed, since only two thirds of the existing capacity was in use at the time of the application (January 2018). We also found that the RFA had inadequately prepared the project and underestimated the renovation costs. Those costs increased by 119 % in the course of the project.

No integration feedback system

The main goal of the State Integration Programme was to help asylum-seekers integrate into Czech society. The main areas of support were housing, employment, education, social support and health. The MoI was the programme owner and the RFA was the executive body. The MoI set only a general programme goal and no measurable indicators for monitoring progress towards the goal. The MoI also had no feedback and monitoring system with which to obtain information about the extent to which the programme had contributed to social integration of the target group, e.g. whether they had remained and found work in the Czech Republic. Thus, the MoI was unable to evaluate whether, for example, integration funding was being spent in an effective way.

No rules or project parameters

The goal of the MoI Programme to Assist Refugees in their Regions of Origin and Prevent large-scale Migration Movements was to help countries with large refugee populations and those facing significant migratory pressure. The MoI provided support via donations to, for example, government entities and international organisations supporting refugees outside the Czech Republic. We found, among other things, that the MoI had

not set binding rules for spending from the programme and did not always specify project parameters to ensure that spending was efficient and effective. For example, the Macedonia 2017 project included the objective 'purchase passenger cars to improve state border protection', but there was no statement of vehicle numbers, no technical specifications and no estimated price per vehicle.

Funding was also provided on the basis of a range of contract documents that listed different conditions for support (e.g. in regard to evidence of expenditure). The MoI has not assessed the programme outcomes since 2015. The above shortcomings represented significant risks to the efficiency and effectiveness of spending.

Our audit triggered a number of positive impacts

The risks we had identified before the audit began were confirmed during its implementation. The MoI has adopted a range of measures to remedy the shortcomings found by the SAO. Other measures have been adopted by the EU – for example through Regulation (EU) 2021/1149 establishing the Internal Security Fund[3] and Regulation (EU) 2021/1148 establishing the Instrument for Financial Support for Border Management and Visa Policy[4]. These regulations set out legally binding and clearly distinct output and result indicators for the 2021-2027 programming period. In the Czech Republic, the MoI has introduced a new system for verifying the use of support from EU funds, including an interface with the information system. Regarding the State Integration Programme, the MoI has set up a new system of indicators to monitor individuals' integration and to evaluate the programme's success (through a feedback system) directly by the beneficiaries. Taking up the SAO recommendations, the MoI has also conceptually restructured its programme to assist refugees in their regions of origin and prevent large-scale migration movements, which obtained government approval in June 2021. One change relates to uniform conditions for individual projects to receive support.

The issue of migration cannot be understood separately from the development of the international situation in neighbouring countries and countries of origin. Since 2022, as a result of the war in Ukraine, the Czech Republic has been faced with a surge in migration (see **Figure 1**); at the start of June 2023, some 342 000 Ukrainian refugees remained on Czech soil[5]. At the EU level, on 8 June 2023, the European Council took a decisive step towards modernising the EU's asylum and migration rules[6]. This demonstrates that migration policy is not only topical in the Czech Republic, where, in terms of the expanding scale of support, it is a significant item of national funding (the country has already provided more than CZK 36 billion (€1 525.4 million) to deal with migration from Ukraine). It is therefore a likely topic for further SAO audits in future years, when as SAO we will also verify the effectiveness of MoI measures to remedy the shortcomings revealed by the 2020 audit.

3   https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021R1149
4   https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021R1148
5   https://data.unhcr.org/en/situations/ukraine
6   https://data.consilium.europa.eu/doc/document/ST-10084-2023-INIT/en/pdf and https://data.consilium.europa.eu/doc/document/ST-10083-2023-INIT/en/pdf

'The EU is really at a crossroads'

Interview with Tomas Tobé, Member of the European Parliament

By Gaston Moonen

Tomas Tobé

Migration policy in the EU is an area that relates to various key aspects, ranging from asylum and migration management to common asylum procedures, from arrangements in Schengen to an instrument for crises and force majeure. Within the European Parliament, Tomas Tobé, in his role as member of the Committee on Civil Liberties, Justice and Home Affairs, was the rapporteur on the Commission's proposals regarding asylum and migration management. He is keen to see these proposals and related amendments finalised through the adoption of a new Pact on Migration and Asylum. In the interview below, he shares his main concerns and hopes for a successful closure, which in his view is seizing an historic opportunity for a common EU migration policy, built on solidarity and shared responsibilities, that is not only effective but provides protection for those who truly need it.

A common approach

As the European Parliament's rapporteur on the EU Regulation on Asylum and Migration Management, aimed at replacing the current Dublin Regulation and relaunching the reform of the Common European Asylum System, Tomas Tobé has been dealing with EU migration policies for years and has called the issue the Achilles heel of the EU. 'On this topic the EU is really at a crossroads. Either we go for a more common approach to try to deal with migration and find solutions together. Or we continue with the failure we see now.'

The MEP is convinced more control is needed at the EU's external borders. 'We need to have a bigger difference between refugees with the right to protection in Europe, and economic migrants. That is something we are failing at today and not even every person who gets to Europe is registered. And we have a situation where smugglers are controlling a lot of migration flows into Europe. Many people die in the Mediterranean Sea, which of course is a failure in itself. We cannot continue this way.' For him, these issues feed into the crisis feeling in this policy area. 'For me, as a politician, it is clear we need a European solution, at EU level. Of course, it will not be perfect, and we will

> *Many people die in the Mediterranean Sea, which of course is a failure in itself. We cannot continue this way. (…) it is clear we need a European solution.*

89

need to keep reforming it in the future. But to stick to the idea that this is a question that a single member state can deal with by itself…reality has shown that that does not work.'

As an MEP who is active in this area, he knows about the many different opinions on the topic. 'We need to be pragmatic and find a balance to move forward. I think we can build a majority in the EP, but that was obvious in my view. Now we have this historic opportunity to build a majority in the Council.' He expresses understanding that member states want to have some control over who comes into their country. 'That is one reason why I convinced the European Parliament to forget the idea of having mandatory relocation for everyone that comes. This will only lead to political failure because the member states will never accept it.' He thinks you have to be more flexible to find workable solutions.

This flexible approach is reflected in the agreement the Council reached on 8 June 2023 regarding their negotiation position on the new Pact on Migration and Asylum. While Tomas Tobé still sees various differences with the parliament's position, he also sees opportunities for agreement. 'On the big issues (should we have 'first country' criteria), on mandatory relocation, working on the external dimension to try to tackle the root causes, on more cooperation with third countries – on all these big issues I see that the parliament is moving in that direction, and the Council as well.'

He identifies real assurance that every country actually contributes to making the new pact work as very important for parliamentarians. 'Because if we don't have meaningful solidarity…then it will not work and remains some perfect model on paper.' He is understanding of the challenges many member state governments face internally. 'They are

> *… if we don't have meaningful solidarity…then it will not work and remains some perfect model on paper.*

pressured from voters who say they want less migration. And even if you perhaps could say that this new migration pact will in the end lead to more economic migrants to be returned…of course it remains a challenge. But sometimes you just have to do what is right. And hopefully, in the future, you can prove to the people out there that it was right.'

Reducing migration

While the new pact aims to tackle several aspects of a common EU migration policy, the MEP identifies the question of refugees coming to Europe as the key issue to tackle, more than, for example, issues relating to the EU need for skilled labour. 'How can we solve, among ourselves, the issue of a swifter procedure for refugees? How can we increase returns? How can we decrease the number of migrants coming solely for economic reasons? These are the big questions in the migration pact.'

However, from his role as Chair of DEVE, the parliament's Committee on Development, he sees that the pact can also offer opportunities to attract more skilled workers to the EU. 'We work a lot with our partner countries in Africa. In strengthening that cooperation, we are willing to invest more in development cooperation, offer more visas, more opportunities for young people to come to Europe to work. But of course, we also expect cooperation when it comes to other "hard" issues, for example, on returns.' While obtaining skilled workers from elsewhere may be one solution for member states, he points to another opportunity to reinforce the labour population. 'For example, if I take my home country, Sweden, we have many people who came from other countries but have not really integrated into society and are out of work.' He sees opportunities for them to seize through education.

As Chair of DEVE he considers EU's external development policies as a key instrument for addressing migration issues, particularly when it comes to tackling the root causes of migration. 'For example, we have Global Europe, which is our instrument for development cooperation. We have said that 10 % of the budget related to that should go to tackling the root causes of migration. That is a big shift.' He realises that one needs to tread carefully when creating such conditionality provisions because of political sensitivity. 'But everybody understands that we need to do more on the spot to make sure that we offer opportunities, especially for young people in Africa. Often, they are seeking a better future when they go on these dangerous boats to Europe. And even when they reach Europe, many are disappointed, for example by a negative answer to their asylum request, their efforts to live in the shadows of society in the EU. It is not a good life either.'

Solidarity

One of the issues Tomas Tobé identifies that needs to be further elaborated on in any new migration agreement is a long-term EU strategy for migration management. 'This is not yet supported by the Council, but I think it is very important to have such a strategy. Because you need to have an idea of the migration flows. And you need better preparedness, we need to support member states that are under migratory pressure at an earlier stage.' For him this means advance warnings of higher migration flows to EU member states through intelligence information, for example from Frontex. 'I find it surprising that this is not structurally done. It could help sometimes to reduce the flows and we could have better conditions in sometimes very hard situations for a single member state to cope with.' He is disappointed that the Council has not gone in that direction. 'I am pushing the idea that we need to tackle migration as much as any of the main political questions we have. And try to have a more long-term view on it, a real strategy to work towards.'

… we need to tackle migration as much as any of the main political questions we have. And try to have a more long-term view on it…

Another key issue in the proposals for him is that every member state has to contribute but can do so in different ways. 'This is a big thing.' He observes that for the parliament it will be essential to have meaningful solidarity that actually works. 'Because everybody understands that the question of border control, registration – that is a question we can solve.' In his view, with sufficient resources. 'But the question of solidarity is another thing, that is, member states stepping up their support. Regarding the numbers, I think we can cope with them if we don't leave it to a few member states to tackle such flows.'

One of the key elements often mentioned to make such solidarity work is trust between the different partners, including member states – specifically those located at the EU border. Tomas Tobé is not convinced this trust is totally there yet. 'If the "MED 5 countries", as we call them, those located around the Mediterranean Sea and dealing with big migration numbers, if we don't offer them solidarity it basically means that they have to solve the whole migration question, or most of it. They hear from other member states in the north: "You need to protect the border; you need to register everybody who comes to Europe." I think this is understandable and I agree. But when you see the numbers really going up, somehow people are not registered anymore.'

…if we don't offer them [the 'MED 5 countries'] solidarity it basically means that they have to solve the whole migration question, or most of it.

Some of his colleagues have pointed out to him that migration policy is also a tough, if not harsh policy. 'But in Europe we are not in a situation where everybody who wants to come to Europe can come and stay here. That is the reality. And then we have to choose. Should you protect people that have a right to asylum? Then we have to focus on that.' For him, this means one has to accept fewer economic migrants. 'That is a hard message for people to hear. Because they just want a better life. I fully understand that, but we have to take responsibility. Because we are losing the trust of many citizens who feel that many politicians do not handle the migration issue. And we need to because otherwise political forces in Europe will grow which basically want to destroy the EU.'

For Tomas Tobé, this means that we need to be strict and use border infrastructure options where needed. 'Europe is not open to everyone. But we want to be a continent that can actually protect people who are fleeing from war. It is quite clear what we are seeing with Ukraine. And it was a positive thing to see many Europeans opening up their homes for Ukrainians. But I think that this lack of trust, that there is something wrong with migration policy…it causes tensions in our societies which are very dangerous.'

… this lack of trust, that there is something wrong with migration policy…it causes tensions in our societies which are very dangerous.

Cooperation for success

In his view, the new Pact also offers opportunities in relation to the implementation of returns. 'Here we will have a very swift procedure and determine whether you will have a high chance of getting asylum or a low one.' He considers this shift important because with the current long procedures many asylum seekers just go somewhere else in the EU. 'And then it is very hard to trace them. With this, we will have more control. If

we succeed, it basically means that people will go back almost directly after coming to Europe.' He expects that if people realise they will be paying a lot of money to smugglers simply to go straight back to the country they just came from, 'this should decrease the appetite to come. It is controversial and there are many political views on this issue. But I and my political group, the EEP, we think that we also need to have more control over the people who actually don't have the right to be in Europe.'

> " … *we also need to have more control over the people who actually don't have the right to be in Europe.*

To tackle migration flows in the future, the MEP thinks it will also be important to work more with third countries. 'For example, to crack down on the smugglers and the criminal networks who somehow control the volume of people coming to Europe.' He knows that this sometimes means working with governments with which the EU has, or has historically had, a difficult relationship. 'We can have opinions on how they work with human rights, with the media, the rule of law. But we cannot choose our neighbours, they are there.' For him, this is a key reason to support work with Türkiye, for example when it comes to migration. 'Because I don't really see an alternative. Of course, we should not just hand out money, and there need to be tough discussions to improve things. Many populists, from the left to the right, basically say "Don't send any money to Türkiye, don't work with them".' Tomas Tobé does not think this is very responsible. 'The EU is very attractive for many people to come to, and we need to work with these countries to try to control the volume.'

Having dealt with this policy area for several years now, Tomas Tobé thinks it crucial to get independent, fact-based information on which measures really work and which do not. 'Take the aspect we covered earlier, on the root causes of migration. Which measures are actually effective? To audit that, that would be extremely interesting. Because we don't really know. Another question to assess and really see is how efficient and effective the procedures relating to applications etc. are. We know that there are various problems, but perhaps to have an audit on that would be extremely helpful.'

Time pressure

As the MEP has indicated, getting the political partners to come to an agreement, in time, will be a challenge. 'But we have an historic opportunity to come together. And we need to have the whole migration pact adopted before the end of this term, so before June 2024. As to the timing, it would be good for the people managing the files to be ready around Christmas.' He does not exclude the possibility of the final issues being solved under the next Presidency, under Belgian leadership. 'But we need to have time to have a proper vote in early 2024, we need to have the confirmation from all the member states.' Despite this time pressure, he thinks it should not be too much of an issue. 'Because we have been waiting for a long time for this to start and we know the positions already. We know all the arguments from the left to the right and likewise for those of the member states.'

The MEP believes that the Pact can be agreed upon. 'It will be hard, but we can do it. But if it were to fail, it would be a disaster! Because then it would not be in the interests of many countries to actually maintain the external border of the EU. And that will also cause problems for countries like Sweden, Germany, the Netherlands, countries that are very attractive to go to for many migrants.'

He sees the main task now being work on building a majority. 'In parliament, the big shift making this all possible is that we have now taken a more responsible position avoiding a political deadlock. We show that you can work with us.' On the Council side, he sees the

> " *In parliament (…) we have now taken a more responsible position avoiding a political deadlock.*

willingness to work with a qualified majority. 'Not every member state has to agree, which is of course crucial.' Regarding the balance between responsibility at EU level and responsibility at national level, he observes: 'That will be the big question. We need to build a migration policy that is flexible and voluntary so that you can use relocation or capacity building.' Again, he ponders the need to ensure that every member state contributes. 'If you leave a big opportunity for countries to say that they opt out, then it will not work!'

Migrants' own stories - giving reports and data a human face

Interviews with Dursa Kadu, who came as a boat refugee to Malta, and Yana Mardus, a refugee from Ukraine

By Kiara Borg and Gaston Moonen, Directorate of the Presidency

Boat refugees in the Mediterranean

Ukrainians fleeing from Russian aggression on 26 February 2022

When tackling the theme of EU migration and asylum, it is relatively easy to find all sorts of report, analysis, commentary and data on the subject. But what about the views of those who left their home countries, came to the EU, and went through the experience of being a refugee, requesting asylum in an EU member state? We decided to speak to refugees and asylum seekers themselves. Kiara Borg, recently working as intern in the Directorate of the Presidency, and Gaston Moonen interviewed Dursa Kadu, originally from Ethiopia, who requested asylum in Malta, and Yana Mardus, who fled from Ukraine in early March 2022. Both were willing to share their experiences, impressions and… advice.

Staying positive while enduring harsh living conditions… not only in Africa

It soon becomes clear that Dursa Kadu is at ease speaking about his experience of leaving Ethiopia at the age of almost 17. Now, almost 10 years later, Dursa is working and studying. 'I am working in finance and I also work part-time for the organisation *Spark15*.' He is now President of Spark15, an organisation that advocates for youth issues affecting the refugee community, working for inclusive societies in Malta and beyond. 'We don't provide legal advice, but in terms of integration, education, and passing on information, we do a lot with asylum seekers, whether they've been here for a few days or a few years. We're run by people who are now in a good place, and can give something back.'

Dursa Kadu

He confirms that he has been granted asylum. 'I'm supposed to become a citizen now. In some EU member states, you can get citizenship after living in a country for five years. But in Malta it takes longer, at least 10 years.' However, he never gives up. 'I am hard-working and I like to give something back, to encourage people so that they can contribute and integrate.'

