



# EXTERNALISATION OF EUROPEAN POLICIES REGARDING MIGRATION

Exchange of views between civil society,  
decision-makers and academia

may 2019

## Table of contents

Introduction	3
Externalization of the right of asylum and of its border management by the European Union	5
The <i>hotspot</i> approach or the non-observance of the fundamental rights of migrants	23
Interview of Mr. Philippe Lamberts	42
Interview of Mrs Christine Revault d'Allonnes Bonnefoy	45
Interview of Mr. De Bruycker	48
ECRE's position	51

Authors: **Giovanna Costanza**, ECRE, **Pierre Jassogne**,

**Martine Vandemeulebroucke**

Cover picture: **Sophie Devillé**

Translation: **Ludmila Bulgar**

Responsible editor: Sotieta Ngo – all rights reserved – CIRÉ asbl 2019

# INTRODUCTION

This publication, made by CIRÉ within the project “*Challenging deprivation of liberty and externalisation as tools for migration management and advocating for dignified reception in the EU*”<sup>1</sup>, is meant to denounce the EU migration policy of externalisation of its borders’ control. In the last years, the restrictive migration policies put in place by the European Union and its Member States have led to systematic infringements of the international Conventions and fundamental rights of migrants. Nowadays, the obsessional control of borders causes the multiplication of the provisions for the detention, confinement and selection of migrants at the external borders of EU. The policies related to migration are increasingly approached from this security point of view, and not from the point of view of attaining high standards of protection and respect of fundamental rights. The putting in place of the *hotspot* approach illustrates that the European Union chooses to manage the migration by means of arbitrary detention of human beings, the only crime of which is the one of escaping from wars, torture and dictatorship.

This is a cynical migration policy which does not hesitate to negotiate inequitable and indecent agreements with third countries in order to push as far as possible these “undesirables” and to block the migration movements. These agreements, which may escape the democratic and parliamentary control, are often contrary to the rights of the migrants and mock the international obligations of the EU States regarding the protection.

---

<sup>1</sup> Financed by EPIM, this project is coordinated by the Migreurop network, a member of which CIRÉ is, and which has among its main partner Italian (ASGI and Arci) and French (Gisti) associations. This project is meant to denounce the “hotspot approach” and, more generally, the externalisation policy conducted by the European Union (EU) and its member States, including during the conclusion of agreements with third countries.

The consequence of such a policy is an elevated human price. Of the number of those who arrive onto the EU territory decreases, the number of deaths in the Mediterranean Sea is constantly increasing.

For CIRÉ, it is of paramount importance that the governments and future MEPs work in order to guarantee the protection of the migrants and refugees. This is about promoting the respect for human rights and the values laying at the basis of the European Union. For this purpose, this publication proposes the analyses and recommendations made by CIRÉ to the EU institutions for putting in place a policy meant to reaffirm the primacy of the right of asylum and reception over the detention of migrants. It also contains the positions of various key stakeholders (NGOs, academics, and political decision makers) regarding the assessment of the last EU legislature, and also regarding the possible excesses of the EU migration policy.

**EXTERNALIZATION OF  
THE RIGHT OF ASYLUM  
AND OF ITS BORDER  
MANAGEMENT BY  
THE EUROPEAN UNION**

## Introduction

Many years ago, EU decided to establish migration management as its main priority. Based on a security view on migration, it establishes more and more restrictive policies to protect its borders to the detriment of the fundamental rights of migrants and makes externalization the backbone of its migration policy.

Thus, since 2015, EU tries to answer to the migration crisis namely with the introduction of the *hotspot* approach<sup>1</sup>. These triage and containment centres that proliferate at the internal and external borders of Europe and throw thousands of asylum seekers into squalid life conditions.

Besides these, the European Union and some of its member states particularly do not hesitate to collaborate with dictatorships or with countries not observing human rights (Libya, Turkey or Sudan) by means of inequitable or reproachful agreements or financing, making these states Europe's unavoidable gendarmes.

The disastrous consequences of such collaborations and of the externalization policy, which became pushed to its paroxysm nowadays, lead to thousands of dead persons at EU borders.

EU and its member states forget that migration is part of the history of humanity and that behind the categorization of foreigners, behind the triage into "good" and "bad" migrants, there are humans looking for a better life. If human dignity is an unalienable right, it does not seem to have a place in the political discourses anymore.

CIRÉ is convinced that EU should change the paradigm and should have a more ambitious and less security view on migration. The EU collaboration with third countries may not be based on power relationships, it must be based on equality relations, effective respect of human rights and real possibilities of migration. EU should guarantee a dignified and qualitative treatment to the asylum seekers located on its territory, in accordance with its international commitments, and should consider detention as an exception.

This note invites EU to put in place migration policies respecting the rights of foreign people. The European efforts should aim at reaffirming the rights of asylum and reception, in accordance with the international and European obligations on the matter.

After several context elements, three advocacy lines will be developed in order to allow Europe and its member states to attain these objectives.

<sup>1</sup> According to Eurostat, a total of more than 1.2 million of people sought asylum in EU for the first time in 2015, which is twice as much as in the previous year when 625,000 asylum seekers have been recorded.

## Context

Today externalization is the backbone of the European migration policy. This policy is based on various measures aimed at delocalizing the external borders of Europe and at outsourcing the control to third countries, either departure or transit countries, for the purpose of blocking migrants as far as possible from the EU borders.

These different measures also allow the EU countries to shrug off the responsibility issuing from their obligations of receipt and protection of asylum seekers pursuant to the right of asylum and to Geneva Convention of 1951. In the absence of safe and legal access routes, the people seeking for protection are forced to endanger their lives in order to be able to arrive to Europe and get a refuge.

## Externalization measures

---

### THE “HOTSPOT” APPROACH

Since 2015, EU tries to answer to the migration crisis namely with the introduction of the *hotspot* approach. These triage and containment centres that proliferate at the internal and external borders of EU and throw thousands of asylum seekers into squalid life conditions, especially in Greece, and increase the confusion between reception and detention and between so-called “economic” migrants and asylum seekers.

The objective of these mechanisms is not only to discourage those who seek protection, but also to stigmatize and criminalize them. Nowadays the foreigners are regarded as invaders, too many and “undesirable”.

Despite numerous violations of the most fundamental rights of the migrants located in such centres, EU invites its member states to open new ones and to continue managing migration by means of arbitrary detention of humans, whose only crime is to wish to escape from war, torture and dictatorships.

The direct consequence of this *hotspot* approach is the intensification of externalization of the border control to the so-called third countries. The cooperation with third countries of origin or of transit allow to retain the migrants as upstream as possible from the European borders and to facilitate

the return and expulsion of unwanted migrants.

Being strong in its power relationship, EU outsources thus the control of its borders to third countries and imposes to them a responsibility in the management of irregular migration, in consideration of a series of aids. Because of this, those who depart risk to be taken in charge in the countries of origin or transit, where they risk being subjected to violations, torture, inhuman and degrading treatments and arbitrary detentions<sup>2</sup>. The fundamental rights of migrants and the international obligations of the European states regarding protection are mocked in this way.