> *… I like to give something back, to encourage people so that they can contribute and integrate.*

Dursa does not think his story is unusual: his motivation to leave his country stems from a genuine opportunity for personal development, which the culture of corruption and nepotism at home does not allow. 'I saw that even if you get a good education with qualifications, what matters is the connections your parents have, with government

or elsewhere. That's when discouragement sets in.' He readily agrees that his departure was economically motivated. 'Yes, 100 %, my goal was to go to Europe, although I had no idea what "Europe" meant. But that first step then leads to others which become life-threatening where there is no longer any option to go back.'

> *… that first step then leads to others which become life-threatening where there is no longer any option to go back.*

His migration journey took him through Sudan and Libya, moving without any documentation and mostly with human traffickers. 'I could work a bit sometimes, get some support, and sometimes sneak into a car.' He was detained in Libya for four months, and was able to escape when being transferred to another prison. 'On the way, I managed to escape by jumping out of the window of a moving car. Four others escaped with me: two made it, two got injured, and one was shot dead.' He spent several months in the desert, and moved on by hiding under rubbish in a bin lorry. He arrived at the shore and managed to buy himself passage onto a boat. 'Some people had to pay 900 dollars each for a place. With 23 people, including three women one of whom was eight months pregnant, we got onto an inflatable boat which we had to inflate before we could leave. Our intended destination was Italy.' He spent almost two days at sea, crossing about 160 km. 'The sailors who found us called the Maltese authorities to rescue us. We just wanted petrol, but the authorities refused and took us to Malta.'

> *With 23 people, including three women one of whom was eight months pregnant, we got onto an inflatable boat…*

Having arrived in Malta, he was detained for nine months with 300 other asylum seekers. He still does not understand why. 'Sometimes people say that they save people from the sea. I don't agree. If you take me from the sea and put me in jail, do you think you've saved me? No!' He highlights the misinformation he experienced throughout his trip. 'It was supposed to be better in Libya – work, education – but there was nothing and we ended up in prison. Also in Malta, where we were even handcuffed.' He says that he will never stop telling the authorities, NGOs and others that detaining people is not right. 'Why don't you give asylum seekers something useful to do, like developing skills. But we were not allowed to do anything: no language, no skills, no integration.'

> *If you take me from the sea and put me in jail, do you think you've saved me? No!*

After his detention, he stayed in Malta. He knows that of the initial group of 23 people, two were sent back to their home countries, but most of them stayed. 'Some moved on and are now EU citizens outside Malta.' Dursa points out that while you are in prison, you explain your situation to the authorities, why you left, why you have no documentation, etc. 'If the outcome is negative, you still remain in detention. If it's positive, you are sent to a camp where you start figuring out how you are going to live, and you get a three-month course.' He managed to get a job in construction and was able to rent a small apartment with somebody else. 'Going from one place to another, that is how I improved, getting help from an organisation to pay for school, and then college. Now I'm a part-time university student.'

Dursa is sceptical about whether EU rules made much difference to him in terms of getting asylum and improving himself. 'Perhaps the EU generally helps migrants, but it seems to have less interest in helping people from third countries. The EU has made certain rules, but if the member state does not implement them, will the EU do anything about it? Even if they know what is happening in a member state? Let's say I leave Malta and go to Germany and claim to be an asylum seeker. I may be accepted even if my EU journey started in Malta.' He thinks the EU should take action, for example by imposing fines, if it sees that a member state is not treating refugees as it should under EU rules. 'I have seen people who I mentored. They move to other countries where conditions are better.'

> *The EU has made certain rules, but if the member state does not implement them, will the EU do anything about it?*

It became clear to him after the war started in Ukraine that conditions can change very quickly, also as regards acceptance. 'There was a lot of support from the EU for the

Ukrainians who fled, and I'm happy for them. But I still feel pain because even if we've all experienced war and similar problems, we don't have the same voice. Waiting as long as four years to be granted asylum when another country might grant it in one month…'

Even after many years in Malta, he does not feel particularly integrated yet. 'I've got involved in so many activities to be part of society, but because of who I am, I'm still not accepted.' He explains that migrants have to forget themselves and respect their host culture, and its laws, people, and communities. 'We have to push ourselves hard. But being integrated would mean that I feel at ease about that, which is still not the case. When people approach you on a bus and say "You take so much from us: go back to your own country!", how can I feel at ease? And I encounter this situation every day. I used to get angry, but now I smile and move on. But do I feel at ease? No.' Another thing that concerns him is the way the media cover situations when something negative happens to an asylum seeker. By contrast, success stories get a lot less attention, which is hard to understand given the trauma most migrants have experienced.

> *… being integrated would mean that I feel at ease about that, which is still not the case.*

Nevertheless, he remains positive, realising he is safe and can go to school, and have respect for life. 'I truly understand that we won't achieve much by focusing on the negatives. But the good things you do and an ability to keep smiling will help you to face daily challenges. And I am inspired by good people.' He sees many good people around him, among them Maltese officials and others who mentor him. 'I have huge respect for those people.' His focus now is on encouraging people. But if he could arrange it, he would like to bring more of those who are directly concerned to the discussion table when decisions are actually being taken. 'Now it's like: this is good for the migrants: sign it and take it. But we should involve migrants more in the process by making it more inclusive and taking account of their actual interests.' He concludes that migrants themselves should also make better use of such opportunities as early as possible, such as the Maltese integration programme 'I Belong.' 'It should go beyond ticking boxes and really offer participants something tangible.'

> *…we won't achieve much by focusing on the negatives. (…) I am inspired by good people.*

Despite his optimism, the horrific images Dursa sees all too often of refugees dying at sea really get to him. 'It remains a source of pain which it is not easy to recover from because it gives you flashbacks. I remember myself almost giving up. At one point, I told myself: if I don't cross, I'll die. I have to do this.' It was clear to him that staying in Libya involved a high likelihood of dying. 'Seeing people leaving also gives you hope. The thought that you won't be scared anymore of feeling a gun pressed against your head every other night, or of people running after you.'

His optimism got him through his ordeal. 'The idea that you can make it to Europe encourages people to take the risk. My pain, as a human being, is that we are watching these horrific images of people dying at sea or on the shores of Africa. And what do we do? The message from the EU seems to be: let them die. We need to understand that many of these people don't have a choice anymore. In the end, we have to find a way to ensure that such people can travel safely.'

> *[on boat refugees] … many of these people don't have a choice anymore.*

He observes that we are playing with other human beings' lives. 'The EU is also made up of human beings. The EU and its member states have many interests in Africa. A lot of funding goes to Africa, also feeding corruption.' He wonders why EU leaders don't create a better system to prevent this. 'If the EU says "We're full, we cannot take any more people", we should not forget that our history and what we are doing now can have a very negative impact, and gives people many reasons for wanting – or even feeling forced – to move. This costs many human lives. It is all connected: one thing leads to another.'

Interviews with Dursa Kadu, who came as a boat refugee to Malta, and Yana Mardus, a refugee from Ukraine

Being allowed to contribute to society, and feeling able to

Yana Mardus is very keen to share her story, one which is still fresh in her mind. 'I arrived in the Netherlands on 9 March 2022, during the third week after Russia attacked Ukraine.

> *When I came, I had no idea what I would do because it was complete chaos, with the first wave of refugees fleeing the war.*

When I came, I had no idea what I would do because it was complete chaos, with the first wave of refugees fleeing the war.' Her plan was just to go to the west of Ukraine and see what happened. When she was at the central station in Kyiv, she quickly realised it was impossible to take the train. 'It was a nightmare. I managed to get into a friend's car, with family, to go to Lviv. It took us two days, when it normally takes six hours.' She explains that entrances to towns had road blocks for defence, and the queues for cities were 20 km long. 'Long lines of cars with people panicking: that was the most difficult part.'

In Lviv, she stayed for three days with a family she had not met before. 'Then I heard about a bus that was leaving for Amsterdam. I had been to the Netherlands before, and it was an immediate yes, which I have never regretted.' She adds that her parents still live in central Ukraine. 'Several family

Yana Mardus

members, including some I don't know, went to my parents' place, from the eastern region. It was a time when people felt great solidarity towards each other, with everyone helping everyone else.' It is clear from her story that this solidarity was not limited to Ukraine. 'It turned out that the bus I got onto was organised privately by five or six Dutch people working at Amsterdam airport. They collected money and paid for three buses to take Ukrainian women and children abroad. It was a wonderful initiative.'

> *… people working at Amsterdam airport. They collected money and paid for three buses to take Ukrainian women and children abroad.*

The bus trip went very smoothly for her. 'The long queue at the Polish border was the main problem: we waited about eight hours. Once in the Netherlands, we felt we could breathe.' Things went very smoothly as far as ID checks were concerned. 'The only obstacles I encountered were physical ones. I showed my passport, with no problem whatsoever. There were also people on the bus who didn't have a passport, who had literally left their homes in their pyjamas. Everyone was accepted.'

Once in the Netherlands, she felt welcomed and supported. 'For the first two months, we stayed in a hotel with about 120 people, then we were allocated more permanent places to live. It was all really well organised. We had food and shelter, and from the first month we also had a living allowance. The local authorities arranged help for us to solve our problems, using an organisation that had experience with Syrian refugees.' Given her knowledge of English, Yana was quite involved with the rest of the group. 'I volunteered as an interpreter, so I was regularly involved, as were some other Ukrainians who had fled. But everything else was done by Dutch people.'

Yana believes that the Temporary Protection Directive that was activated by the Council in early March 2022 made her life much easier from a procedural point of view. 'Otherwise, things would have been more difficult. We got this opportunity to save ourselves, and we were accepted and given refuge. We were really welcomed.' This also made a difference in terms of finding work. 'After a few months staying in another place the authorities had provided, I found a host family in The Hague, where I'd

> *We got this opportunity to save ourselves, and we were accepted and given refuge. We were really welcomed.*

started working.' She explains that her colleagues had helped her to find her host family. 'I've been with them since February now; they're amazing people.'

While she initially found work at the Netherlands Court of Audit, she now works in the private sector. 'Initially, I worked on a programme supported by the Dutch government to strengthen public finances in countries in eastern Europe, including Ukraine. But this was only temporary, so I applied for some vacancies and now work for a company specialising in 'Know your Customer', 'Customer Due Diligence', and anti-money laundering.' She adds that because of her educational background, with a master's in law and another in psychology, she finds it very interesting from a professional point of view.

However, whether she can continue will also depend on the measures the EU and her host member state will take. 'I really would like to know what will come after the Temporary Protection Directive, which can only be extended until 2025 as far as I know. I would really welcome some clarity and predictability to plan my future, and be certain about my legal status in the Netherlands.' This also applies to her current employer. 'My employer would appreciate some certainty too before they can offer me a permanent contract. And employers also want to know whether it is reasonable to invest in an employee's professional development.' She hopes she can switch to a normal working visa, if that is an option. 'My employer would prefer me to be able to switch to a highly skilled migrant contract. But for that, you need to have been hired from outside the Netherlands.' She adds that such practical questions have a considerable impact on her future.

> *I would really welcome some clarity and predictability to plan my future…*

Yana has since been back to Kyiv, where she stayed for a few weeks. 'It wasn't easy, but when you've been through the ordeal once already, you become more resilient.' Something she could not get used to was the air raid sirens. 'I find it impossible to live with the sirens, and this helped me to decide that I really wanted to stay in the Netherlands. Maybe air raid sirens can become part of normal life, but they shouldn't have to be. You hear the noise, think about the likelihood of your apartment being hit, and then you need to go to the air raid shelter.'

> *Maybe air raid sirens can become part of normal life, but they shouldn't have to be.*

Admittedly, there are several pull factors in the Netherlands, and Yana never felt criticised for being a refugee and using Dutch facilities. 'I received support from many people, both practical and moral, which was very impressive. And there was no blame: quite the opposite, in fact, because I am not just using something but am able to contribute to Dutch society.' She observes that what also helps is the smooth interaction with local and state authorities, as well as with banks and employers. 'Bureaucracy is really well organised in the Netherlands. I was provided with various opportunities for social integration. I even joined a club in a local library to learn Dutch, all free of charge.' She concludes by saying that there are many opportunities if you are willing to invest. 'If you make the effort, you can get there. You must be polite, and gratitude opens many doors. It sounds simple, but it's true.'

> *… I am not just using something but am able to contribute to Dutch society.*

The Pact on migration and asylum and the evolution of the EU migration policy

By Michael Spindelegger, Director General, International Centre for Migration Policy Development (ICMPD)

Source: Pixabay

On 8 June, the Council of the European Union reached an agreement on its negotiating position regarding key legislative reforms that were proposed in the 'Pact on migration and asylum'. Against the backdrop of deep divisions concerning major aspects of the reform, the Pact is undoubtedly a major political success for the Swedish EU presidency, the member states and the European Commission. However, only time will tell whether it represents a real breakthrough in EU migration and asylum policy. Michael Spindelegger, Director General of the International Centre for Migration Policy Development, reflects on how this new Pact may affect the EU's migration policy and how it connects to the wider evolution of this policy.

Ever increasing levels of human mobility

Europe and the EU are experiencing perhaps the greatest challenges since the end of the Second World War, not only in terms of the geopolitical situation but also in terms of flight and migration. A new migration reality has emerged, shaped by an increasing number of conflicts in the wider neighbourhood, economic and demographic imbalances between the world's regions, the growing impacts of climate change, and stiff geopolitical competition.

Migration pressures will remain high in 2023 and beyond. The number of globally displaced people has increased by more than 12% since last year, from 104.5 million to 117.2 million, nearly twice as many as at the height of the 2015 refugee crisis. In 2022, EU member states recorded a total of 996.000 asylum applications – a 64% increase compared to 2021. Irregular border crossings rose by 58% and preliminary figures suggest that these trends will continue in 2023 as well.

Box 1 – International Centre for Migration Policy Development

ICMPD is a Vienna-based international organisation with 20 member states represented in 30 countries, and almost 500 staff members, active in more than 90 countries worldwide. It aims to create efficient cooperation and partnerships along migration routes through an approach of structurally linking policy and research, migration dialogues and capacity building.

In response to large-scale displacement following Russia's aggression against Ukraine, the member states invoked the EU Temporary Protection Directive for the first time in history. The quick and unified reaction prevented a border crisis, but the EU is still having to deal with the biggest refugee crisis in Europe since the end of the Second World War. More than 5 million Ukrainian citizens have been granted temporary protection in the EU and other European countries. But integration will take time and investment, and so will the promotion of safe and sustainable return to Ukraine once the situation allows it.

Europeanisation of asylum and migration

Against this backdrop, consensus among the member states on the reform and further development of the common asylum and migration policy seems more urgent than ever. Such reform can build upon a solid base that has developed over the last thirty years, but will also inevitably come up against divisions that persist among the member states over the exact course to take.

Common EU migration policies did not begin until after 1990, in response to increasing migration pressures and the 'first asylum crisis' of the 1990s. Member states, however, continued to regard control over the admission of non-EU workers and students as an indispensable component of nation-state sovereignty and were not prepared to surrender their powers in the area of regular migration to a supranational body. This resulted in the varying degrees of Europeanisation in the areas of asylum and migration. The 1996/1997 Treaty of Amsterdam gave the EU fundamental powers in the areas of protection, visa, irregular migration, return, and combating trafficking in human beings; but it did not introduce a comprehensive regulatory framework for managing the immigration of economic migrants from non-EU countries.

A central component of the 'Europeanised migration policy was the 'Schengen acquis', a set of rules and legislation establishing an area without internal border controls. Schengen, however, could never resolve the contradiction between the principle of control-free travel and the member states' desire to maintain control over the entry of non-Schengen nationals into their respective territories. It puts most of the burden on member states located at the external borders in terms of entry control and arrivals of asylum seekers, which also has implications for the effectiveness of one pillar of the EU migration system, namely the Common European Asylum System (CEAS). Work on the CEAS began in 1999 with the formulation of its core principles: a common commitment to the protection of the politically persecuted, a common approach to asylum, common procedural and reception standards, and enhanced cooperation and solidarity among member states.

The CEAS was implemented through five directives and regulations. The most important, most controversial, and ultimately least effective of these has proven to be the 'Dublin Regulation', which set out the criteria for determining which member state is responsible for processing an asylum application. The aim was to make only one member state responsible for processing an asylum application at a time. This was, subject to the principle of family unity, the member state in which the first application was made on EU territory. From the outset, it was clear that the Dublin system left two key questions unanswered, namely the question of internal EU burden-sharing and that of its enforceability against member states that would not or could not abide by the rules.

Consequently, and immediately upon taking office in 2019, European Commission President von der Leyen embarked on a fresh start on asylum and migration with the aim of breaking the deadlock that had developed around the Dublin system. In a holistic attempt, a 'new EU Pact on migration and asylum' was proposed to thoroughly integrate the different interlinked migration policy areas and the policy's internal, external and border control dimensions.