## AGREEMENTS WITH THIRD COUNTRIES

The collaboration between EU countries and Turkey and Libya are the perfect example of putting in place the externalization of migration policy of the European Union, to the detriment of human rights and international obligations.

### EU-TURKEY AGREEMENT

Pursuant to EU-Turkey agreement<sup>3</sup>, Turkey undertook, from the end of March 2016,<sup>4</sup> to control and impede the migrants to cross its borders and accepted the return of migrants by Europe through its territory. It also takes care of the registration and identification of migrants and of their access to rights. In practice, EU has transferred the responsibility concerning asylum and reception to Turkey. Currently this country receives around

2 CIRÉ, “The attitude of EU and its member states towards Soudan” authorities is available at <https://cire.be/publications/analyses/l-attitude-de-l-europe-et-de-ses-etats-membres-face-aux-autorites-soudanaises>

3 CIRÉ, “A year since the EU-Turkish Agreement: a sad anniversary with a heavy human toll”, available at <https://www.cire.be/publications/analyses/un-an-de-l-accord-ue-turquie-un-triste-anniversaire-et-un-lourd-bilan-humain>  
The agreement offers an “one for one” deal: for each Syrian accepted in Turkey, one Syrian from Turkey – who has not tried to cross it – could be resettled in an EU country (with a threshold of 72,000 people). Finally, Turkey undertook to readmit on its territory any irregularly staying person that has passed at a certain moment through the Turkish land. In exchange, EU undertook to disburse to Turkey up to 6 billion of Euros, to liberalise visas for Turkish nationals and to reopen the thorny negotiations regarding Turkey joining EU.

4 The agreement was signed on 18 March 2016 and came into force two days later.

four million refugees<sup>5</sup> and is considered a “safe third country” by the European Union.

But Turkey is not a safe third country for the migrants and asylum seekers present on its territory, in accordance with EU law<sup>6</sup>. In fact, in order to apply the concept of “safe third country” to non-European countries, such countries should allow migrants to ask and obtain protection in accordance with Geneva Convention and should effectively protect asylum seekers and refugees, observing the “non-refoulement principle” provided by article 33 of the above Convention<sup>7</sup>.

5 File “Turkey-Civil Défense and European Humanitarian Aid Operations”, available at [https://ec.europa.eu/echo/where/europe/turkey\\_fr](https://ec.europa.eu/echo/where/europe/turkey_fr)

6 According to article 38 of the “Procedures” Directive (recast), Member States may apply the concept of safe third country “if the competent authorities obtained certitude” that the applicants could not be afraid of any of the five reasons stated in Geneva Convention of 1951 regarding the refugee status; that the non-refoulement principle is observed in accordance with Geneva Convention; that the interdiction of taking removal measures in case of risk of torture, cruel, inhuman or degrading treatments is observed; and finally that the applicant could ask for the recognition of the refugee status and benefit of it according to Geneva Convention. <https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:32013L0032&from=FR>

7 Principle of the right of refugees forbidding the States to expulse or expel, in any way, a person to a country or territory where his or her life or freedom is endangered by reason of race, religion, nationality, belonging to a certain social group or of political opinions. This principle also forbids to send a person back to a country where he or she would be subjected to torture, inhuman or degrading treatments. This fundamental principle may not be the object of any exception and is

However, concerning asylum, Turkey has ratified Geneva Convention of 1951 regarding the refugee status with a geographical exception, according to which only the asylum seekers native of European countries may benefit from the status of refugee in the sense of the above Convention. Because of that restrictive clause, very few people may fully benefit from the refugee status in this country. The migrants native of a non-European country that are in Turkey (more than 3.5 million of Syrians and hundreds of thousands of people native of Iraq, Afghanistan, Iran and Somalia<sup>8</sup>) may benefit of a status of “conditioned refugees” which only offer a temporary and limited residence permit in Turkey, in the expectation of an eventual resettlement elsewhere.

The application of the notion of “safe third country” to Turkey imposes also to this country an obligation to ensure decent material conditions to all the applicants (right to accommodation, right to stay, access to cares, access to work, etc.) which seems impossible to effectively fulfil taking into consideration the current situation in the country. In fact, despite the very important humanitarian funds released by the European Union in favour of the refugees from Turkey (2.09 billion Euros since 2016), only 155,000 of them live in camps managed by the Turkish authorities, where the refugees have access to accommodation, healthcare, education, alimentation and social activities. Most Syrian refugees and

guaranteed by article 33 of Geneva Convention of 1951 and by article 19 of the EU Chart of fundamental rights.

8 <https://data2.unhcr.org/en/situations/syria>

many refugees of other nationalities live outside such camps, in very difficult conditions, with few resources and with very difficult access to basic services, such as healthcare and education<sup>9</sup>.

The absence of control by the Court of Justice regarding the conformity of this agreement with the respect to fundamental rights guaranteed by the Chart of fundamental rights of the European Union, such as the right of asylum, absolute interdiction to subject any person to torture and inhuman and degrading treatments, interdiction of push-back and interdiction of collective expulsions<sup>10</sup> raises questions.

Nowadays, the agreement with Turkey has created a system ensuring that migrants do not arrive anymore to the European land and are maintained outside EU.

Unfortunately, this agreement may not be impugned in front of European jurisdictions.

In fact, the European Court of Justice stated its incompetence to declare the illegality of this agreement, concluded by the member states and not by the European Union<sup>11</sup>. Nevertheless, the right to an effective appeal in front of a judge should be guaranteed to any person whose rights and freedoms guaranteed by the EU law have been infringed. This is a fundamental right recognized by article 47 of the Chart of fundamental rights of the European Union.

### ITALY-LIBYA AGREEMENT

After managing to impede the migrants to reach European land through the Eastern Mediterranean route, the European Union and Italy wanted to be able to establish the same approach regarding the countries of North Africa in order to close, this time, the Central Mediterranean route and to stop the flow coming from Libya towards Italy<sup>12</sup>.

Italy has signed an agreement with Libya regarding migration on 2 February 2017, *Memorandum of understanding*<sup>13</sup> for the purpose of delegating to Libya the management of migration flows. According to such memorandum, Italy shall offer the technical and technological support to equip and

9 File Turkey, Civil Defence and European-Humanitarian Aid Operations, available at [https://ec.europa.eu/echo/printpdf/4457\\_fr](https://ec.europa.eu/echo/printpdf/4457_fr)

10 The right of asylum is guaranteed by Geneva Convention of 1951 and by article 18 of EU Chart of fundamental rights; the absolute interdiction to subject anybody to torture and inhuman and degrading treatments is guaranteed by article 3 of the European Convention of Human Rights and by article 4 of the EU Chart of fundamental rights; the interdiction of push back is guaranteed by article 33.1 of Geneva Convention of 1951 and by article 19.2 of EU Chart of fundamental rights; and the interdiction of collective expulsions is guaranteed by the Protocol no. 4 to the European Convention of Human Rights and by article des expulsions collectives 19.1 of EU Chart of fundamental rights.

11 <http://curia.europa.eu/jcms/upload/docs/application/pdf/2017-02/cp170019fr.pdf>

12 <https://data2.unhcr.org/en/situations/mediterranean?id=105>

13 Such Memorandum of understanding was signed by the president of the Italian Council Paolo Gentiloni and by the Prime Minister of the Government of National Accord of Tripoli Fayez al Serraj on 2 February 2017, with the support of the EU leaders.

train the Libyan coast guards entrusted with the reinforcement of control and with the surveillance of their borders. The memorandum also provides for the amelioration and equipment of the “reception centres” for migrants in Libya and the financing of “development programs”.

This memorandum, which has not been subjected to ratification by the Italian Parliament, is the object of an appeal in front of the Italian Constitutional Court. The legislative decree allowing to divert 2.5 million Euros from the development aid funds in favour of buying 4 patrol boats, providing spare vehicles and training the teams of the Libyan authorities was the object of appeal in front of the Administrative Tribunal of the Italian district of Lazio<sup>14</sup>.

The collaboration between Italy and Libya is part of a global European strategy of delegating the management and reception of migrants. Indeed, several days before signing the *Memorandum*, the European Commission was proposing measures to decrease the passages through the Central Mediterranean route resumed upon Malta Summit of February 2017. During such Summit, under the pretext of “saving lives” on

the sea and of guaranteeing an adequate reception to the migrants in Libya, the European governments gave their consent to reinforce the support to Sophia operation<sup>15</sup> and to equip and train the Libyan coast guards so that they could reinforce the surveillance and control of Libyan borders<sup>16</sup>. The European leaders also supported the memorandum concluded between Italy and Libya<sup>17</sup>. After signing such memorandum, the European Union granted 200 million Euros from the Funds of European aid to African countries to participate in putting in place “measures” meant to remediate the migration situation in Libya<sup>18</sup>.

After Khadafi’s fall, the situation of Libya is very instable, and many reports attest serious and systematic violations of human

14 ASGI has appealed in front of Lazio administrative tribunal the decree 4110/47 my which the Ministry of Foreign Affairs and International Cooperation granted to the Ministry of Interior a loan of 2.5 million Euros for the relaunch of 4 patrol boats, provision of spare vehicles and training of the teams of Libyan authorities. This appeal, rejected by the administrative court, is today before the Council of State. <https://www.asgi.it/asilo-e-protezione-internazionale/libia-italia-ricorso-fondi-cooperazione/>

15 Sophia Operation (EUNAVFOR MED): Military operation in the south of the Central Mediterranean Sea, approved by the EU member states in May 2015, the objective of which is to dismantle the economic model of the ferrymen network and to fight against the trafficking of migrants. This is done by identifying, capturing and neutralising the ships and the material supposed to be used by the ferrymen or traffickers who move migrants.

16 Other commitments have been undertaken on the resettlement of refugees from Libya to other countries and on the support to the voluntary return from Libya to the countries of origin. <http://www.consilium.europa.eu/fr/press/press-releases/2017/02/03-malta-declaration/>

17 CIRÉ, “Externalization of the right of asylum and border management by the European Union: towards the denial of the fundamental rights of migrants”, <https://www.cire.be/externalisation-du-droit-dasile-et-de-la-gestion-des-frontieres-par-lunion-europeenne/>

18 Malta Declaration of 3 February <https://www.consilium.europa.eu/>

rights in relation to migrants<sup>19</sup>: sordid conditions of detention, rapes, tortures, executions, inhuman and degrading treatments and slavery. Furthermore, when migrants are caught on the sea by the Libyan coast guards, they suffer all kinds of violence and torture in the detention centres<sup>20</sup>. All these elements allow affirming that Libya may not be considered a safe state.

Despite these denunciations formulated by NGOs and despite the report of the UN Security Council on Libya<sup>21</sup>, EU continues to support the reinforcement of controls in the Mediterranean Sea favouring the collaboration with Libyan authorities. This migration route has become one of the most dangerous in the world. Unfortunately, migrants die every day in the Mediterranean Sea while trying to arrive to Europe and escape from the Libyan hell.

19 Amnesty International, “Libya’s dark web of collusion: Abuses against Europe-bound refugees and migrants”, <https://www.amnesty.org/en/documents/mde19/7561/2017/en/> OHCHR, report “Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya”, <https://www.ohchr.org/Documents/Countries/LY/LibyaMigrationReport.pdf>

20 HCDH, “Detained and dehumanised, Report on human rights abuses against migrants in Libya”, [http://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised\\_en.pdf](http://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf); “Human Rights Watch, UE: Place human rights above political considerations – Delegating to Libya the responsibility to manage migration is an approach full of risks”, Amnesty International, “Concerns on the cooperation policy between EU and Libya”.

21 United Nations Security Council, Final report of the group of experts on Libya, created by resolution 1973 (2011), S/2017/466, 1 June 2017

## THE REFOULEMENT OPERATIONS

The EU member states look for more and more subtle strategies to bypass their obligations regarding international protection, despite the repeated convictions issued by the European Court of Human Rights<sup>22</sup>. For illustration, the refolement of migrants at the borders by the police officers or by boats in the Mediterranean Sea is an infringement of the non-refoulement principle that absolutely forbids to send people to a place where they risk suffering from torture or inhuman and degrading treatments, according to article 3 of the European Convention of Human Rights (ECHR). Thereafter, if the migrants do not arrive onto the European Continent, they cannot have access to the procedure of international protection. No member state would check where there is an infringement of article 3 of ECHR in case of return of such migrants to their country of origin. Nowadays, despite the different names which may be given to such practices (pull back, push back, interceptions, readmission etc.), all of them are contrary to the non-refoulement principle provided by the European and international law<sup>23</sup>.

Migration management and border control may not be done with the infringement of the fundamental rights of migrants and asylum seekers. The right to human dignity, to life, to asylum, the absolute interdiction

22 The Court has already severely condemned the Italian refolement policy towards Libya in the case *Hirsi Jaama and others vs. Italy*, application no. 27765/09

23 The Cimade, “inside, outside: Europe becoming sick”, available at [https://www.lacimade.org/wp-content/uploads/2018/06/La\\_Cimade\\_Schengen\\_Frontieres.pdf](https://www.lacimade.org/wp-content/uploads/2018/06/La_Cimade_Schengen_Frontieres.pdf)

of subjecting to torture, inhuman or degrading treatments, and the respect of the non-refoulement principle remain just senseless affirmations once EU externalizes the management of its borders to countries not respecting human rights.

### READMISSION AGREEMENTS

The readmission agreements, signed by EU or by one of its member states with third countries in order to facilitate the identification and forced return of migrants irregularly staying on the European territory<sup>24</sup>, have also become a central tool of the fight against clandestine immigration.

Nowadays, the quasi-totality of commercial or economic agreements concluded between EU and neighbouring countries contain migration-related clauses, especially readmission agreements. The good management and cooperation on migration issues have become an essential condition for third countries to have access to the European development funds<sup>25</sup>, manipulated in this way to obtain the control of borders and return of migrants.