The Pact included a number of new proposals relating to the main stumbling block to agreement among member states, namely the question of (mandatory) solidarity and responsibility sharing. The overall pressure on EU asylum systems was to be reduced by a fast-track border procedure at the external borders that would encompass a pre-entry screening, an asylum procedure and – where applicable – a swift return procedure in one seamless process. The scope of solidarity was to be broadened to include a return

dimension and forms of 'flexible solidarity' such as the provision of staff and financial support instead of relocating applicants. Taken together, the envisaged reform of the EU asylum and migration policy included no fewer than 31 legislative packages.

Two of the proposals were of particular importance to the reform of the CEAS but also the subjects of the most controversial discussions. The proposed 'Asylum and Migration Management Regulation' (AMMR), intended to replace the Dublin Regulation, and 'Asylum Procedure Regulation' (APR) envisaged a common, streamlined procedure that all member states would need to follow for people seeking international protection.

Breakthrough in June 2023

Ever since the Pact was presented in 2020, member states have been unable to agree a common line on these two proposals. The southern member states insisted on a mandatory distribution of asylum applicants, which was rejected by most of the others. The northern member states' main concerns were to strengthen the protection of the external borders, improve return rates and impose greater restrictions on secondary movements of asylum seekers. Talks stalled and concerns grew that an agreement on the Pact might not be reached before the European Parliament elections in 2024.

However, the Swedish EU presidency achieved a last-minute breakthrough in June of this year, when the Council agreed a negotiating position on the AMMR and the APR. The first cornerstone of the agreed compromise is the introduction of mandatory border procedure for asylum applicants who have misled the authorities with false information or who have very little prospect of being granted asylum. The second is a proposed new solidarity mechanism that provides for mandatory solidarity but is flexible as regards the choice of contributions. Member states can offer to relocate applicants, make financial contributions, deploy personnel or contribute to capacity building. As a starting point, the annual target for relocations from the most affected member states was set at 30 000, or a financial contribution of €20 000 in lieu of each individual relocation. The third main element is the streamlining and simplification of the current Dublin rules within the framework of the proposed AMMR. In addition, the regulation contains provisions aimed at discouraging secondary movements, for instance by limiting the possibilities to shift responsibility for an application from one member state to another.

When considering whether the agreed compromise represents a real breakthrough, one has to distinguish between two main aspects. The actual impact on irregular arrivals will be limited for the time being, mainly in view of the almost 1 million asylum applications in 2022. The envisaged targets for relocation are therefore not that high and member states will need time to build up functioning systems, equip them with the necessary capacities, and develop working procedures among themselves. At a political level, however, the compromise is a much-needed signal that the EU remains capable of action, and that the member states are willing to seek compromises and push ahead with reforms even on the most contested issues.

However, there should be no illusions about the way ahead. Member states have not always abided by majority decisions of the Council, for example on the issue of the distribution of asylum seekers during the refugee crisis in 2015, when some member states did not keep their initial pledges. Even now, member states that did not agree with the Council's negotiating position at the time state that they do not feel bound by the obligations resulting from the decision-making process. The Council's decision of 8 June is an important step in the right direction but only time will tell whether this step develops into a real milestone on the way to a better functioning CEAS.

Developments in the external dimension of EU's migration policy, too

Since 2015, major progress has also been made in the second dimension of EU migration policy – the external dimension. For a long time, this field was mainly covered by technical cooperation in building migration management capacities in non-EU countries. It was only in the wake of the 2015 refugee crisis that cooperation with non-EU countries was escalated to the level of heads of state and government and endowed with more far-reaching resources. Wich was demonstrated, for example, by the Valletta Action Plan of 2015, the Migration Partnership Framework of 2016, the continued cooperation with Turkey within the framework of the 'EU-Turkey Statement', also from 2016, a series of refugee- or migration-related emergency and investment funds, or the

EU talent partnerships introduced by the Pact in 2020. The members states unanimously supported the strengthening of instruments of the external dimension of EU migration policy, acknowledging that most of the EU's migration challenges have their origin outside its territory and can only be addressed in close cooperation and partnership with non-EU countries of origin and transit.

Closely related is a list of priorities which the EU should follow together with its non-EU partners. In combination with the above-mentioned internal reform steps, these priorities could lead to a real change in the situation. I can think of seven:

1. Better migration solutions depend on intensive and open cooperation, at a political and practical level, between all states connected by migration flows. This involves permanent dialogue, setting common goals and developing joint agendas, which should focus on concrete measures and programmes to improve the situation on the ground, for example by creating jobs in countries of origin. To this end, the business community and private sector need to be more systematically involved as well.

2. Migration policies must find a better balance between migration control and the expansion of legal migration channels. Both spheres must be closely aligned, and opportunities and restrictions must be clearly communicated to countries of origin and potential migrants.

3. EU member states should invest in bringing vocational education and training standards in countries of origin up to the same level as their own. This will not only provide potential migrants with the formal and informal qualifications required on European labour markets, but also contribute to economic development in those countries. Seeing this benefit is likely to increase their willingness to cooperate more closely in the areas of control and return as well.

4. Return policies have to be made more intelligent by linking them to job creation and development cooperation.

5. EU member states should reflect critically upon the common visa policy. In 2022, more than 30% of all asylum applications were submitted by nationals with visa-free entry to the EU or a neighbouring country whose chances of receiving a positive decision on their claims were very low. Tighter visa policies have much potential to reduce overall application numbers.

6. Asylum procedures have to be faster but still legally sound. Lengthy procedures are a major reason why applicants from nations with low recognition rates still apply for asylum and hope to be able to stay for years before a final negative decision;

7. The fight against migrant-smuggling networks must become more serious. The resources allocated to this cause remain insufficient, and that is a mistake given the critical role these networks play in irregular migration.

Nevertheless, key questions remain

In the end, however, three major questions remain. What should a functioning, fair and global refugee regime look like? How can the international community help to reduce the number of violent conflicts that are still the main driver of flight and irregular migration? And how can a fair global economic order provide opportunities for as many people as possible and limit the need for disorderly and irregular migration? These three questions are still awaiting satisfactory answers. Only once they receive them will a final breakthrough on migration issues also be in sight.

Civil society's key concerns about the reform of EU asylum law

By Catherine Woollard, European Council for Refugees and Exiles (ECRE)

The new proposals for the EU Pact on Migration and Asylum have been closely followed and analysed by various civil society organisations. Their major concerns include ensuring that the new Pact is not only in accordance with the values the EU stands for but is also in accordance with international law. Catherine Woollard, Director of the European Council for Refugees and Exiles, ECRE, frequently publishes her analysis and comments on the reform. Below she considers the main concerns of civil society and outlines priorities for the final stage of the reform process.

Concerns about the proposals

The reform of the EU's Common European Asylum System (CEAS), the body of EU law on asylum matters, is reaching a conclusion after seven long years. The reform will introduce significant changes into the CEAS, already one of the most contentious areas of EU law. Civil society has closely followed the process, providing analysis, proposing amendments to the legislative proposals, and working with the co-legislators.

While civil society remains concerned about the content of the changes, the end of the reform process also marks an opportunity to return to a focus on implementation after many years when time and resources have been concentrated elsewhere, with compliance often neglected.

Civil society has expressed many concerns about the proposals. First, the proposals generally reduce protection standards in Europe. They are based on containing people at borders in order to facilitate rapid return to the countries of origin or to third countries and on a more restrictive approach which aims to

> **Box 1 – ECRE**
> The European Council for Refugees and Exiles – ECRE – is an alliance of 117 NGOs in 40 European countries. It was established in 1974 with the aim of facilitating collective civil society work on the right to asylum. ECRE's mission is to protect and advance the rights of refugees, asylum-seekers and other forcibly displaced persons in Europe and in Europe's external policies. Its diverse membership ranges from large INGOs with global presence to small organisations of dedicated activists.
> ECRE's members' work covers all aspects of forcible displacement from zones of conflict, to dangerous routes and arrival in Europe, to long-term inclusion in European societies. ECRE's own activities are in three areas: legal support/litigation, advocacy and communications. ECRE's secretariat is located in Brussels.

deter people from seeking protection. This is based on the oft-repeated but nonetheless false notion that a large majority of asylum applicants arriving in Europe do not have

protection needs. In fact, the protection rate – the percentage of asylum seekers who are recognised as in need of international protection – has been consistently high. In 2022, at first instance the figure was 49% on average across the EU. At second or further instances, following an appeal or review, around one-third of cases result in a positive decision, and there are also people with protection needs who do not have access to a fair or even an in-merits process, for instance, for Syrians who arrive in Greece. All told, it seems very probable that a majority of those arriving are entitled to protection – unsurprising when by far the most prevalent countries of origin are Syria and Afghanistan, with Iraq, Iran, Eritrea, Turkey and Venezuela other major countries of origin. In any case, harsh policies don't serve as a deterrent when record number of people are displaced, with over 90% hosted in poor or fragile countries.

Second, the Pact and the 2016 reforms that preceded it, envisage a greater focus at the borders. The Screening Regulation provides for a screening process to take place at the EU's external borders for all people arriving, in a fiction of non-entry - the pretence that the person has not entered the territory of the country (and the EU), which contributes to justifying the use of detention as the recast Reception Conditions Directive allows for the use of detention to assess whether a person should be allowed to enter.

In addition to the new screening process, the heart of the reform is the expanded use of special procedures, including the mandatory use of the asylum border procedure, which exists in the current CEAS but is not mandatory, and of the new return border procedure. In addition, acceleration of the examination procedure becomes mandatory in many cases.

Civil society is concerned because border procedures reduce the likelihood of protection being granted, often because a fair process is harder to realise in the border context. In addition, accelerated procedures may not allow sufficient time to examine claims, given the many complex cases in asylum systems. The erosion of procedural guarantees foreseen will weaken the position of the applicant vis-à-vis the already more powerful and often hostile state. As in any proceeding in any area of law, procedural guarantees are there to ensure fairness, which is undermined if they are harder to access.

Overall, civil society is also concerned about the increased administrative burden created by these new and highly complex procedural changes. A more efficient system would involve greater investment in the regular procedure, rather than the creation and management of this complex labyrinth of special procedures. A related fear is that, faced with increased responsibilities, the member states at the EU's external borders are more likely to resort to pushbacks. The experience in Greece tends to indicate this as a possibility.

Third, although the reforms are premised on creating a new balance between responsibility and solidarity, the rules on allocation of responsibility in the new Regulation on Asylum and Migration Management (RAMM) remain largely similar to the current Dublin system. There is even increased responsibility for the countries at the external borders, as the duration of responsibility for an applicant is extended significantly and there are measures throughout the package to enforce take-back requests (whereby countries seek to transfer asylum applicants back to the country where they entered the EU), many of which fail currently.

For years, if not decades, the dysfunctionality of the Dublin Regulation, and notably of the principle of first entry, has been recognised. Although the Dublin Regulation is repealed and replaced by the RAMM, civil society is concerned the reform shies away from the deeper reform many consider necessary.

Fourth, punitive and deterrent measures run through the proposals but they are unlikely to discourage people from seeking protection, given that the majority are fleeing violence, persecution, and repression. Others who may not qualify as requiring international protection tend nonetheless to be in situations of forced migration. The measures proposed are likely to result rather in increased destitution, irregularity and vulnerability to exploitation. For example, the expansion of border detention may lead smugglers to diversify routes and switch to more expensive and more dangerous options. Attempts to punish 'secondary movement' (onward movement within the EU) include

withdrawal of reception conditions however people are still likely to move onward – to escape poor reception conditions, detention or lack of integration prospects in the member states at the border.

Finally, many of the proposals are highly complex and have been rendered even more so by the amendments proposed by the co-legislators. In some cases, questions arise about workability and whether the proposals can actually be implemented

Three priorities for the conclusion of final stage

Defend the right to asylum in the negotiations

Although the overall direction of the reforms is negative, there is still a chance for improvement. As ECRE's comparison of the positions of the European Parliament and the Council shows, there are numerous points on which the two disagree. The final stage in the process should focus on maintaining the positive changes that have been introduced and reducing or mitigating damage linked with negative changes. Generally, the Parliament's amendments are preferable, although, on the main elements of the reforms, it has already made significant concessions and largely accepted the provisions in the Commission proposal.

The Council's amendments, on the other hand, tend to worsen the proposals from a fundamental rights perspective, although there are also examples of where the Council's position is better. In the negotiations, the Parliament must ensure that it defends its positions but also that – where it does concede – it then receives sufficient, equivalent concessions in return. For example, one of the points of disagreement is on the border procedure, where Parliament's position removes the mandatory use of the border procedure, while the Council's expands its use. It is widely assumed that the Parliament will concede on this point and accept the mandatory use of border procedures for certain categories of applicants. Given the serious impact of the border procedure, any such concession must be accompanied by other changes, including the bolstering of procedural guarantees, such as free legal assistance.

Definitively end the reform process: back to compliance

For seven years, drafting, promoting, analysing and negotiating the reforms has absorbed a large amount of time, not least of the European Commission. This has been to the detriment of enforcement of EU asylum law, which is already in place: the reforms have not been launched in a void, the EU already has extensive, complex and relatively new instruments forming a common asylum system. ECRE argued that the focus should have been on compliance and not reform (with the exception of the Dublin Regulation), given the widespread, often flagrant violations of the law which take place across Europe.

When the reform ends, prominence should be given to implementation. This requires a definitive end to the process, including the withdrawal of proposals that are not accepted. In particular, ECRE argues for the withdrawal of the hugely damaging instrumentalisation proposal[1], which, if passed, would lead to a de-harmonisation of EU asylum law, as well as undermining the global protection system. If the reform continues after spring 2024 it will immediately run into challenges: a new Parliament will be elected in June 2024 and a new Commission nominated shortly afterwards, at the same time, the Council Presidency will be held from July 2024 by Hungary, Poland and then Denmark, all Member States with extremist positioning on asylum policy and likely to use the process to generate anti-EU sentiment.

---

1   In response to the increasing role of state actors (for example by the Belarusian regime) in artificially creating and facilitating irregular migration, using migratory flows as a tool – instrumentalise them - for political purposes, to destabilise the EU and its member states, this proposal sets up an emergency migration and asylum management procedure in relation to third-country nationals and stateless persons apprehended or found in the proximity of the border with a third country instrumentalising migrants after an unauthorised crossing or after having presented themselves at border crossing points.

Fair and comprehensive implementation

The implementation that follows the conclusion of the reform should be comprehensive and fair, ensuring that member states comply with the rules in all areas of the CEAS. This means that longstanding implementation gaps must be addressed, including substandard reception conditions; the asylum lottery that leads to significant divergences in protection rates; the systematic neglect of the procedural guarantees; the lack of registration; and the failure to ensure that the family unity and children's rights are respected in allocation of responsibility for applications.

The debate about implementation has already begun and there are worrying signs that implementation might be selective, focusing on certain parts of the reform which are considered priority for some states, such as the border procedure. As part of a wider proposal for the revision of the EU's budget, the Commission has proposed an additional €2 billion to be allocated to the Asylum, Migration and Integration Fund (AMIF) for the next four years. It refers to reception infrastructure, returns and relocations. If the proposal is accepted, it must be recalibrated to ensure a balanced implementation of the Pact from the start.

Finally, whatever legislative reforms are agreed, EU asylum law must be implemented in accordance with jurisprudence of the Court of Justice of the European Union, with EU primary legislation including the Charter of Fundamental Rights and with international law. The EU's oversight bodies, including the European Court of Auditors, will all have a crucial role to play in ensuring that a functioning asylum system in the EU is in place through proper implementation of the reformed legal framework.

The new Pact on Migration and Asylum and human rights: continued hypocrisy or outright dehumanisation?

By Professor Violeta Moreno-Lax, Queen Mary University of London & University of Barcelona

Source: Prazisss/Depositphotos

With the von der Leyen Commission starting its mandate pondering on the values and principles the EU stands for, the new Pact on Migration and Asylum needs to reconcile border management measures with international fundamental rights the EU and the member states have committed themselves to. No surprise that new measures to manage increasing migrant flows are critically scrutinised in this respect. This is not only relevant from an academic perspective but even more so from a legal and practical one, since frequently courts at different levels repeal or condemn authorities' measures or actions due to these international and EU commitments. Professor Violeta Moreno-Lax is Professor of Law at Queen Mary University of London, specialised in international and EU law at the intersection with migration, border violence, and security, Visiting Professor at the College of Europe, and Ramón y Cajal Senior Research Fellow at Barcelona University. In her article[1] she covers aspirations of the new Pact and measures and practices such as the weaponisation of migrants, negating rights and pushbacks, and the way the new Pact addresses them.

The high-stakes political game of migration in the EU

Migration has long been politicised in the EU as a high-stakes domain that can bring down governments and win elections. Populist depictions speak of the existential risks of uncontrolled movement, the public security threat of unauthorised entries, and have served to strongly securitise the field. From framings of 'invasion', a 'jungle' that may overtake the 'garden' of Europe, to flood 'water against a dam' metaphors, migration — particularly *irregular* migration — is routinely portrayed as an indomitable power that may shake the 'very foundation' of the integration project. Recently, EU High Representative Josep Borrell has warned that it may constitute 'a dissolving force for the European Union'. This is how intractable the policy area has become.