In 2009, the Migreurop network has already denounced this connection between the

economic and commercial policy or the “dangerous connection” between the support for development and the management of migration flows<sup>26</sup>. This connection forms part of the expulsion logics, of keeping migrants away and criminalising the migration phenomenon.

The readmission agreements mainly serve the interests of EU countries, as the state accepting to sign such type of agreement with the European Union or one of its member states is motivated by hopes, such as the hope to be able to join EU, to receive financial compensations or obtain visa facilities for its citizens.

Even though these agreements are public, their negotiations are not transparent, as the compensations involved, which are not directly related to the readmission, are not included in the text submitted to the European Parliament and Council and are not known to the public. The transparency of such negotiations is more than deficient<sup>27</sup>. Nevertheless, the control of the modalities of such negotiations is necessary to guarantee that the third countries are really considered equal partners and are not subjected to European blackmailing.

24 The Migreurop notes “The readmission agreements – The ‘cooperation’ serving to expulse migrants, available” at [http://www.migreurop.org/IMG/pdf/Note\\_de\\_MIGREUROP\\_12122012\\_Accords\\_de\\_readmission\\_pour\\_mise\\_en\\_ligne.pdf](http://www.migreurop.org/IMG/pdf/Note_de_MIGREUROP_12122012_Accords_de_readmission_pour_mise_en_ligne.pdf)

25 The agreements of readmission of migrants remain at a standstill, <https://www.euractiv.fr/section/migrations/news/les-accords-de-readmission-des-migrants-font-du-sur-place/>

26 The Migreurop notes, “The readmission agreements – The ‘cooperation’ serving to expulse migrants”, available at [http://www.migreurop.org/IMG/pdf/Note\\_de\\_MIGREUROP\\_12122012\\_Accords\\_de\\_readmission\\_pour\\_mise\\_en\\_ligne.pdf](http://www.migreurop.org/IMG/pdf/Note_de_MIGREUROP_12122012_Accords_de_readmission_pour_mise_en_ligne.pdf)

27 CIRÉ, “Elements of critics of the European and Belgian migration policy”, available at <https://www.cire.be/les-politiques-migratoires-europeenne-et-belge-elements-de-critique/>

The readmission agreements represent a threat for the respect of human rights and fundamental rights of migrants in situation of irregular stay and of asylum seekers. Indeed, the European Union or its member states open negotiations and conclude agreements with countries that represent an interest for their geographic position in the intention of making the return as efficient as possible, without even evaluating the level of respect of human rights or the way of managing the migration issues by the governments of such countries.

If the international law contains an obligation for the states to readmit their citizens that are in irregular stay in another state, the application of such agreements raises issues as far as it concerns the readmission of citizens of a third country or stateless persons. Actually, the risk of infringement of the non-refoulement principle exists, as the citizens of a country X readmitted by a country Y are readmitted in a country t which they do not belong and which, probably, will send them immediately to another country, without taking into consideration the situation and respect of human rights which is prevalent<sup>28</sup>.

Nowadays, the member states focus more and more on the transit countries which share their borders to create a “buffer zone” around their territory<sup>29</sup>. Consequently, the

transit countries tend to decrease the freedom of circulation of the asylum seekers, though it is provided by regional agreement, such as ECOWAS (European Community of West African States). The readmission agreements negotiated with transit countries decrease thus the possibilities of the migrants to exercise their fundamental rights in Europe and to be able to seek asylum there, at that those transit countries do not guarantee their fundamental needs (access to accommodation, work, healthcare, justice, etc.) or their safety<sup>30</sup>. If EU tries to influence the asylum systems of its neighbours, it is to remind that such countries are not obliged to observe the right of asylum and reception provided by the European norms. If the migrant is not able to return to his or her country of origin, serious threats exist on the respect of the principle of human dignity and of the fundamental rights.

Moreover, many infringements of the international law and human rights have been committed from the moment of putting in place such readmissions: of the non-refoulement principle, of the right of asylum and absolute right not to be subjected to torture; inhuman or degrading punishments or treatments; of the interdiction of collective expulsions, of the right to life; of the respect to family life, etc.

28 CIRÉ, “Externalization of the right of asylum and border management by the European Union”, available at <https://www.cire.be/lexternalisation-du-droit-dasile-et-de-la-gestion-des-frontieres-par-lunion-europeenne/>

29 Report of Tineke STRIK “Consequences for

human rights of the ‘external dimension’ of the asylum and migration policy of the European Union: far from them, far from rights?” Available at <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-FR.asp?FileID=24808>

30 Ibidem

### INFORMAL AGREEMENTS AND TECHNICAL COLLABORATIONS

Taking into consideration the difficulty of concluding readmission agreements, today the collaboration between the EU member states and the third countries also takes place by means of informal agreements or technical collaborations of the police for the purpose of identifying more easily the migrants and allowing accelerated expulsions.

These collaborations, which fit into the framework of Khartoum process<sup>31</sup>, EU Trust Fund for Africa<sup>32</sup> and “Partnership for Migration”<sup>33</sup>, allow the collaboration of the EU member states with countries as Sudan. The question is about texts that often do not have to be ratified by the national parliaments and which may avoid any control. This was the case of the Police Cooperation Agreement (MoU) concluded between Italy and Sudan<sup>34</sup> on 3 August 2016. This police cooperation

agreement raises legitimacy issues at the level of conformity with the national law, as the management of migration flows should be subject to a procedure of ratification of the international treaties according to the Italian Constitution, to the international law, especially to the non-refoulement principle<sup>35</sup>.

The application of this agreement had very serious consequences for Italy, as it led to the expulsion of approximately 40 Soudanese citizens at the end of August 2016. All of those who could escape from expulsion obtained the refugee status in Italy. Now an application has been filed to the European Court of Human Rights by ASGI<sup>36</sup> against the expulsion of those Soudanese citizens for infringement of the non-refoulement principle, infringement of the collective expulsion interdiction, and infringement of the right to effective remedy.

Other countries, such as Belgium and France, did not hesitate to collaborate with Sudan and, contrary to Italy, they deny the conclusion of agreements with Sudan and prefer talking about “*technical collaboration*”. In the case of Belgium, it allowed the identification and expulsion of potential asylum seekers in detained in the closed centres of the country.

31 [http://europa.eu/rapid/press-release\\_MEMO-15-6026\\_fr.htm](http://europa.eu/rapid/press-release_MEMO-15-6026_fr.htm)

32 [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2\\_factsheet\\_emergency\\_trust\\_fund\\_africa\\_fr.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2_factsheet_emergency_trust_fund_africa_fr.pdf)

33 [https://eeas.europa.eu/sites/eeas/files/factsheet\\_partnership\\_framework\\_on\\_migration.pdf](https://eeas.europa.eu/sites/eeas/files/factsheet_partnership_framework_on_migration.pdf)

34 Sudan is a country that cannot be considered safe. It has been governed for 30 years by its President Omar Hassan Ahmad al-Bashir who has been the subject of two international orders of arrest of the International Criminal Court for genocide, crimes against humanity and war crimes in Darfur. Destitute by the army on April 11, 2019, the military leaders temporarily took power and the situation in the country is still very unstable.

35 CIRÉ, “Attitude of EU and its member states towards the authorities of Sudan”, available at <https://cire.be/publications/analyses/l-attitude-de-l-europe-et-de-ses-etats-membres-face-aux-autorites-soudanaises>

36 <https://www.asgi.it/allontamento-espulsione/memorandum-sudan-italia-analisi-giuridica/>

To make the return as effective as possible, the European Union always recommends a closer collaboration with the countries of origin. The partnership framework on migration matters<sup>37</sup> or “Migration Pacts” launched in 2016 allow, for example, the EU and its member states to coordinate their collective means of pressure in order to find, together with third countries, customised methods for the joint management and improvement of cooperation on return and readmission matters<sup>38</sup>. These customised partnerships allow thus to establish objectives and funding depending on the countries and on their collaboration with EU on migration matters<sup>39</sup>.

The whole cooperation with the European Union is therefore conditioned by the “good management of migration flows”. The African countries targeted at first are Mali, Ethiopia, Senegal, Niger and Nigeria. This model may serve for future partnerships with other African countries.

EU declares that it wants to improve the practical cooperation on readmission with the countries of origin of the migrants in irregular situation. Many agreements have been concluded lately with countries where the expectancies concerning fundamental rights are generalized and denounced by human rights defenders. These last agreements refer to such countries as Afghanistan, Guinea, Bangladesh, Ethiopia, Gambia and Côte d’Ivoire<sup>40</sup>.

---

37 [http://europa.eu/rapid/press-release\\_IP-16-2072\\_fr.htm](http://europa.eu/rapid/press-release_IP-16-2072_fr.htm)

38 [http://europa.eu/rapid/press-release\\_MEMO-18-5713\\_fr.htm](http://europa.eu/rapid/press-release_MEMO-18-5713_fr.htm)

39 The Cimade, “EU-African cooperation. Chronicle of a blackmail”, available at <https://www.lacimade.org/publication/cooperation-ue-afrique-migrations-chronique-dun-chantage/>

---

40 Amnesty International, “The situation of human rights in the world”, annual report for 2017/2018 available at <https://www.amnesty.be/infos/rapports-annuels/rapport-annuel-2018>

## Cost of externalization

The fight against irregular immigration conducted by the European Union involves immeasurable financial and human costs. The survey called *The migrants files*<sup>41</sup> performed by the consortium of journalists has, for example, revealed very important costs related to the forced return of migrants. According to that survey, after the years 2000, the return of migrants costed EU (plus Norway, Liechtenstein, Switzerland and Iceland) at least 11.3 billion EUR. This amount does not correspond to the final amount, as it is necessary to add to it the indirect costs of this policy, such as the development aid funds used nowadays as a tool to allow the collaboration with third countries on readmission matters. The survey has also revealed that the cost of deportations in EU is close to one billion EUR each year.

In Belgium, CIRÉ denounced that the budget meant for forced returns exceeded 63 million in 2014 and 88 million in 2018, which corresponds to an increase of 40% in 4 years. The intention of the Belgian government to build three new closed centres and the extension of places within the closed centres from 2021 will consequently increase the budget meant for forced returns: it should exceed the threshold of 100 million starting with 2019<sup>42</sup>.

The costs related to forced returns represent only one part of the amount spent by the European Union and its member states to maintain migrants far from their territory. Nowadays, the militarisation and externalisation represent a flourishing business for the arms and security industries, main beneficiaries of contracts for the supply of equipment and services for border security. Indeed, to increase the performance of the control of third countries, the European Union offer to such countries IT systems, military and protection equipment, and participate in the training of their security forces.

The TNI report "*Expanding the fortress*" denounces the obsessional policy of border control conducted by the EU and the (human and financial) costs of such policy. A policy which does not address the important reasons that make people migrate but which, contrarily, contributes to reinforce the repression and conflicts in the countries of origin<sup>43</sup>. The means used to put in place this policy are colossal, according to the report, and the main beneficiaries are authoritarian countries responsible of serious violations of human rights. The agreements with such countries escape often from the democratic control of the European Parliament or of the national parliaments. The examples of agreement between EU and Turkey, agreement between Italy and Libya and collaboration between Italy and Sudan are significant in this regard.

41 "The money trails, the migrants files" available at <http://www.themigrantsfiles.com/>

42 CIRÉ, "Memorandum of CIRÉ in view of the federal elections of 2019", <https://www.cire.be/memorandum-du-cire-en-vue-des-elections-federales-2019/>

43 TNI, *Expanding the fortress*, [https://www.tni.org/en/publication/expanding-the-fortress?content\\_language=fr](https://www.tni.org/en/publication/expanding-the-fortress?content_language=fr)

In June 2018, the Commission proposed to almost triple the funding meant for migration and border management for the period 2021-2027, which would amount to 34.9 billion Euros as compared to 13 billion Euros during the previous period<sup>44</sup>. This increase is not clear, as the official figures on migration show that our continent receives only an insignificant percentage of the millions of refugees in the world (85% of refugees are located in developing countries), that the arrivals have drastically decreased in the last years (116,273 arrivals by sea in 2018 compared to more than 1 million on 2015, according to IOM) and that, unfortunately, the number of deaths in the Mediterranean Sea is only increasing (2,297 deaths and disappeared people in 2018, according to IOM).

## The advocacy lines

It becomes imperative that EU and its member states put in place migration policies observing human rights of the people of foreign origin and reaffirm their will to guarantee the right of asylum and the right of reception on the EU territory and at its border, according to the international and European obligations on the matter. Three advocacy lines are formulated here for the attainment of such objectives by EU and its member states.

### FIRST LINE: OBSERVANCE OF FUNDAMENTAL RIGHTS OF MIGRANTS, INTERNATIONAL LAW AND EUROPEAN LAW

The EU countries should observe the fundamental rights of migrants on the basis of many European or international conventions, such as the European Convention of Human Rights and Geneva Convention regarding the refugee status. The involvement of third countries in migration control raises serious problems in terms of access to international protection and observance of fundamental rights. While the European Union externalises its borders, the member states assign their responsibilities concerning protection to countries that are not obliged to observe the guarantees of the right of asylum and reception, provided by the European law.

44 Budget of the European Union: The European Commission proposes an important increase of the funding meant to reinforce migration and border management, available at [http://europa.eu/rapid/press-release\\_IP-18-4106\\_fr.htm](http://europa.eu/rapid/press-release_IP-18-4106_fr.htm)

Detaining asylum seekers in the countries of origin or transit calls into question the right of any person to be able to emigrate, provided by article 13 of the Universal Declaration of Human Rights. Obviously, this right may be only exercised only if it is accompanied by a right to immigrate to another country<sup>45</sup>.

While the EU states, in the name of their national sovereignty, have the prerogative of granting or denying the entrance of foreign citizens to their territory, they still have to observe the EU chart of fundamental rights, the interdiction of non-refoulement provided by Geneva Convention on the status of refugees, as well as the absolute right provided by article 3 of the European Convention of Human Rights, they are forbidden to return or to refuse the access to a person facing serious infringements of human rights, including the right not to be subjected to torture, inhuman or degrading treatments.<sup>46</sup>

The cooperation of EU with these countries would deny the access to protection to the migrants that need it, at the extent at which the concerned third countries do not observe the international law on the matter and are not obliged to observe the European Convention of Human Rights (ECHR).