---

1 Drawing on Violeta Moreno-Lax, 'The Crisification of Migration Law', forthcoming in: Stella Burch Elias, Kevin Cope and Jill Goldenziel (eds), *The Oxford Handbook of Comparative Immigration Law*, (Oxford: Oxford University Press).

The negotiations of the New Pact on Migration and Asylum instruments show this well. The debate is highly polarised, between those that would like to maintain some measure of humanitarianism and those for whom the 'fight' against irregular arrivals is the top priority to be achieved by any means. This is said to be necessary to avoid that 'smugglers and traffickers define who and decide who is coming through the European Union'. That most of those reaching Europe in the last years have been refugees fleeing war in Syria or the Taliban regime in Afghanistan has not been sufficient to persuade EU leaders to reach a consensus grounded in the dignity and rights of those concerned. Even after the much touted 'political agreement' on the Crisis Management Regulation Proposal forged in early October 2023, due to replace the dysfunctional Dublin system and culminate Council negotiations of the New Pact reforms, have rifts between national governments persisted. Hungarian President, Viktor Órban, one of those opposing the agreement alongside Poland, has gone as far as to compare it with being 'legally raped' by fellow member states. This is the magnitude of the tensions surrounding migration management in the EU today.

The New Pact and fundamental rights: A case of 'organised hypocrisy'?

The place of fundamental rights and the compatibility of the measures proposed with EU and international law standards have been progressively diluted. While, in the aftermath of the 2015 'refugee crisis', the European Commission's ambition, at least at the rhetorical level, was to offer a 'fresh start' and achieve a more 'humane' migration and asylum system, this has soon morphed into a vision of 'pragmatism', ready to sacrifice EU principles and values to overcome policy deadlock. Although the rights to asylum and to *non-refoulement* (Arts 18 and 19 of the EU Charter) have featured as legally binding primary law obligations since the entry into force of the Lisbon Treaty, both the EU and the member states tend to be oblivious of the necessity to ensure their efficacy on the ground.

All instruments proposed as part of the New Pact contain fundamental rights clauses, promising adherence to key obligations. Yet, the operational detail is opaque and contradictory. While access to asylum is supposedly maintained, a host of provisions on pre-screening, border procedures, and safe third country rules, make effective protection very difficult in practice. Externally, rather than focusing efforts on opening up legal channels, whether in the form of humanitarian visas or other formulas, the main strategy has been to reinforce containment and coercion *in* and *by* countries of origin and transit, including Türkiye, Libya, or Tunisia, through funding as well as political and material support. Such techniques of 'contactless control' thwart movement without establishing a clear jurisdictional link with those concerned, thereby aiding to defuse responsibility. All along, however, the EU pledges compliance with the human rights of refugees and migrants.

The gap between declared principles, on the one hand, and the practical-political constraints to which the EU, like other organisations, is confronted in its functioning, on the other, has been theorised as a case of 'organised hypocrisy'. In organisational sociology, the so-called 'capabilities-expectations gap' is considered a by-product of institutions' attempts at reconciling conflicting demands imposed on them from different perspectives. The gap is supposedly unwanted, if not even unconscious. It is considered the 'natural' result of the schism between commitments and resources, of the irreconcilable pressures imposed by the contradicting normative and technical environments within which organisations operate. These opposing forces are what leads to incoherencies between discourse and action, between law on the books and real-life application. Yet, the structural character of organised hypocrisy cannot be easily undone. It is the outcome of imperfect political compromises and incomplete bargains, bridging positions that remain inherently conflictual and that cannot be really reconciled. Ultimately, organised hypocrisy constitutes 'a necessity': the only way in which the Union can continue 'talking the talk' without 'walking the walk' of its constitutional principles and founding values (Arts 2, 3(5), 6 and 21 TEU). In this context, fundamental rights are mobilized at the symbolic, discursive level, to justify action, but without a real investment in their actual materialization.

The strategy of 'rescue-through-interdiction' deployed in the Mediterranean is a case in point. It has been forged through the years since Frontex launched its first maritime operation, presenting the interception of refugee boats as a life-saving measure that spares the dangers of deadly voyages, but without allowing access to the EU. It entails a 'rescue-without-protection' outcome. It virtually replaces rescue (understood as the 'delivery to a place of safety') with blocking displaced persons at ports of departure, in Libya and elsewhere, regardless of human rights implications, but using a language that conveys a humanitarian intent. Interdiction in this context fulfils the double role of 'combatting illegal immigration' while 'saving the lives of migrants' (Arts 1 and 2, Eurosur Regulation).

The approach treats migrants as threats ('*a* risk') to EU border security and as victims ('*at* risk') of traffickers and smugglers. They thereby become the *objects* of regulation, dispossessed of their legal agency and full rights, supposedly for 'their own good'. Interdiction is justified to 'save them'. Human rights are transformed in this process: from the ultimate limit on State action to their very justification. As a result, human rights are co-opted into a mechanism of control that discursively legitimizes action that actually undermines the legal position and protection of migrants. The act of interdiction, through the language of human rights, is converted into a human rights-implementing tool, regardless of the real impact of the measure on the human rights of migrants, which become ineffective.

From 'organised hypocrisy' to outright dehumanisation

The disconnection between human rights discourse and migrants' human rights realities in practice will be further cemented by the New Pact. The 'orchestrated instrumentalisation' crisis still unfolding in the aftermath of the 2021 EU-Belarus clash over refugee movements engineered by Lukashenko will embed rightlessness within the EU *acquis*, not as a result of organised hypocrisy, but as part of a conscious move of outright dehumanisation. The instrumentalisation package, consisting of several dedicated regulations, including a Provisional Emergency Measures Proposal adopted for the benefit of Latvia, Lithuania and Poland, and an Anti-instrumentalisation Regulation Proposal, in addition to a targeted revision of the Schengen Borders Code (SBC Amendment Proposal), demonstrate an evolution towards the normalisation of violence vis-à-vis (non-white) protection seekers in EU law. Not only extreme political views by far-right parties and governments, but the mainstream of the EU migration and asylum system will openly entrench hostility to refugees arriving through irregular means whenever it may be perceived that their arrival has been aided or exploited by a third country for political gain. Whenever migration may be deemed to have been instrumentalised, a range of exceptions and derogations from the rights that normally apply to border crossing and asylum claiming processes will become available to the member states.

The plan amounts to a 'legalisation of pushbacks'. The proposed definition of 'instrumentalisation' is so large and so vague that it involves the risk that the downgraded set of protections it envisages (Art 1, Anti-instrumentalisation Regulation Proposal) becomes generalised. A situation of instrumentalisation' is one 'where a third country instigates irregular migratory flows into the Union by actively encouraging or facilitating the movement of third country nationals to the external borders, onto or from within its territory and then onwards to those external borders, where such actions are indicative of an intention of a third country to destabilise the Union or a Member State, where the nature of such actions is liable to put at risk essential State functions, including its territorial integrity, the maintenance of law and order or the safeguard of its national security' (Recital 1, Anti-instrumentalisation Regulation Proposal; and Art 2(27), SBC Amendment Proposal).

Which factors will count as 'indications of an intention… to destabilise' is not specified. And how large the number of persons being instrumentalised may be irrelevant for them to constitute a 'risk' to 'essential State functions' or to the 'territorial integrity' of the State concerned, or its capacity to maintain law and order or 'safeguard… its national security' pursuant to the proposed definition. Basically, any designation of a situation by the member state concerned as one of instrumentalisation will allow it to have recourse to the new regime.

The origins of the proposed anti-instrumentalisation regime

The anti-instrumentalisation proposals can be traced back to the EU-Belarus row of July 2021. This is when Lukashenko, in retaliation to EU-imposed sanctions, started facilitating and channelling refugee flows in the direction of Poland, Lithuania, and Latvia, which prompted renewed reprisals by the Union. A Joint Statement by the Prime Ministers of the affected countries presented the 'ongoing crisis' as the consequence of systematic planning by the Belarusian government, which had organised the arrival of individuals onto its territory before they were 'unlawfully direc[ted] to the EU external border [and] … later prevented from returning to their countries of residence'. This Joint Statement acknowledged the apparent protection needs of the individuals concerned, decrying their 'weaponisation'. Yet, it also asserted the three member states' preparedness to 'take all necessary actions, including advancing advocating [sic] for the possible new restrictive measures by the EU to prevent any further illegal immigration orchestrated by the Belarusian State', disregarding the rights to leave any country, to asylum and to *non-refoulement* to which the persons concerned were entitled as a matter of law.

Later statements forwent any references to the protection needs of the individuals affected, emphasising instead Belarus' actions as a 'hybrid attack against the EU', and condemning Lukashenko's attempt to 'weaponis[e] irregular migration for achieving political goals'. The conversation progressively dehumanised the migrants, framing them as 'living weapons' or 'living shields', referring to their instrumentalisation as rendering the situation unmanageable, despite the small numbers involved. Indeed, the Commission recorded just 7,698 arrivals from July to November 2021.

The warlike conceptualisation allowed for the adoption of highly restrictive measures, most of which are still in place today. While Lithuania declared an 'extraordinary situation', warranting the disapplication of essential EU, international and constitutional protections vis-à-vis third-country nationals arriving at the border, the Polish government declared a 'state of emergency' and adopted similar derogations. In Latvia, the state of emergency has continued to be extended on the ground that the risks of 'illegal migration' still remain, and with five extensions between 2021-22 is 'effectively becoming a permanent condition'. The three countries have also increased the militarization of their respective border zones, banned the press, humanitarian actors and civil society organisations from approaching the area, erected new fences, and passed national laws, allowing for extraordinary powers to the military, police forces, and border guards, including to deny entry and perform summary expulsions, effectively regularising pushbacks (in Poland, Lithuania, and Latvia). Their responses have, in effect, 'followed very similar inhumane tactics to those practiced by the Belarusian government'.

A pattern of institutionalised pushbacks

The pattern of institutionalised pushbacks continues, with over 50,000 cases documented from Poland to Belarus and a further 12,000 'preventions of irregular crossings of the border' since the start of the 'crisis'. An additional 11,000 summary expulsions have been recorded from Lithuania, and another 4,000 from Latvia in 2022. The main countries of origin of the persons affected are Syria and Afghanistan, which remain top refugee-producing countries according to UNHCR. In addition, deaths, disappearances, detention in inhuman conditions, and destitution on both sides of the border have become commonplace.

Many have expressed criticism, including the UN High Commissioner for Human Rights, UNHCR and IOM, several Special Rapporteurs, the Council of Europe Commissioner for Human Rights (at least on two occasions), as well as several NGOs, including Amnesty International, Human Rights Watch, and MSF (Doctors Without Borders). The Strasbourg Court has condemned Poland (in *M.K. and Others*; *D.A. and Others*; *A.I. and Others*; and *A.B. and Others*) for not providing effective access to asylum procedures to applicants arriving from Belarus, finding the country unsafe and removals thereto in contravention of the prohibitions of *refoulement*, ill treatment and collective expulsion. The Court has also granted interim measures against Lithuania, Poland and Latvia, requiring authorities to stop the summary expulsions that they were about to perform. However, the EU has by and large sided with its member states.

The characterisation of events as a 'hybrid attack to destabilise Europe', in the words of von der Leyen, has led to an exaggerated reaction. Without providing specific details, the Commission speaks of a 'hybrid threat' that 'represent[s] a real and present danger to the EU's security'. How exactly the instrumentalisation of human suffering may be capable of 'destabilising or undermining [EU] society and key institutions', of 'putting [EU] citizens at risk', even with potential 'global ramifications … for the [entire] international community', is never explained. But it is this assumption that justifies the mobilisation of a superlative response. It is on this basis that the EU deploys a 'holistic' and 'comprehensive action against the Belarus strategy of state-sponsored instrumentalisation of migrants', including substantial funds, emergency aid, operational assistance, and sanctions, to 'cut off opportunities for migrant smuggling'. Interventions with partner countries, 'asked to fight smuggling networks and to impose tighter controls on flights and passengers' or to start 'organising repatriation flights', have been presented as innocuous attempts at 'helping people to return home'. No reference has been made to their fundamental (EU) rights, nor to the duty to respect them that binds the EU and the member states concerned (Art 51 of the EU Charter).

Negating rights: normalising pushbacks at EU level

Despite Commissioner Johansson affirming that 'pushbacks should never be normalised … [and] should never be legalised', this is actually what the anti-instrumentalisation package entails. Following a petition by twelve member states 'to adapt the existing legal framework to the new realities' and with a view to 'enabling [the member states] to adequately address [future] attempts of instrumentalisation of illegal migration', ensuring a 'maximum level of security', the Commission has proposed several instruments. As mentioned above, not only has it submitted a proposal for a Regulation on provisional emergency measures in support of Latvia, Lithuania and Poland, but it has also tabled additional measures that, if adopted, will embed and consolidate the provisional ones, providing a 'permanent toolbox'.

The proposal for provisional measures is presented with a view to 'countering the ongoing hybrid attack launched by the Belarusian regime' so as to 'ensure effective control of [the EU's] external borders' (Provisional Emergency Measures Proposal, p 1). The proposal aims to introduce 'a temporary emergency migration and asylum management procedure tailored to the needs … [of] the current situation' (Provisional Emergency Measures Proposal, p 4). This procedure amounts to a normalisation of pushbacks, which are deemed as being 'forced by the current circumstances' (ibid.).

The main features of the procedure (Provisional Emergency Measures Proposal, Art 2) include the possibility for the member states affected to register asylum applications only at specific registration points — possibly implying that claims not presented at those points may be rejected. It also contemplates the extension of the deadline to register claims to up to four weeks — leaving claimants in limbo in the interim and allowing for any pushbacks to go unaccounted for. It provides the option to apply the 'accelerated border procedure' to all applicants — justified as a means to 'limit the possibility for Belarus to target for instrumentalisation third-country nationals to whom the border procedure cannot [normally] be applied' (Provisional Emergency Measures Proposal, p 6) — the idea being to reduce procedural guarantees across the board and 'examine an application at the border without authorising entry to the territory' (ibid.), thus generalising pre-entry detention (*cf.* CJEU *Commission v. Hungary*).

The procedure will also entail the power to extend the total duration of the assessment process for sixteen weeks, including appeals — to 'help the Member State [concerned] to apply the fiction of non-entry [into their territory and the concomitant exclusion of attendant rights] for a longer period of time' (Provisional Emergency Measures Proposal, p 7). It will also allow the possibility to 'limit the automatic suspensive effect of an appeal' (ibid.), which runs afoul of effective remedy standards; the option to reduce material reception conditions 'to cover only basic needs' (ibid. and Art 3); and the possibility to derogate from specific safeguards applicable during removal proceedings (ibid. and Art 4). This divestiture of rights is supposed to be needed to provide for 'the necessary flexibility' to counter a situation of grave 'urgency' (Provisional Emergency Measures Proposal, p 10). But how exactly the arrival of a few thousand refugees may violate the

'the territorial integrity and security of the Member States' is never told (Provisional Emergency Measures Proposal, p 9). Their presence is depicted as 'violent' by definition and to 'be avoided at all costs' (ibid.).

Closing the gap, ending hypocrisy: generalising outright de-humanisation

This supposedly provisional framework has been incorporated into a separate proposal for a general Anti-instrumentalisation Regulation and reinforced via an amendment to the Schengen Borders Code — the general instrument governing the movement of persons across borders under EU law. What these mechanisms will do is to consolidate the 'emergency migration and asylum management procedure', putting it at the disposal of the member states in any future situations of purported instrumentalisation (Recital 3 and Arts 2-4, Anti-instrumentalisation Regulation Proposal; recast Arts 5 and 13, SBC Amendment Proposal). When confronted with any such future scenarios, the member states 'shall intensify border surveillance as necessary in order to address the increased threat', in particular, national authorities 'shall enhance, as appropriate, the resources and technical means to *prevent* an unauthorised crossing of the border' (recast Art 13(5), SBC Amendment Proposal), which invites recourse to coercive methods, including pushbacks.

The gap between rhetoric and practice may well be closed as a result of the adoption of the New Pact instruments. The anti-instrumentalisation package may signify the end of 'migration hypocrisy'. However, rather than approaching law to principle or redressing malpractices, this will be achieved by attempting a reformulation of the relevant rules (in a bid to also presumably downplay the underlying values or, at least, disapply them vis-à-vis 'unwanted migrants'). Those reaching the Union in search of asylum, if arrived without permission — a situation facing 90% of those seeking protection who become recognised as refugees, will be greeted with aggressive, though supposedly 'legalised', forms of coercion, deterrence, and hostility. Once-taboo mechanisms will enter the mainstream. Instead of rectifying conduct to align it with the normative foundations of the EU, demonising narratives will gain political and policy ground, normalising violence against protection seekers. The Union will thereby become a site of open and outright de-humanisation. Organised hypocrisy will be resolved, but at the cost of the EU's founding principles.