45 CIRÉ, "Elements of critics of the European and Belgian migration policy", available at <https://www.cire.be/les-politiques-migrations-europeenne-et-belge-elements-de-critique/>

46 Case Hirsi Jaama and others vs. Italy, application no. 27765/09, par.114

## RECOMMENDATIONS:

- put an end to the externalisation of its migration policy. EU should conduct a migration policy that complies with the fundamental rights of the migrants, asylum seekers and refugees. Therefore, it should have the courage to change the way it perceives migration and to conduct a minute reflection on putting in place the freedom of circulation
- put in place an ambitious policy of reception and protection. EU, observing the international law and regional texts countersigned by its member states, should reaffirm the priority of the right of asylum and reception.
- unconditionally ensure the observance of the non-refoulement principles, as well as of article 3 of the European Convention of Human Rights, which provides the absolute right not to be subjected to torture or to inhuman and degrading treatments. This involves stopping all the refoulement practices and stopping any form of violence towards the migrants at the borders
- do not negotiate international texts involving the infringement of the fundamental rights of migrants. The access to effective remedy should be guaranteed in case of infringement of rights
- stop the collaboration with the countries not observing human rights

---

## SECOND LINE: GUARANTEE OF THE TRANSPARENCY AND DEMOCRATIC CONTROL IN THE NEGOTIATION OF AGREEMENTS BY EU WITH THIRD COUNTRIES ON MIGRATION MATTERS

Nowadays, the collaboration of third countries takes place by means of a multitude of formal or informal agreements, declarations or memorandums of understanding which escape the democratic and parliamentary control and are often contrary to the rights of migrants. Such is the case concerning the return of citizens of the so-called third countries who do not have a residence permit.

Nevertheless, the control of the European Parliament, national parliaments and civil society is essential to guarantee that the agreements signed between EU and or its member states comply with the fundamental rights of the migrants and with the international conventions and treaties.

---

## RECOMMENDATIONS:

- ensure the transparency and democratic control when the European Union or its member states negotiate agreements with third countries concerning migration
- guarantee the highest level of transparency and facilitate the access of the civil society to any information regarding the negotiation of readmission agreements between the European Union or its member states with third countries
- subject the bilateral agreements with third parties to the control of all the national parliaments. It is necessary to guarantee that the approval is transparent and that the content is public.
- stop any form of police collaboration with totalitarian countries and, consequently, interrupt the signing of “*memorandums of understanding*” or “*protocol of agreements*” relating to the identification and readmission with such countries, which are not subjected to democratic control

---

### THIRD LINE: ASSESS THE MIGRATION POLICY IN TERMS OF FINANCIAL, DEMOCRATIC AND HUMAN COSTS

The current figures relating to migration show that the “invasion” of which we can often hear as a justification of colossal figures deployed for the protection of the borders does not exist. Contrary, the death of migrants at the border of EU continue to increase. Thousands of migrants continue to die on the sea or in the desert without being taken into account by anybody.

The management of public money may not be done to the service of restrictive policies conducted to the detriment of human rights. Contrary, we are convinced that the EU budgets should serve first the policies of reception and integration of migrants.

---

### RECOMMENDATIONS:

- to assess the efficiency of the migration policy, not only in terms of financial costs, but also in terms of democratic and human costs

## Conclusions

EU should change the paradigm and should have a more ambitious and less security view on migration. It should conduct a decent migration and reception policy complying with the values of democracy, respect to human dignity and human rights, which are the fundamentals of EU.

To attain this objective, the EU collaboration with the countries of origin or transit may not be based exclusively on power relations, it should be based on more equalitarian relations. Such collaboration should be based on the effective observance of human rights and should offer real possibilities of migration.

The control by the European Parliaments, national parliaments and civil society is essential to guarantee that the agreements signed between EU or its member states and third countries comply with the fundamental rights of migrants, and with the international conventions and treaties. The democratic control is necessary to guarantee the respect of the state of law and of the values that are at the basis of human solidarity.

EU should not pursue failing migration policies, as their consequences are the death of thousands of people. Currently, the refugees do not have other option than looking for illegal and dangerous ways to arrive to the European continent and to find a shelter. The traffickers and ferrymen are considered by EU as the only ones responsible for the thousands of deaths in the Mediterranean Sea. We rather think that namely

the tools for dissuasion and repression put in place by the European Union contribute to the development of criminal networks related to illegal immigration. They favour the taking of a high risk by the migrants and the increase of the deaths on sea and on earth, without EU assuming its responsibilities insofar.

To pursue the objective of saving human lives and of stopping the game of the ferry-men, EU and its member states should conduct a policy complying with the right and offer access to international protection to those who are at its borders. It would seem obvious to us that the promotion of safe and legal ways of migration is the most efficient way to allow the access of migrants to EU and to fight the ferry-men in parallel.

**THE *HOTSPOT*  
APPROACH OR  
THE NON-OBSERVANCE  
OF THE FUNDAMENTAL  
RIGHTS OF MIGRANTS**

## Introduction

The *hotspot* approach is one of the answers of the European Union (EU) to the so-called “migration crisis” of 2015<sup>1</sup>. This approach, put in place to allow the relocation of asylum seekers on the entire European territory and to alleviate Italy and Greece, was the object of numerous attacks from human rights defenders.

The *hotspot* approach is a complex tool meant to reinforce border control and the access to the European continent by means of developing the role of European agencies in the asylum and return procedures. It designs a new working methodology: it identifies the physical places for registration, identification and first assistance to migrants, directly after their disembarking in Italy or Greece, and push the migrants back from those places to the detriment of their fundamental rights.

The *hotspot*, generally described as “reception and first reception tools in the member states located on the front line”, are a new cover for the old policy of creating internment camps at the entrance in EU, as the Migreurop network was denouncing in 2016<sup>2</sup>. Three years after putting them in

place, we conclude that the *hotspots*, rather than reception centres, are in fact centres for the classification and identification of migrants or asylum seekers. Those end up blocked, especially in Greece, in squalid conditions, which are contrary to their right to a decent and human reception provided by the European law<sup>3</sup>. This approach reinforces the ambiguity between reception and detention and is meant to distinguish the “economic migrants” from asylum seekers. Nowadays, the “management” of asylum applications on a nationality basis, declared within the *hotspots* becomes the main criteria of access to the international protection system, infringing the norms regarding asylum.<sup>4</sup>

This selection procedure is unlawful and discriminating, and contributes to reinforcing the vulnerability, insecurity and clandestineness of migrants. It also causes a systematic infringement of their fundamental rights and mocks the obligations of EU states concerning reception and protection. The containment and arbitrary detention of migrants in such places answer to an EU fundamentally restrictive and reluctant policy to the reception of asylum seekers, contrary to the fundamental right

1 According to Eurostat, a total of more than 1.2 million of people applied for asylum for the first time in 2015 in EU, which is twice as more as in the previous year, when 625,000 asylum seekers have been registered.