The dawn of a new age of implementation in EU migration policymaking?

By Hanne Beirens, Migration Policy Institute Europe

Source: velkol /Depositphotos

Dawn of a new age.

We may be on the threshold of a new age, one which places implementation and impact – what happens on the ground – closer to the core of the EU's migration policy mission. What are the signs that we may be at the dawn of a new era and what is driving this trend towards situating impact at the heart of policymaking? Hanne Beirens, the Director of Migration Policy Institute Europe, identifies several signals in Brussels and beyond, the EU now needs to deliver on a policy area with high visibility, high dependency between member states, and pressing expectations from EU voters. She describes various things that indicate a genuine desire to achieve an impact on the ground.

Widespread sense of urgency for change

Brussels, the beating heart of EU policymaking, is in a frenzy finalising negotiations on the new Pact on Migration and Asylum. With European elections due next June, and the current European Commission's tenure ending in October 2024, the timeline for an EU-wide agreement on migration is short. The Pact needs a green light from the Commission, European Council heads of state, and the European Parliament in the first months of 2024.

Beyond the basic political calendar, Pact negotiators face other key pressures. A renewed sense of chaos – of not getting a grip on the migration situation in Europe's neighbourhood – is causing sleepless nights in capitals across the bloc, and stirring thoughts of a drastic departure from the traditional approaches to migration and asylum. The number of asylum seekers and other migrants arriving on EU shores and at its external land borders has reached levels surpassed only by those of the 2015-2016 migration crisis, when more than two million people arrived. Member states such as Italy, Spain and Greece are sounding the alarm on boat arrivals. Other member states such as the Netherlands, Austria and Belgium have been plunged into a deep reception crisis for nearly two years now .

The presence of 4.1 million Ukrainians has increased (the perception of) competition for scarce resources in education, health care, and support in accessing the labour market. In Germany, which has been a stronghold for the right of protection in the Union, but as of June had received one-third of all EU asylum applications so far this year, proposals such as cutting benefits for asylum seekers have skyrocketed. Germany's anti-migration party, the AfD, performed well in the 8 October state elections, coming second in Hesse and third in Bavaria. Migration proved the downfall for Mark Rutte's government in the Netherlands in July. And in other EU member states, traditional centre-left and centre-right parties fear a bloodbath in upcoming elections if the theme of migration – and the absence of perceived action and results *on the ground* – dominates electoral debates.

> **Box 1 – Migration Policy Institute Europe**
>
> The Migration Policy Institute Europe, which was established in Brussels in 2011, is a non-profit, independent research institute that aims to provide a better understanding of migration in Europe and promote effective policymaking. MPI Europe provides research and practical policy design to governmental and non-governmental stakeholders who seek more effective management of immigration, immigrant integration, and asylum systems, as well as successful outcomes for newcomers, families of an immigrant background, and receiving communities in Europe.

Hence, while there is a great need for political agreement on how to tackle migration and asylum and a renewed commitment to set common standards and work together, these will not be enough on their own. Many Europeans are seeking a change in the migration situation *on the ground* and reassurance from their governments that the Pact holds the key to accomplishing this. It is therefore essential that political adoption of the Pact should be accompanied by a concrete and realistic plan and vision for implementing it.

In the final sprint to the agreement between member states in June, a small but important article was added: the obligation for the Commission to deliver an implementation plan within three months of the Pact being adopted, with a subsequent duty for national governments to develop their own plans.

This rather novel element in EU policymaking brings with it key questions. These include:

- what an implementation plan should look like;

- what elements it should cover, and at what level of detail; and

- how soon relevant authorities can make preparations to ensure that the necessary finances, human resources, strategies and standard operating procedures can be mobilised.

That this new focus on implementation made its way into legal texts is indicative of a new school of policymaking in Brussels, i.e. an intent to close the often all-too-real gap between policy ambitions and operational outcomes. A gap that in the migration context yawns between the political commitment to fair but swift asylum procedures in support of migration, integration and return systems, and the reality of asylum decisions averaging two or more years. A growing number of stakeholders are pinning their hopes on implementation of the Pact as an essential vehicle towards addressing persisting problems (e.g. overcrowded reception centres and lengthy asylum procedures) *and* demonstrating to the public that European cooperation can make a difference when it comes to well-functioning migration and asylum systems.

Fitting within an emerging chasing impact trend?

This burgeoning focus on ensuring that what is codified on paper becomes an effective reality, fits within an emerging – if still covert – trend towards a chasing impact culture. There are several indicators for this trend.

Evolution of executive agencies dealing with migration

A first indicator is the growing mandate and resources reserved for executive agencies, which has gone hand in hand with the evolution from being merely a support office – think: plugging holes – to being active in upgrading, reconfiguring, and even – in some cases – gradually taking over parts of national operations. The transformation of the European Asylum Support Office (EASO) into the European Union Agency for Asylum

(EUAA) was a landmark. The EUAA has seen its operational support plans for member states double over the last two years, with the agency now active in 13 countries. National governments no longer view the EUAA as a lifeline for the ailing – or even structurally underfunded – asylum systems, but as an EU-wide resource that all member states can call upon when in need of extra capacity and expertise.

The morphing of Frontex into the European Border and Coast Guard Agency (EBCG, though still typically referred to as 'Frontex'), which has a more robust mandate and budget, also fits within this trend. The nature of the tasks that EUAA and Frontex carry out would, in some cases, have been unimaginable a few years ago. In the Frontex case, this ranges from agency staff standing alongside national border or coast guards, to offering Joint Reintegration Services for voluntary and forced returnees and replacing national reintegration programmes. In the case of the EUAA, this includes supporting the Greek Asylum Service with all steps of the asylum procedure (e.g. registration, interviews, case reviews, and recommended decisions), except for the final decision.

Will this standard mobilisation – and continuous reconfiguration of the role – of EU executive agencies be a model for the future implementation of the Pact if it crosses the finishing line? And will those stakeholders who play a key role in securing the Pact have an opportunity and sufficient time to implement the lessons learnt – and all the tools which may not have been officially identified as being in the toolbox – in crafting the Commission's and national governments' implementation plans?

A shift from legislation-making to securing impact on the ground

A second important marker is the creation of operational units within the Commission's DG HOME, which originally prioritised proposing new legislation or amendments to the existing acquis. Plainly speaking, the earlier incarnation of the DG responsible for migration and home affairs could be described as reaching for legislative action and technical corrections to solve most problems. Financial instruments and the operational programmes they funded played only a secondary, enabling role in steering national migration goals and systems in the 'right' direction. But with the 2015-2016 crisis, a notable shift occurred. The setting-up of hotspots in Greece and Italy went hand in hand with the establishment of a Migration Management Response unit in DG HOME, where Brussels staff were tasked with supervising EU-funded and co-managed [with national administrations] operations. Since then, the number and mandate of the operations-focused units in DG HOME have grown, and one of the Deputy Directors-General has been given a clear mandate to manage this growing body of work for the organisation. Will these units eventually be reconfigured into a fully-fledged operational arm of the Directorate for Migration and Home Affairs?

Building an evidence-based culture to design impactful practices and programmes

Fostering support for operational thinking, planning and innovation represents a third marker of the emerging chasing impact culture. There is also a new recognition of the importance of building monitoring and evaluation (M&E) into asylum, resettlement, return and reintegration initiatives. A culture of M&E permits better tracking, taking stock and analysing how things work in practice, which in turn consolidates the evidence base for a given topic. The EUAA and FRONTEX, for example, have seen their monitoring role expanded recently. Similarly, regard and recognition has grown for the added value that investigations by the European Court of Auditors (ECA) generate. The ECA has kickstarted ten or so audits of migration and asylum in recent years. Special report 24/2019, which examines asylum and return procedures in Italy and Greece, constitutes a hallmark for how an investigation into operations, mechanisms, and associated financial and human resources can push the field forward. For example, the ECA's analyses of the involvement of EU agency staff in those two countries played a crucial role in streamlining and upgrading the support they offer.

Chasing impact as a marker of successful EU migration policymaking

All of these markers and other developments may suggest that we are at the dawn of an age where implementation is no longer a back-office function and regarded as an after-thought, but runs side-by-side with policy formation and legislative text drafting.

We could even envisage the next Commission turning this up a notch by departing from the default reaction to migration crises, which is to return to the legislative drawing table. It is perhaps not too much to hope that in the years to come, implementing the key principles and laws already agreed in Brussels becomes *the* priority and marker of success for DG HOME.

Moving effective implementation to the heart of the conversation requires some key questions to be addressed:

- How is effective, measurable implementation done? Via implementation plans, operational programmes and pilot projects?

- Who are the protagonists from among a list that includes the EUAA, Frontex, the Fundamental Rights Agency (FRA), the ECA, the Commission, the International Organisation for Migration (IOM), the UN High Commissioner for Refugees (UNHCR), and NGOs?

- How do we move towards better data gathering and analysis? All ECA reports on migration have, without exception, concluded that there is an absence of data, which hampers analysis of what works, where and why. Moreover, the auditors were often faced with a lack of measurable targets linked to policy ambitions and roadmaps.

- How is this shift towards implementation adequately resourced?

- As policymakers communicate about (new) strategic directions in the field of migration, do they accompany their statements with announcements about implementation plans?

- To ensure realism, should discussion of implementation plans include mentions of phased approaches and multiannual work plans? And should an incremental approach build in key milestones, which are translated into smart indicators that implementing organisations and auditors alike can work with?

Finding timely answers to these questions will be crucial if the new Pact on Migration and Asylum is to stand a chance in practice. Expectations on the ground and in national capitals as to what the Pact is to achieve are highly strung. Advances achieved on paper but not reflected in practice will not be accepted by citizens who are increasingly anxious about the EU's ability to manage migration.

'A strong and united Europe empowers the EU member states'

Interview with Lefteris Christoforou, ECA Member since 2 November 2022

By Gaston Moonen

Lefteris Christoforou

On 2 November 2022 Lefteris Christoforou succeeded Lazaros Lazarou, who had served two mandates – 12 years, as ECA Member for Cyprus. Having been in public office most of his life, Lefteris Christoforou considers his new responsibilities as a major opportunity to contribute to a Union that delivers and meets its citizens' expectations. Below, he explains what prompted him to assume public office in the first place and how his work in parliament prepared him for protecting the EU's financial interests as an ECA Member.

Childhood experience prompted keen dedication to public life

Before you became a Member of Parliament in 1996, you worked in the banking sector in Greece and Cyprus. What made you move into the public sector?

Lefteris Christoforou: I am a Greek Cypriot and until the age of 11 I lived with my family in Famagusta District. Unfortunately, Turkey, in violation of International Law and Human Rights, illegally invaded and occupied 37% of the territory of the Independent Republic of Cyprus, a member of the UN and today a member state of the EU. The Turkish army, with unprecedented brutality, after destroying everything in its path, forced us, together with 200,000 of our compatriots, to leave our properties and our ancestral homes. So, in 1974, we were displaced by the Turkish troops from our home and land and became refugees, without a home and without property. As a child, I continued my life with my family in the refugee settlements.

This terrible injustice and suffering had an enormous impact on my country and all of us refugees, especially those who were children. This left an indelible mark on my soul and from my childhood led me to fight for human rights, international law and the freeing of my country from the Turkish invaders. So, I started my involvement with politics and the public life with the sole aim of freeing my homeland from the Turkish occupation, even before I started my studies in economics at university and long before I started my banking career. For me, involvement in public life means taking action to contribute to the common good and the welfare of our fellow citizens.

> *This terrible injustice and suffering [Turkish invasion of Cyprus] (…) left an indelible mark on my soul…*

You worked as a Member of Parliament (MP) and Member of the European Parliament (MEP) for 18 and eight years, respectively. What would you consider the key differences in how the Cypriot Parliament and the European Parliament work?

Lefteris Christoforou: As a member of the Cypriot Parliament, my main mission was to serve the public interest of Cyprus, to utilise the money of Cypriot citizens in the most efficient way and to promote legislation for the benefit of Cypriot citizens, society, and the economy of Cyprus. In my involvement with the Cypriot Parliament and as President of the Committee on Trade, Energy, Industry and Tourism, I focused on these issues, with particular emphasis on green policies, the development of natural gas deposits, the support and promotion of Small and Medium Enterprises, the upgrading of tourism in Cyprus and the promotion of many other development projects.

Also, my main pursuit in the Cypriot Parliament was to support the vulnerable groups in Cypriot society, especially the refugees, who for 50 years have continued to pay the cost of the occupation, the people working in the agricultural sector and our rural population, who always need support and economic backing. Furthermore, we fought hard diplomatic battles inside and outside Cyprus for the liberation of our homeland from the occupation, the return of the refugees and the implementation of International Law, the resolutions of the UN and of the Security Council as well as European Law in Cyprus, which Turkey has been brutally violating for half a century. I was an MP during the accession process of Cyprus to the EU and I contributed with all my strength to the accession. I believe in the European Idea, in the European principles and values and in the European vision.

> *… my main pursuit in the Cypriot Parliament was to support the vulnerable groups in Cypriot society, especially the refugees…*

As an MEP, my mission was to serve European goals, European principles and values, European policies, and the European vision. As a deeply committed European, I fought with vigour and consistency to make the EU stronger, more resilient, and more secure. I also participated in the Conference on the Future of Europe where I presented my own contribution for a Europe that is greener, more digital, more humane, and more aware of grassroots social issues.

The main difference between an MP and an MEP is the fact that in the Cypriot Parliament you try to solve problems and promote issues that largely concern Cyprus, while in the European Parliament you fight for the whole of Europe. I passionately believe in the EU and defend it as a concept because I believe that a strong and united EU enormously strengthens and empowers the EU member states.

> *… a strong and united EU enormously strengthens and empowers the EU member states.*

From MEP to three additional 'E's

You have also worked as a member of the EP Committee on Budgets and the EP Committee on Budgetary Control. What did you find surprising when dealing with ECA reports in that capacity? How did these reports stand out compared with other policy-related information from other sources?

Lefteris Christoforou: I considered it a great honour and a valuable experience to participate as a full member in both the Committee on Budgets and the Budgetary Control Committee. These two committees are considered among the most demanding committees of the European Parliament, bearing a lot of responsibility, since they are the Committees that approve and control all budgets, all expenses, and revenues of the EU.

As MEPs we considered the ECA as a very close partner, with common goals and a common mission. We acknowledged the ECA as a very powerful, respected, reliable, trustworthy, and efficient EU institution. I believed and continue to believe that the ECA has a very important role to play in protecting European money and safeguarding the sound financial management of the EU budget. As MEPs, we considered every report, every review, and every intervention of the ECA as very important and noteworthy, and we always examined and analysed them with rigour and responsibility. These reports are considered the most reliable, high-quality input for the European Parliament's work.

> *As MEPs.(…) We acknowledged the ECA as a very powerful, respected, reliable, trustworthy, and efficient EU institution.*

In your hearing in the EP relating to your nomination as ECA Member, you referred to performance audits based on six 'E's instead of the familiar three 'E's. Can you explain these additional 'E's and why they should be added?

Lefteris Christoforou: Indeed, at my hearing in the European Parliament I focused on the importance of performance audits. The usual basis for performance audits is the three 'E's – Economy, Efficiency and Effectiveness. However, auditing is a very dynamic field and is constantly evolving, with new tools, new methods, and new approaches. Thus, experts now argue that the principles that govern the audits should be determined on the basis of six or even seven 'E's.

> *… experts now argue that the principles that govern the audits should be determined on the basis of six or even seven 'E's.*

Beyond the existing three 'E's, the additional three are: a) Equity, which is about being fair and ensuring that resources are distributed without bias and everyone has equal access; b) Ethics, ensuring that operations and decisions are made with honesty, integrity, transparency, and accountability; and c) Environment. Firstly, the environmental sustainability of all EU operations and activities needs to be rigorously examined. Secondly, sustainable development should meet the needs of present generations *and* ensure that future generations not only survive but thrive. Performance audits implemented based on the six 'E's would play a key role in creating an EU that delivers value and meets the expectations of citizens and member states.

Which are the topics you would particularly like to work on in your capacity as ECA Member, in view of your experience? What are your specific tasks in the audit chamber you have been allocated to?

Lefteris Christoforou: I have always believed, and continue to believe, that the most important success factor in EU institutions is collegiality. The operation of our institution is based on the principle of collective and unified effort. All reports, opinions, and the annual report are discussed in our plenary meetings or at audit chamber level and decisions are taken collectively by ECA Members. All of us work consistently and responsibly within the operating framework of the ECA, strictly following the rules, principles, and values of the ECA. I am always ready to take on any task assigned to me, in line with my philosophy in my work that together we strive for excellence. A yearly task which, together with the team, I am working on is the chapter of the annual report about the budgetary and financial management of the EU. Additionally, I am currently particularly involved in three special reports. The areas covered in these are: the plastic packaging waste based own resource; the European Fund for Strategic Investments; and the European Commission's enforcement of infringement procedures.

> *… the most important success factor in EU institutions is collegiality.*

One of the concerns expressed by your former colleagues of the EP Budgetary Control Committee regarding the Recovery and Resilience Facility (RRF), a major programme implemented outside the EU budget but nevertheless audited by the ECA, is the monitoring and detection of possible fraud and corruption with this Facility's expenditure. What do you consider to be the main catalyst for this concern and how do you see the ECA tackles this subject?

Lefteris Christoforou: The main catalyst of concern is that the RRF control system is so different from cohesion spending. While cohesion payments are based on actual costs, the conditions for making RRF payments involve the satisfactory fulfilment of milestones and targets, which are also the basis for control and audit. As a result, for the RRF, the Commission relies more on national systems to ensure that the EU's financial interests are effectively protected. It is a concern also because the RRF design has some weaknesses. For example, the ex-post audit procedures do not provide for checks to verify whether the audited targets previously assessed as fulfilled were reversed after the payment. The role of ensuring that EU money has been spent in accordance with the rules is now left more in the hands of the member states. There is always a risk of fraud and corruption; with the RRF, the responsibility for preventing fraud is on member states as it is also with cohesion funding.

> *… ensuring that EU money has been spent in accordance with the rules is now left more in the hands of the member states.*

The ECA does not have a mandate to investigate cases of suspected fraud against the EU's financial interests. We nevertheless assess the risk of fraud before starting audits and assess whether procedures are sufficiently robust to avoid and detect fraud. We have no grounds yet to suspect that the risk of fraud is higher for the RRF than for the general EU budget. Nevertheless, as also stated in chapter 11 of our 2022 annual report, we design and perform audit procedures responsive to those risks. I consider that this approach should continue in the future also. The work performed by the ECA in preparing special report 07/2023, which reviews and assesses the control systems of the member states to ensure compliance with RRF-funded projects, is also important in this respect. Our findings have alerted both the ECA and the European Commission, resulting in remedial actions to be adopted. More audits on assessing specific parameters of the RRF will follow in the next year's work programme also, thus allowing us to identify any deficiencies or weakness in the RRF and ask for their correction.

Adhering to high ethical values

Ethics is considered an important element affiliated with auditors, bringing to the surface facts, no matter what they are. You are one of the three members of the ECA's Ethics Committee; can you explain what this Committee does?

Lefteris Christoforou: The Ethics Committee was established in 2015 as an independent body which can examine any matter at its own discretion, including suggestions to our institution of an ethical nature which are relevant to the provisions of the Code of Conduct and our organisation's reputation. Our committee also examines declarations of external activities of current ECA Members as well as the requests from former Members for engaging in an occupation within two years after they leave office. The Committee is composed of three permanent and three alternate members, with both groups including two ECA Members and one external independent member.

What do you consider a major challenge for the ECA to work on and where do you think the ECA can further excel to provide the best added value to policymakers and the population at large? Is there a specific topic you think should be covered more fully/in greater depth?

Lefteris Christoforou: The ECA is doing valuable work on identifying audit and accountability gaps, such as those I mentioned regarding the RRF. The ECA can take more actions to contribute to our stakeholders' interests. I think we should continue to consider, even more, the suggestions from the European Parliament for performance audit issues. I believe the directions set out in the ECA strategy for further digitalisation of the audit work are very relevant to making our work more efficient.

> *… we should continue to consider, even more, the suggestions from the European Parliament for performance audit issues.*

Where do you consider that you, as an ECA Member, can make a difference during the coming years? Is there a specific milestone you have set for yourself in your mandate as ECA Member?

Lefteris Christoforou: As a college, the ECA Members decide on various things that have to do both with the day-to-day operations and with the long-term strategy of the ECA. I feel that each one of us as Members has the legal and moral obligation to work hard and cooperate with each other and with our staff to abide by our responsibilities and further promote the ECA position as the Guardian of the Treaties. I will strive in the upkeeping of high ethical standards in our conduct, both through my participation as a permanent member in the Ethics Committee, as well as in the preparation of high-quality audit products. I will make the utmost effort to add value to the ECA strategy and its implementation. I strongly believe that our adherence to high ethical values and quality of work will have a positive impact on the effort made by the European Union to further gain the trust of its citizens.

'Contributing to a more resilient EU that upholds the values on which it is based'

Interview with Laima Liucija Andrikienė, ECA Member since 16 November 2022

By Gaston Moonen

Laima Liucija Andrikienė

Newly appointed ECA Members often bring very diverse life experiences to the world of ECA audit. This is certainly true of Laima Liucija Andrikienė, who succeeded Rimantas Šadžius as the Lithuanian Member on 16 November 2022. Having worked in research and academia and as a national MP and minister and then Member of the European Parliament, she has been witness to the wide range of challenges facing those in public office. For her, one major takeaway is that values forming the foundations of your society need to be maintained and sustained over and over again. A process in which she considers the ECA too has an important role to play.

Courageous efforts to realise the dream of independence

You were one of the signatories – and one of the few women involved – to the Act on the Re-establishment of the Independent State of Lithuania in 1990. You were also among those inside the Supreme Council in Vilnius who were protected by unarmed citizens standing up to Soviet tanks. How did these events influence your life and approach to politics?

Laima Liucija Andrikienė: It is a part of my life which will forever stay with me and be part of me. I was born in Lithuania, but in the Soviet-occupied Lithuania, in a family of former Siberian deportees. I have various first-hand experiences, e.g. running in the very first democratic parliamentary elections in Lithuania and being elected on the ticket of the Popular Movement Sąjūdis; the bloody events of 13 January 1991 when Gorbachev sent tanks against unarmed, singing people; the economic blockade of Lithuania in 1990-1991, when they tried to kneel us down, only for the reason we wanted to end the illegal Soviet occupation as well as the Red Army to go home and Lithuania's statehood to be restored. Therefore, it is very easy for me to understand those in different countries and continents who fight for independence, freedom, liberty, human rights, and democracy. I know from my own experience that those are values which are not given or granted forever: people must

"*… independence, freedom, liberty, human rights, and democracy. I know from my own experience that those are values which are not given or granted forever…*

fight for them and sacrifice a lot to have their independence, their freedom regained, their statehood restored.

You have been in politics ever since, mostly serving as a Member of Parliament in Lithuania or an MEP, or in the executive, for example as Minister of European Affairs. You worked on Lithuania's independence and on making it a fully-fledged member of the EU. What do you consider to have been the biggest challenge – you have written books about your experiences – to Lithuania's becoming a functioning EU member state?

Laima Liucija Andrikienė: On 22 October 1978, at his Inaugural Mass, Pope St John Paul II said in his homily: "Do not be afraid". "Be not afraid" became a kind of motto for his pontificate. We, those who lived on the other side of the Iron Curtain, read his message directly as: be courageous, you are not alone. Changes are inevitable, dream and make your dreams become a reality.

> *… be courageous, you are not alone.*

So, what really matters in achieving your goals and overcoming your barriers, is courage, responsibility, political will, and the alliances you build to achieve your goals. And, finally, hard work – a lot of work, your commitment, your readiness to overcome all obstacles to have a better life, if not for your generation then for your children. I wanted my children and grandchildren to live, love, study and work in an independent Lithuania, a fully-fledged member of the EU and NATO, an integral part of a free, democratic world. And we Lithuanians managed to achieve our goals together with the Latvians, Estonians, Poles, and other European nations. Fundamental barriers are disclosed in the famous book by Nobel laureate Czesław Miłosz *The Captive Minds*, first published in 1953.

As an MP and MEP you worked in various committees, including as a member of the EP Committee on Budgets. But most of your parliamentary activities related to foreign affairs, international trade and human rights. Where do you see the possibilities for an external auditor at the ECA to provide added value in those fields? For example, in the field of human rights?

Laima Liucija Andrikienė: At one of the sessions of the recent ECA seminar, we discussed the general strategic outlook of the EU and how could this impact the long-term orientations of the ECA. Considering the challenges the EU has faced in the past years – financial crisis, Brexit, COVID-19 pandemic, Russia's war against Ukraine and de facto against all of us Europeans, also migration challenges, China's ambition to dominate in the world, etc. and also considering the EU's challenges in the years to come – I clearly see that the ECA should prioritise more policy-related audits in the areas linked to EU values and geopolitical matters, possible risks and challenges, although in comparison with cohesion, agriculture, etc. these are less-funded policy areas. In my opinion, a deterioration of the geopolitical situation and a backsliding of some member states from core EU values like the rule of law and human rights, system competition, even system conflicts, which are back in Europe and everywhere in the world, call for the reinforcement of our role and adequate attention from the ECA. Moreover, we should also address the expectations of EU citizens in this respect.

> *… the ECA should prioritise more policy-related audits in the areas linked to EU values and geopolitical matters…*

Audit also entails listening to learn where the ECA can contribute most

You joined the ECA almost one year ago. What did you find easiest to deal with in your new working environment? And where did you find, unexpectedly, you had to adapt the most?

Laima Liucija Andrikienė: From my day one at the ECA I received the warmest welcome and support from ECA colleagues, including those whom I knew from my earlier work as MEP at the European Parliament and those whom I met for the very first time. This was very helpful in adapting to the new working environment. Discussion and collegiality at the ECA are what I am used to, having been over 40 years in academia and politics. Adapting to a new type of activity, audit, and a large number of internal rules, procedures, etc. was a challenge. And the ECA should further strive to reduce the time it takes to finalise its audits.

> *Discussion and collegiality at the ECA are what I am used to*

At your hearing you pleaded for more exchanges between the ECA's audit chambers and the committees of the European Parliament, with more extensive participation by ECA Members in committee discussions. What action do you envisage in practice to enable such a change, and do you think the Parliament's checks on the implementation of EU policies are given enough attention in comparison with its policy-making activities?

Laima Liucija Andrikienė: It is difficult to say what is the right balance between parliamentary control and policy-making. As you know, the principal committee of the EP dealing with the control of EU finances is the Committee on Budgetary Control (CONT). I see that the CONT is a very active committee, but it is composed of only 30 MEPs out of the 705. I think that more dynamic engagement with other standing committees is of utmost importance in increasing parliamentary checks on the implementation of EU policies. The ECA's work could be even more impactful if its expertise and audit results were more widely used in the parliamentary control activities. Thus, to increase the relevance of its audits, the ECA's audit chambers should be more proactive in monitoring the legislative agenda of the EU.

> *… more dynamic engagement with other standing committees is of utmost importance in increasing parliamentary checks on the implementation of EU policies.*

You are a member of the audit chamber on "Financing and administering the Union". What topic in particular are you currently working on, and for which tasks are you specifically responsible?

Laima Liucija Andrikienė: My audit portfolio covers a broad range of topics. At the beginning of July 2023, we published a review on digitalising the management of EU funds, which is extremely relevant in shedding light on a real situation on Europe's digital agenda. It provides a comprehensive picture of the state of digitalisation of the European Commission's and EU member states' IT systems for managing EU funds, their interoperability and planned developments, including opportunities and challenges.

Currently we are performing another review, on rule-of-law reporting. The rule of law is one of the values upon which the EU is founded. With this review we aim to provide a comprehensive overview of the whole rule-of-law landscape, including the European Commission's report on positive and negative developments relating to the rule of law in EU member states. We plan to publish the report at the beginning of 2024.

> *… we aim to provide a comprehensive overview of the whole rule-of-law landscape…*

We started planning a performance audit of the European Commission's 2019 anti-fraud strategy, also known as CAFS. With this audit we will assess the effectiveness and appropriateness of the CAFS and recently revised action plan in combating fraud affecting EU expenditure.

Finally, I am responsible for the audit of administrative expenditure of all EU institutions and bodies in 2022. With this audit we assess whether expenditure on human resources, buildings, equipment, energy, communications, and information technology is in compliance with the applicable rules. This audit task is a part of the ECA's annual report on the EU's general budget.

You have been pleading for more extensive involvement of the European Parliament in the programming of the ECA's audit work. The ECA is currently preparing its 2024+ work programme. Do you think parliamentary concerns are well addressed, and how could they be addressed better?

Laima Liucija Andrikienė: The ECA considers seriously the list of audit suggestions accumulated and sent by the Conference of Committee Chairs of the European Parliament. These suggestions are taken into account in one way or another. However, in my view, we might better heed parliamentary concerns by discussing them at chamber level with the committees or even individually with MEPs.

Enhancing the ECA's presence through practical cooperation and increased visibility

In the context of NGEU and the RRF, and the important role of member states in implementing these EU initiatives, you argued, when proposed as ECA Member, for more cooperation between national audit institutions and the ECA to increase the range of insights into compliance and performance aspects of the related funds and measures. What do you suggest as the most effective way of giving impetus to cooperation of this kind on new initiatives or in the ECA's other work?

Laima Liucija Andrikienė: According to the Treaty, the ECA and the national audit bodies of the member states shall cooperate in a spirit of trust, while maintaining their independence. Unfortunately, despite the EU finances and policies being a common denominator, the practice shows that cooperation in auditing is rare. In my view, auditing such instruments as the RRF is a good opportunity to increase practical cooperation in the interest of both the EU and the national taxpayer. It can be achieved only by initiative, good will and persistence in persuading our peers.

> *… practice shows that cooperation in auditing is rare. In my view, auditing such instruments as the RRF is a good opportunity to increase practical cooperation…*

Having worked at the ECA for almost one year now, what do you think could be done to further improve its impact, to ensure that more is done with its findings and recommendations? And is there something you find the ECA does particularly well in this respect?

Laima Liucija Andrikienė: We are aware that the ECA is relatively a less-known EU institution. Thus, better communication about the ECA's activities and its mandate should be taken as a priority. I believe that better visibility in national capitals would eventually increase the effect of our work as well.

> *… better visibility in national capitals would eventually increase the effect of our work as well.*

As to the impact of our recommendations, I think that an agreement with the auditee on the *actions* in order to implement our recommendations would make them more instrumental and increase the influence of our audits further. Another important aspect is safeguarding multilingualism in the ECA's activities, because we want to be heard by our citizens and our work to be appreciated by them. Unfortunately, for efficiency reasons there is a tendency to pivot towards English. I am sure that, with the fast rate at which AI is integrating into our lives, we should expect a decrease in translation costs soon. This tendency should be considered when decisions regarding translations are made.

What one key objective have you set for yourself, at and with the ECA, during your mandate as Member?

Laima Liucija Andrikienė: I would like to use an element from the ECA's vision document which I myself share very much: I am to contribute to a more resilient and sustainable EU that upholds the values on which it is based.

Reaching out

Strengthening cooperation:
the Latvian State Audit Office and the ECA

By Evelina Gaisonoka, private office of Mihails Kozlovs, ECA Member

From left to right: Rolands Irklis, Auditor General of Latvia, Laura Graudina, ECA, and Mihails Kozlovs, ECA Member, at their meeting on 16 August 2023 in Riga.

On 30 June, a delegation from the State Audit Office of the Republic of Latvia visited the ECA and was hosted by ECA Member Mihails Kozlovs. The Latvian supreme audit institution (SAI) is an active player in the international audit community, providing training in public-sector auditing to other national SAIs. On 16 August, an ECA delegation then participated in the '100 years of audit' conference organised by the State Audit Office. In this article, Evelina Gaisonoka from the Member's private office provides an overview of the topics discussed at the two meetings.

Visit to the ECA – focus on EU-related audit issues

With the goal of enhancing cooperation between the two institutions, a delegation from the Latvian SAI recently visited the ECA. The delegation comprised Auditor General Rolands Irklis, Council Members Kristīne Jaunzeme and Inga Vilka, acting head of the *Third Sector of the Audit and Methodology Department* Dzintra Tripane, and international cooperation specialist Zane Leitāne. The delegates engaged in meaningful discussions with their ECA counterparts, delving into various EU-related topics, fostering knowledge-sharing, and exchanging perspectives.

The delegation was welcomed by ECA President Tony Murphy and Mihails Kozlovs, ECA Member and Dean of the *Regulation of Markets and Competitive Economy* Audit Chamber, for discussions regarding their respective institutional work and strategic priorities. The discussions focused on the strategic plans of the two institutions, particularly regarding audit work and challenges related to the Recovery and Resilience Facility (RRF).

From left to right: ECA Member Mihails Kozlovs, ECA President Tony Murphy, and Rolands Irklis, Auditor General of Latvia.

Further discussions on specific RRF-related aspects followed, involving various ECA participants such as Jan Gregor, ECA Member and Dean of the *Financing and Administering the Union* Audit Chamber. The session covered aspects relating to the RRF delivery model, the ECA's mandate for the RRF, its work for the RRF Statement of Assurance and its RRF-related performance audit work. This included discussions of the main findings from ECA special report 07/2023, *Design of the Commission's Control System for the RRF*, which was published in March 2023.

Another session focused on audit methodology and quality control, previously flagged as a topic of interest to the Latvian delegation. During this session, led by ECA Member Iliana Ivanova, ECA representatives explained how the ECA approaches quality control in its audits. The presentations covered the procedure for ECA reports, digital data acquisition and analysis tools, as well as the ECA's methodology framework, audit guidance platform and Data Quality Control Committee, which was created to manage relationships with key auditees. Another aspect covered was the ECA's work as chair of the Professional Standards Committee (PSC) of the International Organisation of Supreme Audit Institutions (INTOSAI).