2 Note of Migreurop no. 4 - October 2016. “Hotspots in the centre of the archipelago of camps”, available at [http://www.migreurop.org/IMG/pdf/note\\_4\\_fr.pdf](http://www.migreurop.org/IMG/pdf/note_4_fr.pdf)

3 <https://www.cire.be/relocalisation-des-de-mandeurs-de-protection-l-imposture-de-la-solidarite/>

4 Gennari Lucia, Ferri Francesco e Caprioglio Carlo (2018), “Within and beyond the hotspot approach. Short reflexions about the operation and significance of the hotspot system in Italy”, in *Studies on the Criminal Issue* online, available at <https://studiquestionecriminale.wordpress.com>

## Context

to freedom guaranteed by the European Convention of Human Rights.

This note invites EU and its member states to put in place migration policies complying with the rights of foreign origin people.

And thus, to urgently put an end to the *hotspot* approach.

The “migration crisis” and the tragic wrecks that have taken place in April 2015 in the Mediterranean Sea emphasized the failure of the EU policies of asylum and reception. In a context of humanity and solidarity crisis, the European Union should have put in place humanitarian channels and legal and safe ways allowing the exiled people to arrive to EU. However, instead of assuming its responsibilities concerning the rescue on the sea, it elected to reinforce its external borders by adopting the *hotspot* approach. This approach was proposed by the European Commission on the EU agenda concerning migration in May 2015<sup>5</sup>. Put in place in Italy and Greece following the decisions of the Council of Europe on the temporary measures of international protection in favour of these two countries<sup>6</sup>, it represents nowadays the new governance model in the management and control of the migration flows at the external borders of EU.

The *hotspot* approach, never exactly defined, has been created on the basis of simple communications of the European Commission stating only its essential features. The European Commission, facing

---

5 Communication of the European Commission to the European Parliament, Council of Europe, European Economic and Social Committee and Committee of the Regions, European agenda on migration, 13.5.2015 COM (2015) 240 final, available at <https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:52015DC0240&from=IT>.

6 Decision 2015/1523 of the Council of Europe of 14 September 2015 and 2015/1601 of the Council of Europe, 22 September 2015.

the emergency of a “massive inflow” of migrants and the difficulties encountered by Italy and Greece in order to take them in charge and receive them, has proposed<sup>7</sup> to put in place the solidarity principle by means of relocation on the entire EU territory<sup>8</sup>.

This approach, which should have been only temporary as it is closely related to the relocation procedure, in fact has only worsened Italy and Greece’s fragile system of asylum and reception and caused a deep crisis of the right to asylum in EU.

## A POLICY OF IDENTIFICATION AND SELECTION OF MIGRANTS

To alleviate Italy and Greece, a plan and certain quotas of mandatory repatriation of the asylum seekers<sup>9</sup> have been approved and

established based on various criteria (number of inhabitants, GDP, etc.). The method proposed to determine the need for international protection of the migrants before an eventual relocation to another member state is questioned. Indeed, for a migrant to be eligible for relocation, his or her need for protection should be recognised on a fast procedure. This fast classification of migrants and asylum seekers, essentially based on their nationality, involves the risk of treating some applications for protection in an expeditious manner and with insufficient procedural guarantees<sup>10</sup>. This is contrary to the guarantees provided by the norms of the international law on the matter<sup>11</sup>.

Putting in place *hotspots* at the main points of entrance of the migrants into the EU allows their selection through the collaboration of the teams of EASO, Frontex, Europol and Eurojust. What follows is all about identifying migrants, recording their fingerprints and registering them at their arrival in order to distinguish those who need protection from those the EU wishes to get rid quickly. EASO, the European Asylum Support Office, takes care of the

7 Regarding asylum and immigration, article 78, par. 3, TFUE provides that the Council, at the proposal of the Commission, may take temporary measures in favour of the member states affected by the onset of a “sudden” inflow.

8 CIRÉ, “The reaction of EU to the tragedies in the Mediterranean Sea” - <https://www.cire.be/thematiques/asile-et-protection/la-reaction-de-l-europe-face-aux-tragedies-en-mediterranee>

9 At the beginning, it was about temporarily distributing within EU the people that manifestly needed international protection (namely Syrians and Eritreans), which need would have been established in Italy or Greece starting with 15 April 2015. In total, 40,000 of them had to be relocated to other EU member states in the next two years. The member states had to receive 6,000 Euros for one person relocated on their territory. See the proposal of a Council decision of the

Commission regarding the temporary measures in the sphere of international protection in favour of Italy and Greece of 27 May 2015: <http://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-286-EN-F1-1.PDF>.

10 CIRÉ, “The reaction of EU to the tragedies in the Mediterranean Sea” - <https://www.cire.be/thematiques/asile-et-protection/la-reaction-de-l-europe-face-aux-tragedies-en-mediterranee>

11 Geneva Convention on refugee status of 1951 and Directive 2011/95/UE called “Qualification” of 13 December 2011 (recast).

screening and contributes as fast as possible to processing the files of the people oriented towards an asylum procedure. Frontex helps the States to coordinate the return of people not needing protection. Finally, Europol and Eurojust offer their assistance in dismantling the networks of smugglers.

After putting in place such an approach, the far greater number of officials assigned by the two agencies – Frontex and EASO, to the *hotspots*, means a greater emphasis on identification, registration and taking the migrants' fingerprints over guiding them towards the corresponding procedures<sup>12</sup>. This control is primarily meant to stop the secondary movements of the migrants to the EU member states and to make their return effective.

Through its function of identification and return of the migrants considered not to need protection, as fast as possible, this system deeply affects their rights: only the migrants whose need for protection was recognised may be relocated or accepted on the Italian or Greek territories. Prioritising the control and identification of migrants and not their protection, and under the pressure of the European Commission<sup>13</sup>, Italy in particular has committed

acts of torture or inhuman and degrading treatment during the taking the fingerprints of migrants arriving on its coasts<sup>14</sup>. The infringement of this absolute right provided by article 3 of ECHR was denounced by Amnesty International in its report of 2016: it is the consequence of the lack of a national legal basis for this *hotspot* approach<sup>15</sup>.

---

Italy for the infringement of the Eurodac regulations and imposed Italy to attain the objective of taking the fingerprints of all the arriving refugees and migrants, recommending Italy to adopt a legislation on the *hotspots* "especially to allow the use of force in order to obtain the fingerprints and to provide for the orders of detaining for a long term the migrants refusing to give their fingerprints". Despite the pressure, Italy has not amended its legislation. However, the absence of a legal basis did not impede the Italian government to promote important changes in practice. In fact, in March 2016, The European Commission recognised that "the rates of identification of the Italian authorities, IOM and Frontex almost attained the 100% of the migrants arrived in the hotspots"

12 Claire Rodier, "The false pretence of the *hotspots*" - <https://journals.openedition.org/revdh/3375>

13 Amnesty International, *Hotspot Italia* – [https://d21zrvtkxtid6ae.cloudfront.net/public/uploads/2016/11/18155810/Report\\_Hotspot\\_Italia.pdf](https://d21zrvtkxtid6ae.cloudfront.net/public/uploads/2016/11/18155810/Report_Hotspot_Italia.pdf). In its report, Amnesty underlines that in 2015, The European Commission initiated an infringement procedure against

14 Among the coercive methods used by the police authorities to obtain the fingerprints, Amnesty International denounced the use of truncheons (including electric), hits, forms of sexual humiliation and causing pain in the genital organs, as well as the refusal to give food and water.