The Latvian delegation showed a keen interest in the ECA's 2021-2025 Strategy and its work programming process. In addition to the strategy's aims, the ECA also spoke about implementation, with a presentation by its Planning and Performance Management team. This included an example relating to one of the ECA's audit chambers showing how the programming process works in practice, including insights into how audit ideas are developed into audits. The session also involved various exchanges regarding the Latvian SAI's approach and work, and the ECA's activities.

Other topics discussed related to audit work and challenges in fields such as defence, COVID-19 issues, communication of audit results and cooperation with non-governmental organisations. These bilateral exchanges, the first for several years, underlined the importance of exchanges between peers and continued close professional cooperation. Mihails Kozlovs expressed his thanks and gratitude to the participants from the two institutions.

The ECA and the Latvian State Audit Office will continue this cooperation in future, exchanging experiences and keeping each other informed on topical matters. Mihails Kozlovs will maintain consistent and productive contact with the ECA's counterparts in Latvia, and will shortly present the ECA's annual report.

From left to right: Mihaela Pavel, Mihails Kozlovs, Iliana Ivanova, James Verity and Torielle Perreur-Lloyd, ECA; Inga Vilka, Dzintra Tripane, Kristine Jaunzeme and Rolands Irklis, Latvian State Audit Office.

Latvia's '100 years of audit' conference – the power of audit

On 16 August 2023, the Latvian State Audit Office hosted delegations from several other SAIs, ranging from EU member state SAIs to those of Georgia and Moldova, and representatives of the INTOSAI Development Initiative (IDI). The ECA was represented by Mihails Kozlovs and Laura Graudina, who contributed to discussions on the power of audit to mark 100 years of audit in Latvia (see **Box 1**). Discussions focused on future prospects for external public audit, experience-sharing regarding communication and cooperation, and visions for future developments in audit. The event included an evaluation for the purposes of improving public administration.

The Latvian State Audit Office is active on an international level, serving as a member of the OECD Audit Committee and in various other international fora, such as the Governing Board of the European Organisation of Supreme Audit Institutions (EUROSAI) and the Contact Committee of the EU SAIs and INTOSAI.

Box 1 – 100 years of audit at the Latvian State Audit Office

On 16 August 2023, the State Audit Law turned 100. With the adoption of this Law, the State Audit Office changed from the formal *de facto* institution founded on 2 December 1918 to an independent, collegial, *de jure* supreme audit institution of the Republic of Latvia. The State Audit Office is one of the independent state institutions enshrined in the *Satversme* (Constitution) of Latvia.

The purpose of the centennial celebratory conference was not only to look at the power of audit but also to look back on the institution's history and achievements, and to outline the vision for its future development. Besides many representatives of sister organisations in and outside the EU, guests included the current and former Latvian Presidents, Edgars Rinkēvičs and Vaira Vīķe-Freiberga, Prime Minister Krišjānis Kariņš, and speakers from the Latvian Constitutional Court and the University of Latvia. They reminisced about the SAI's century-long journey.

Reaching out

ECA hosting and chairing the INTOSAI Professional Standards' Steering Committee

By Alan Findlay, Directorate Audit Quality Control

The INTOSAI PSC meeting in Luxembourg.

The ECA hosted the 23rd meeting of the Professional Standards' Committee (PSC) of the International Organisation of Supreme Audit Institutions (INTOSAI) in Luxembourg on 27 and 28 February 2023. Aimed at providing professional standards and guidance for public audit institutions, the PSC is a key committee within INTOSAI to enhance the relevance and impact of supreme audit institutions. Alan Findlay, senior administrator, from the PSC secretariat provides information below.

Strategic plan to increase the use of standards

As chair of the PSC, a responsibility we took up in 2022, we were particularly pleased to approve the committee's strategic development plan (SDP) for 2023-2025. This plan sets out our strategy to develop a clear, consistent and relevant set of professional pronouncements for INTOSAI's members and to update accordingly the INTOSAI Framework of Professional Pronouncements (IFPP) and its categorisation of pronouncements into principles, standards and guidance.

The overall ambition for INTOSAI is to encourage more SAIs to apply the ISSAIs – the International Standards for Supreme Audit Institutions – and to do so more consistently. The ISSAIs are INTOSAI's international *standards* on public sector auditing. They define the audit types and the principles and requirements for these audit types as well as a set of organisational requirements. ISSAI 100 (the Fundamental Principles of Public Sector Auditing) gives SAIs several ways to use the ISSAIs, and the ECA uses the ISSAIs directly as our authoritative standards. Depending on their mandates, individual SAIs carry out financial, compliance and performance audits and many also combine these audit types. The ISSAIs also cater for SAIs with jurisdictional functions. In 2020, a review planned in the SDP 2020-2022 was initiated by the PSC to examine amongst other things if and how the framework is implemented and to identify obstacles to implementation and compliance with the requirements. The review and analysis of the IFPP concluded that many of the qualities of a good and robust standards' framework were not always achieved. Our plan will help to identify unnecessary repetition throughout the framework and ensure consistency by describing the same matters in the same way.

The PSC's new vision will focus on improving the *accessibility* of the framework through digitisation and consideration of more intuitive ways of accessing the pronouncements, and providing definitions of certain key terms and a consolidated glossary through a thorough analysis of the use of *terminology* in the pronouncements. The *INTOSAI Principles* form the basis of the legal, institutional and organisational frameworks for SAIs, however our research work highlighted the need for consolidating these important documents into a clear set of workable principles for the whole INTOSAI community.

Finally, the INTOSAI *guidance* pronouncements which support SAI to enhance their performance related to organisational requirements, will be thoroughly examined with a view to implementing a set of recognised criteria for the type of guidance that should be an integral part of the framework along with an appropriate due process for the management of such material.

The PSC's strategic development plan will be tabled at the meeting of INTOSAI's Governing Board in November for final endorsement.

Engaging more stakeholders in standard setting

During the same PSC meeting, colleagues from Arab and English-speaking African regions (known as ARABOSAI and AFROSAI-E) presented a reflection paper on engagement of stakeholders in the standards-setting process and its importance in ensuring that standards reflect the needs and perspectives of all relevant parties. Whilst there is no clear or specific indicator published on the number of stakeholders contributing and commenting to exposure drafts during standards setting, their number is likely to be small. However, their importance to standard setting organisations like INTOSAI cannot be overemphasised.

Research from both the Institute of Internal Auditors and from the International Federation of Accountants has focused on the value of stakeholder involvement and how it can be maximised. Suggestions included inviting stakeholders to provide comments on exposure drafts and surveys (at the earliest possible stage) and participating in roundtable discussions and focus groups. Providing translations of important documents can also aid participation as can the careful categorisation and weighting of feedback from stakeholders.

The PSC is fortunate enough to have a number of advisory partners and consultative bodies at its disposal and who regularly attend our meetings and offer feedback. The PSC recognises how the participation of external stakeholders can bring different perspectives and provide valuable feedback to INTOSAI standard setting process, increasing the credibility and the recognition of our standards. However, the PSC is of the view that, despite personalised invitations, sometimes our stakeholder are reluctant to get involved, perhaps because they are cautious about offering criticism or are unsure what their exact role is and how far they can engage.

Based on the conclusions from the paper from ARABOSAI and AFROSAI-E, the PSC resolved to re-examine its stakeholder base and contact its stakeholders, perhaps in consultations with other INTOSAI bodies, to gather and analyse the factors preventing greater engagement. The PSC secretariat will report back on this matter at a future meeting.

Reaching out

The ECA's 2022 annual report - lemon trees and inflation

By Matthias Beermann, Directorate of the Presidency

ECA President Tony Murphy presenting the 2022 annual report to the European Parliament's Committee on Budgetary Control.

Although the ECA publishes many reports and opinions throughout the year, a focal point in its planning is the publication of the annual report, which usually takes place in October. On 5 October 2023, the date of publication, ECA President Tony Murphy presented the report to the European Parliament and the media. The 2022 annual report not only contains an adverse opinion on the EU's spending in 2022, but also identifies several budget risks for the future in the form of growing debt and rising inflation. Matthias Beermann, spokesperson and senior editorial and media advisor, provides information on some key findings and the response from the media.

Some surprising findings

From a media perspective, the publication of an annual report has a major advantage: it can be planned well in advance. Arguably, the ECA's annual report now occupies a permanent and prominent place in the diaries of many journalists, but this still does not guarantee widespread coverage. The fact is that annual reports also have a psychological disadvantage – by definition, they are a matter of routine, and so some editors may regard them as less interesting. This is why highlighting special aspects of the report is so important, in addition to our usual messages about error and absorption rates. Journalists are obviously attracted to what is new, different, and relevant to current developments. In this respect, we had much to report this year.
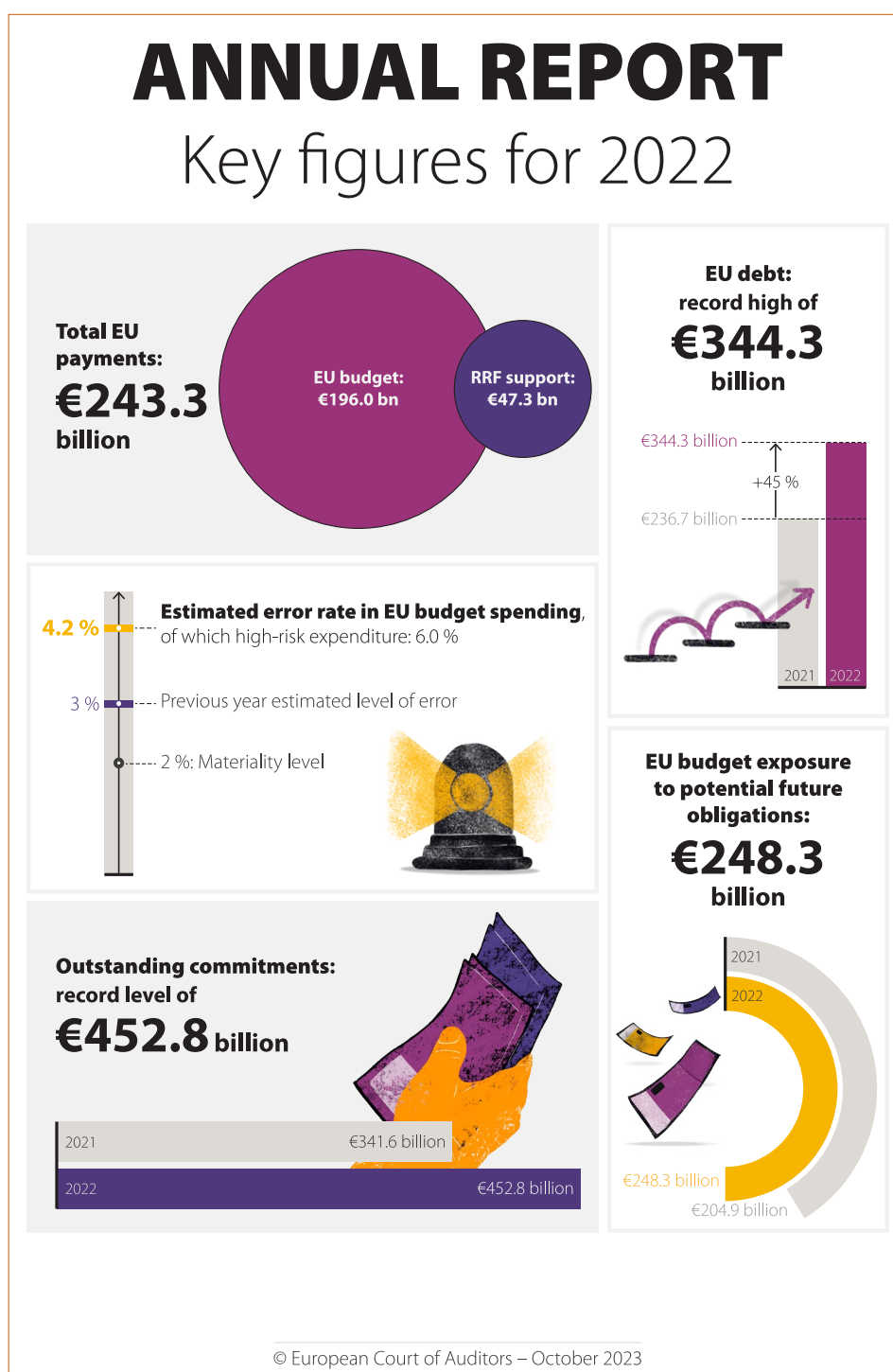
The audit findings already contained some striking news: a sharp increase in the error rate, which jumped significantly from 3 % in 2020 to 4.2 % in 2022. Our auditors considered two thirds (66 %) of the audited expenditure to be high-risk, another increase when compared to the previous year. The headline of our press release referred to 'more errors', but also mentioned 'greater risks'. Indeed, the report warns of the growing risk of borrowing for additional payment needs, such as those triggered by the pandemic response and Russia's war of aggression against Ukraine. It also examines new questions such as the impact of high inflation and growing debt on the EU budget.

These issues generated considerable media interest. During the press briefing, EU support for Ukraine was the topic that received by far the most questions, followed by the increase in spending errors and the ECA's audit findings on the EU's temporary recovery

instrument, the Recovery and Resilience Facility (RRF). The RRF is the main component of the EU's €800 billion *NextGenerationEU* (NGEU) package, which is intended to alleviate the economic consequences of the pandemic.

A considerable volume of high-quality media coverage

As usual, communication about the ECA's annual report had been intensively prepared in the weeks prior to publication: individual interviews were organised in advance, and journalists were invited to press briefings. Registered participants received embargoed material shortly beforehand in order to facilitate informed discussion during the briefings, and to help them prepare their own reports. This year, the press information package was expanded to include a 'fact sheet' (see below) summarising the most important figures from the report in the form of appealing infographics that we also used for our communication on social media.

ANNUAL REPORT
Key figures for 2022

Total EU payments:

€243.3 billion

EU budget: €196.0 bn

RRF support: €47.3 bn

EU debt:
record high of

€344.3
billion

€344.3 billion

+45 %

€236.7 billion

2021 2022

4.2 %

Estimated error rate in EU budget spending,
of which high-risk expenditure: 6.0 %

3 % Previous year estimated level of error

2 %: Materiality level

EU budget exposure
to potential future
obligations:

€248.3
billion

2021

2022

Outstanding commitments:
record level of

€452.8 billion

2021 €341.6 billion

2022 €452.8 billion

€248.3 billion

€204.9 billion

© European Court of Auditors – October 2023

As in previous years, our press briefings took place virtually, by videoconference, the day before they were published. They included the main briefing by ECA President Tony Murphy and Jan Gregor, the ECA Member responsible for the annual report, and six additional briefings for national correspondents by ECA Members. The main briefing was streamed for the first time via MS Teams from the new ECA video studio, and the annual report was published on the relaunched website.

In total, around 60 journalists attended the various briefings. This is an excellent result given the fierce competition for media attention during the week of publication, when many Brussels-based correspondents were attending the informal EU summit in Granada. In terms of overall coverage, we can see that our communication efforts have paid off: more than 800 news articles and almost 5000 social media posts referring to the 2022 annual report were published in the two days after the report was released (see **Box 1**). In terms of the number of articles, the vast majority of coverage came from the press in Germany (the biggest net contributor to the EU budget), followed by Spain (the biggest beneficiary of RRF grants), and then Greece and Belgium.

> **Box 1 – 2022 annual report communication**
>
> - 7 press briefings held on the 2022 annual report
> - 59 journalists attended our briefings
> - 802 online articles published in the two days after publication
> - 4944 social media messages posted in the two days after publication

The quality of media coverage was also excellent. *Politico*, the most influential news outlet in Brussels, together with the Financial Times and several leading national newspapers, reported on our findings, as did TV and radio stations – some of them extensively. We also noted that media coverage of our annual report has become increasingly accurate. Only a few media sources still described expenditure errors as 'wasted' money. The majority of the articles spoke quite accurately of money 'that had not been spent correctly, according to the applicable rules'.

Another observation confirms our previous experience: clear examples help us to explain our work and illustrate our audit findings. The example given during the press briefing – of EU funding wrongly paid out for a non-existent lemon-tree plantation in Italy – appeared in numerous articles and even some headlines.

E FOCUS A

Transport of live animals in the EU: challenges and opportunities

Our review describes the main factors surrounding the transport of live animals, and illustrates the trends in animal transport. Each year, billions of live animals are transported by road, sea, rail and air within, and to and from, the EU, for a number of reasons, such as breeding, fattening or slaughter. The EU has adopted legislation on animal protection during transport, but the European Commission and academic studies have detected weaknesses. Future challenges and opportunities lie in identifying alternatives to live animal transport, providing better information to consumers, promoting structural changes towards a more sustainable food supply chain, assigning monetary value to animal suffering and incorporating it into transport costs and meat prices, and promoting the use of new technologies.

Click here for our report

Securing agricultural product supply chains during COVID-19

The COVID-19 pandemic impacted agricultural product supply chains from farm to fork. In this audit we assessed whether the EU response was appropriate. We found that the Commission reacted rapidly by issuing useful guidelines, direct support, and market measures such as crisis distillation. However, member states did not sufficiently target the use of direct support, and the crisis distillation rules were not clear. State aid payments were more significant in monetary terms, but we found that they could lead to distortion of competition and overcompensation. We recommend that the Commission share good practice to improve the targeting of CAP measures, and that it propose clear rules in the event of future crises.

Click here for our report

## EU support for the digitalisation of schools

The EU supplements and supports member states in the digitalisation of their schools under various programmes and measures financed from the EU budget.

In this audit, we examined whether EU-financed action supported the digitalisation of schools well. We conclude that, overall, it helped schools in their digitalisation efforts, but member states lacked strategic focus in the use of EU financing. Moreover, in spite of an ambitious EU target to connect all schools by 2025 to gigabit internet, only a small number of schools have such fast connections to make best use of the potential of digital education.

Click here for our report

Special report 10/2023

Published on 26/04/2023
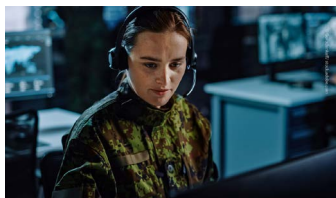
The Preparatory action on defence research – Some lessons learned, but value as a testbed for increasing EU defence spending reduced due to time constraints and limited results

The Preparatory Action on Defence Research (PADR) was designed as a precursor programme of the European Defence Fund (EDF). This is the ECA's first audit in the defence area and assessed whether the PADR properly prepared the EU to significantly increase its defence spending through the EDF. We conclude that, while some lessons were learned, the value of the PADR as a testbed for increasing EU defence spending was reduced due to the time constraints and limited results available. When the EDF was launched, most PADR projects were still ongoing.

Click here for our report

Special report 13/2023

Published on 05/05/2023

Authorised Economic Operators – Solid customs programme with untapped potential and uneven implementation

The EU has a programme in place to simplify customs procedures for reliable traders, to facilitate legitimate trade between the EU and its global partners and to ensure international supply chain security – the Authorised Economic Operators programme. We examined whether the Commission provided a sound regulatory and monitoring framework and whether the Member States implemented the programme properly. Our overall conclusion is that the AEO programme facilitates legitimate trade, enhances supply-chain security and the protection of the EU financial interest, but the management, regulatory framework and the implementation, including AEO benefits, require changes and improvements.

Click here for our report

Special report 12/2023

*Published on 12/05/2023*

EU supervision of banks' credit risk – The ECB stepped up its efforts but more is needed to increase assurance that credit risk is properly managed and covered

The European Central Bank (ECB) supervises large banks in the Banking Union, assessing their prudential risks. This includes credit risk, which is when loans become non performing and threaten the viability of banks and sometimes the whole financial system.

Click here for our report

Special report 14/2023

Published on 07/06/2023
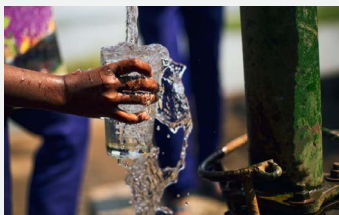
Programming the Neighbourhood, Development and International Cooperation Instrument – Global Europe – Comprehensive programmes with deficiencies in the methods for allocating funds and impact monitoring

Programming is the process through which the EU defines its priorities for international cooperation. Our audit assessed whether the Commission and the European External Action Service had programmed the newly created Neighbourhood, Development, and International Cooperation Instrument – Global Europe appropriately. We found that the geographical programmes were comprehensively designed, addressing a broad range of partner country needs and EU priorities, but there were deficiencies in the methodologies used for allocating funding to partner countries and in the setup of the monitoring framework.

Click here for our report

Special report 16/2023

Published on18/06/2023

NGEU debt management at the Commission – An encouraging start, but further alignment with best practice needed

The NextGenerationEU programme provides grants and loans to member states to support their economic recovery following the COVID-19 pandemic. The Commission will fund the programme by issuing up to €807 billion in EU bonds on the capital markets. We analysed whether the Commission had developed effective systems to manage the debt raised to finance NextGenerationEU. We found that the Commission had established the funding strategy and the organisational arrangements quickly, which had allowed the required funds to be made available in a timely manner.

Click here for our report

Special report 15/2023

Published on 19/06/2023

The EU's industrial policy on batteries – New strategic impetus needed

Batteries enable the clean energy transition and have become a key component of the competitiveness of the automotive sector. In 2018, as part of the EU's industrial policy, the Commission designated batteries as a strategic imperative for the EU's clean energy transition, and launched an action plan aimed at making Europe a global leader in sustainable battery production and use.

Click here for our report

Special report 18/2023

Published on 26/06/2023

EU climate and energy targets – 2020 targets achieved, but little indication that actions to reach the 2030 targets will be sufficient

The EU achieved its 2020 climate and energy targets, but some member states did not contribute as expected to the targets. The Commission did not assess whether the EU had reached its targets as a result of its policies rather than as a result of external factors, such as the 2009 financial crisis and the COVID-19 pandemic. The EU's 2020 and 2030 greenhouse gas emissions targets do not include emissions embodied in imported goods or emissions from international aviation and shipping. Little data is available on the cost to the EU budget, national budgets and private sector at which the EU achieved its targets.

Click here for our report

Special report 17/2023

Published on 03/07/2023

Circular economy – Slow transition by member states despite EU action

A circular economy preserves the value of products, materials and resources and minimises waste. A product's design determines around 80 % of its environmental impact. We found only limited evidence that the Commission's two Circular Economy Action Plans, in particular in terms of the circular design of products and of production processes, had been effective in influencing circular economy activities in the EU. We recommend that the Commission analyse reasons for the low take up by member states of EU funding for circular design and consider how to provide more incentives for this, and improve its monitoring of member states' transition to a circular economy

Click here for our report

Review 4/2023

Published on 06/07/2023

EU auditors: progress towards an internal electricity market is slow

Digitalisation can transform public administrations, helping them to deliver services more efficiently. The Commission has been modernising and simplifying its complex IT landscape. However, the "truly digital Commission" is still a work in progress, and all bodies responsible for managing EU funds face challenges in this area – particularly the need to improve interoperability by aligning different IT systems and databases. Digitalisation also has the potential to make the audit of EU funds more efficient.

Click here for our report

Special report 19/2023

Published on 10/07/2023

EU efforts for sustainable soil management – Unambitious standards and limited targeting

In Europe, 60-70 % of soils are unhealthy, in part due to soil and manure management practices. The common agricultural policy and the Nitrates Directive provide tools to encourage improvements in soil and manure management. We assessed whether the Commission and member states made effective use of these EU tools for managing agricultural soils and manure sustainably. We found that these were not used sufficiently and that there remains considerable scope to improve soil health.

Click here for our report

Special report 22/2023

Published on 18/09/2023

Offshore renewable energy in the EU – Ambitious plans for growth but sustainability remains a challenge

The EU strategy for offshore renewable energy sets ambitious deployment targets for 2030 and 2050. We examined whether the Commission and the member states had promoted the sustainable development of offshore renewable energy. We found that while their actions have supported this type of energy, ensuring its social and environmental sustainability remains a challenge. Maritime spatial planning facilitated the allocation of sea space, but has not resolved conflicts relating to its use. Thus far, the socioeconomic implications of developing offshore renewables have not been studied in sufficient depth, and numerous environmental aspects have yet to be recognised.

Click here for our report

Special report 21/2023

Published on 11/09/2023

The Spotlight Initiative to end violence against women and girls – Ambitious but so far with limited impact

In 2017, the EU launched the Spotlight Initiative in global partnership with the UN to ensure that all women and girls live free from violence and harmful practices. Our audit assessed whether the Spotlight Initiative has been an efficient and effective way for the Commission to address violence against women and girls. We found that the initiative has achieved outputs, but it is difficult to assess to which extent it achieved its intended results. We also identified room for greater efficiency and better value for money. We recommend that when funding future development initiatives, the Commission carry out a thorough comparison of implementation options and their costs, increase the proportion of funding reaching final beneficiaries and incorporate lessons learnt into actions building on the Spotlight Initiative.

Click here for our report

Special report 23/2023

Published on 26/09/2023

Restructuring and planting vineyards in the EU – Unclear impact on competitiveness and limited environmental ambition

The EU provides wine growers with support for vineyard restructuring to make them more competitive. This could also improve sustainable production and the environmental footprint of wine growing. Wine growers need to obtain authorisation before planting new vineyards, which are limited in number, so as to avoid excessive supply with negative social and environmental effects. We found that EU support has an unclear impact on the competitiveness of wine growers. There are flaws in the design and implementation of the planting authorisation scheme, and the EU's wine policy falls short of common agricultural policy's environmental objectives.

Click here for our report

2022 EU audit in brief

Published on 05/10/2023

A word on the '2022 EU audit in brief'

The '2022 EU audit in brief' provides an overview of our 2022 annual reports on the EU's general budget and the European Development Fund, in which we present our statement of assurance as to the reliability of the accounts and the legality and regularity of the transactions underlying them. We also covered the Recovery and Resilience Facility and provide a separate opinion on the legality and regularity of its expenditure. The EU audit in brief also outlines our key findings regarding revenue and the main areas of spending under the EU budget and the European Development Fund, as well as findings relating to budgetary and financial management.

Click here for our report

Opinion 03/2023

Published on 05/10/2023

Concerning the proposal for a Regulation of the European Parliament and of the Council on establishing the Ukraine Facility

Ukraine has continued to suffer enormous damage as a result of Russia's war of aggression. Between the start of the invasion on 24 February 2022 and June 2023, the EU and its member states made support of over €70 billion available to Ukraine and its people. This comprises various forms of assistance, including humanitarian aid, macrofinancial assistance, budget support, assistance for Ukrainians who have fled to EU countries, and military assistance provided outside the EU budget. In the opinion we make a number of suggestions in order to contribute to the legislative procedure. We suggest, for instance, enabling the European Commission to request that Ukraine review and/or modify the Ukraine Plan, backing loans to Ukraine with additional safeguards, as well as clarifying ECA's audit rights by stating them explicitly throughout the legislative proposal.

Click here for our report

Opinion 02/2023

Published on 05/10/2023

Concerning the proposal for a Regulation of the European Parliament and of the Council laying down measures to strengthen solidarity and capacities in the Union to detect, prepare for and respond to cybersecurity threats and incidents

On 18 April 2023, the Commission published a proposal for a Regulation of the European Parliament and of the Council laying down measures to strengthen solidarity and capacities in the Union to detect, prepare for and respond to cybersecurity threats and incidents (the "EU Cyber Solidarity Act").

Click here for our report

Opinion 04/2023

Published on 10/10/2023

Concerning the Commission's amended proposal for a Council Regulation on the methods and procedure for making available own resources

On 22 December 2021, the Commission proposed amending the Council Decision on own resources ('own resource decision') to introduce three new categories of EU revenue gradually as from 2023: a first based on the revised EU emissions trading system, a second based on the carbon border adjustment mechanism, and a third based on a share of residual profits that are allocated to member states from the largest and most profitable multinational enterprises.

Click here for our report

Special report 20/2023

Published on 12/10/2023

Supporting persons with disabilities – Practical impact of EU action is limited

Around one quarter of EU citizens have a self-declared disability. To help member states provide support, the EU has adopted disability strategies. We assessed whether the Commission had taken effective action to support persons with disabilities. The impact of EU action in this area was limited and the key indicators had not significantly improved. The criteria for disability status differ across the member states and the statistical data are not comparable, which may undermine mutual recognition. The 2021-2030 Strategy sets objectives, but some issues remain unresolved and the monitoring system in place does not show how EU funding helps improving the lives of persons with disabilities. We recommend that the Commission obtain more comparable data, work towards mutual recognition of disability status and review EU legislation to assess its compliance with the UN Convention on the Rights of Persons with Disabilities.

Click here for our report

Special report 20/2023

Published on 12/10/2023

Supporting people with disabilities –
Easy-to-read version

Easy-to-read information is easier to understand.
Easy-to-read information is important for people with intellectual disabilities and other people who have difficulty reading.

Click here for our report

Special report 26/2023

Published on 12/10/2023

The Recovery and Resilience Facility's performance monitoring framework – Measuring implementation progress but not sufficient to capture performance

We audited the RRF's performance monitoring framework and concluded that it measures implementation progress but only partly the RRF's performance. Milestones and targets and common indicators contribute to measuring progress but focus on output rather than results and do not fully cover all aspects of the RRF's performance. The RRF scoreboard is user-friendly but affected by data quality and transparency issues. The early RRF reports mostly complied with the reporting obligations but the information on performance was limited. We recommend that the Commission improves the quality of RRF reporting and addresses the shortcomings regarding performance monitoring in future instruments based on financing not linked costs.

Click here for our report

2022 AAR

Published on 04/05/2023

Our activities in 2022
Annual activity report of the European Court of Auditors

This activity report gives an overview of our work and publications in 2022, which was the second implementation year for our new strategy. In addition, it provides information on our management, staff, audit support and finances.

Click here for our report

2022 Sustainability report

Published on 30/05/2023

The ECA's 2022 sustainability report

The European Court of Auditors' 2022 sustainability report describes the institution's continued efforts to be a sustainable organisation. It is based on the Global Reporting Initiative (GRI) Standards and describes how we address the environmental, social and economic impact of our operations, both internally and externally.

Click here for our report

Financial year 2022

Published on 30/06/2023

Report of the authorising officer by delegation (pursuant to Article 74(9) of the Financial Regulation)

This report contains financial and management information, an analysis of the efficiency and effectiveness of internal control systems, and the Secretary-General's annual declaration of assurance regarding the legality and regularity and sound financial management of the financial transactions under his responsibility.

Click here for our report

NEXT EDITION

Accountability and transparency: arrangements and practices

In today's world we hear about some sort of crisis almost every day (war, migration, climate change, inflation to name but a few), so it is unsurprising that calls for a greater public response have been growing ever louder. There are the same calls also for EU action, given its ever-growing annual budget spending, which has increased over the past 20 years from almost €99 billion in 2002, to €196 billion in 2022. However, the budget is just one aspect of EU finances; there is also EU expenditure outside the budget, the clearest example being the EU's Recovery and Resilience Facility, of which over €47 billion was spent in 2022. These sums should be properly spent, and this is where accountability and transparency come in. There are also EU regulations and directives to consider, which have perhaps an even greater impact than the financial dimension of EU action. The area of regulation is one in which the EU is considered to be a superpower, from its anti-trust action to protecting citizens' privacy.

Whether at EU or national level, we see often see that public attention – and that of policy-makers – tends to focus on future action instead of on achieving things in the here and now. However, to guarantee public trust in future endeavours, there must first be trust in past and present ones. What does this mean in practice? People must be able to see that those in public office act with integrity, apply the rule of law, spend taxpayers' money carefully, are clear about objectives, and achieve the results that were promised. Failures here will diminish public trust, and this is a concern in the EU, given that its institutions are often perceived as being quite far removed from the general public. Accountability is thus one of the cornerstones of the democratic process, and a key part of EU policy procedures. These procedures begin by the European Parliament, Council and Commission all agreeing on policy action, are then followed by the Commission executing the action, including through shared management structures, and finally come the key inputs from audit and evaluation reports, as well as accountability through Parliament and Council, including the discharge procedure.

Source: Iqoncept/Depositphotos

Source: Slphotography/Depositphotos

We live in a fast-paced world, with fake news, own truths, echo chambers, conspiracy theories and the data crunches through AI, all of which prevent us from seeing what is really going on. For this reason, reality checks are needed even more to provide the highest-quality information possible in order to hold those in power accountable and ensure governments that learn from their mistakes. Checks and balances need to be in place to ensure proper democratic accountability and effective governance. Governance is also important when it comes to providing value for money and creating clear and visible benefits for citizens.

In the next edition of our ECA Journal we will look at accountability and transparency in general. What does this entail and how is it put into practice? What requirements need to be in place for accountability to function properly? What are proper and reasonable transparency requirements? What role does audit play in this whole process? How does accountability in the public sector differ from the private sector and how do accountability structures in the EU differ from those elsewhere? What is needed in terms of governance to ensure effective accountability, but also in terms of addressing citizens' concerns about trust? Where are important accountability deficits? By attempting to answer these questions and more, we will cover this issue that is not only at the heart of the ECA's core business, but always has additional relevance when it comes to elections. Let's not forget that the elections for the European Parliament, scheduled for June 2024, are just around the corner, and this is a key moment for holding those in power accountable for their performance.

ISSN 1831-449X

EDITION
HIGHLIGHTS

The contents of the interviews and the articles are the sole responsibility of the interviewees and authors and do not reflect the opinion of the European Court of Auditors.

COVER: Migration policy and the EU
oleschwander, Salajean/Depopsitphotos-Nicolas Toulas

QJ-AD-23 002-2A-N