15 According to various Italian lawyers, a partial and insufficient legal basis for the *hotspot* approach was created in February 2017 with the c.d. "Minniti Decree". The recent Law no. 132/2018 finally covers some hypothesis of detention in such places and gives them somehow a legal basis.

## LIMITED ACCESS TO THE ASYLUM PROCEDURE

The system of access to international protection is deeply undermined by the *hotspot* approach, a kind of legal limbo without any specific legal framework<sup>16</sup>. This lack of regulation led to the infringement of many fundamental rights recognised by the national and international acts, starting with everyone's right to receive full, comprehensible information on their legal situation and their right to seek asylum.

The difficulty of access to legal support definitely represents one of the major criticisms against the *hotspot* approach, both in Italy and Greece. Such legal assistance is indispensable for preventing the risk of refoulement of migrants at the border and for them to exercise their right of asylum.

As selection into “economic migrants” and “asylum seekers” is made on the basis of the declared nationality, it becomes the main criteria of access to the international protection system, which is contrary to the norms concerning asylum<sup>17</sup>. This is how

many migrants native of Nigeria, Gambia, Senegal, Morocco, Algeria and Tunisia, recorded on the basis of their nationality as “economic migrants” during the identification operations in Italy, did not have access to the international protection procedure. They were subject to a delayed refoulement order and were placed in detention centres (where there were available places)<sup>18</sup>. In most of the cases, these migrants could not find lawyers or attorneys who could explain to them their rights and the possibility of filing an appeal against such decisions of rejection. The border police were the ones to decide on their access to the right of asylum, after a series of brief interviews conducted with the support of the Frontex experts, sometimes accompanied by cultural mediators. However, the admissibility and analysis of each application for international protection belong to the exclusive competence of the Italian territorial Commissions.

Moreover, such interviews are generally held immediately after disembarking in the port or at the *hotspots*, often after rescue operations in the Mediterranean Sea. This is a time when the asylum seekers have generally escaped from their countries of origin due to persecution, experiencing long journeys full of violence and infringement of their fundamental rights and their dignity. In such conditions of stress, the already

<sup>16</sup> European Parliament, Committee on Civil Liberties, Justice and home affairs, *On the Frontline: The Hotspot Approach to Managing Migration*, may 2016, [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556942/IPOL\\_STU\(2016\)556942\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556942/IPOL_STU(2016)556942_EN.pdf) In the case of Greece, the functioning of the hotspots is governed by Law 4375/2016 adopted in April 2016. ECRE, *The implementation of the hotspots in Italy and Greece*, <https://www.ecre.org/wp-content/uploads/2016/12/HOTSPOTS-Report-5.12.2016..pdf>

<sup>17</sup> Gennari Lucia, Ferri Francesco e Caprioglio Carlo (2018), “Within and beyond the

*hotspot* approach. Short reflexions about the operation and significance of the hotspot system in Italy.”, in *Studies on the Criminal Issue* online, available at <https://studiquestionecriminale.wordpress.com>.

<sup>18</sup> Aida Italy 2017 Report, available <https://www.asylumineurope.org/reports/country/italy>.

vulnerable migrants are not aware of the statements that they have to make or of their immediate effect. The absence of interpreters or cultural mediators – though necessary for the migrants to understand questions about the reasons for their journey – also has significant consequences on their access to the asylum procedure<sup>19</sup>.

In Greece, establishing this approach and the application of the EU-Turkey Statement – a country considered a safe third country in this case – only makes more complex the asylum procedures to the detriment of the rights of the migrants classified on the basis of their nationality. Moreover, the NGOs are permanently denouncing the putting in place of a complex, fuzzy and discriminatory system of procedures within the Greek hotspots<sup>20</sup>. Nowadays, the infringement of the right to asylum often takes place as the migrants do not benefit from the rights guaranteed by the “Procedures” Directive<sup>21</sup>

or by the “Reception” Directive<sup>22</sup> (though binding for Greece), such as the right to have a social and legal assistant. Some forms of assistance (social, legal, medical, etc.) are ensured by the NGOs present on the islands. Despite the efforts of the volunteers, the legal assistance provided is not enough to cover thousands of people that end up trapped on the islands. So, the migrants may pass long periods in the camp without receiving information on the asylum procedure, their obligations and rights, in a language they are able to understand.<sup>23</sup>

The lack of legal information and the limited access to lawyers, the long delays for the registration and processing of the application of asylum, the defaulting evaluation of the vulnerability and the disputable role of the European agencies within the hotspots obviously infringe the provisions of the European Directives<sup>24</sup>.

---

19 For example, the report of The Cimade emphasizes that the Italian policy has five cases (“labour”, “family reunification”, “escape poverty”, “asylum” and “other reasons”) to select the migrants after the interview. According to that report, the “asylum” reason appeared in the end and a little bit aside on the first forms (*Foglio notizie*) and the way of invoking “asylum” is not clear at the moment of the interview.

20 The Cimade, “Hotspot approach: EU failing on the Greek islands”, <https://www.lacimade.org/laproche-hotspots-leurope-en-faillite-sur-les-iles-grecques/>

21 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).

---

22 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down the standards for the reception of applicants for international protection (recast).

23 Norwegian Refugee Council, Oxfam, International Rescue Committee, “The Reality of the EU-Turkey Statement: How Greece Has Become a Testing Ground for Policies That Erode Protection for Refugees”, March 17, 2017, p. 3,

24 “The ‘hotspots’ system in Greece: European migration policy at the basis of massive infringements of human rights”, Testimony of Belgian lawyers in mission in Greece, *Revue du droit des étrangers* - 2017 - n° 194.

## RECEPTION CONDITIONS CONTRARY TO HUMAN DIGNITY

In Italy, the hotspots are at the same time reception and detainment centres, where the migrants are kept and deprived of freedom at least during the period of carrying out the identification and registration procedures. Normally, after those operations, the migrants are transferred either to the reception centres (when registered as asylum seekers) or to the expulsion centres (when registered as “economic migrants”).

The registration operations may take several days and the retention of migrants is to the detriment of their fundamental rights. It should be remembered that these structures were not originally provided for first reception but were converted by the Italian authorities for such purpose.

The retention conditions in such inadequate structures are often contrary to human dignity. One example is the Lampedusa *hotspot* which had to be closed in March 2018 for restructuring due to the inadequate nature of its premises for the accommodation of people: degradation of sanitary services, absence of dining areas, inappropriate premises for families and children, and for adults, etc.<sup>25</sup>. The Italian associations denounced these terrible living conditions, as well as the infringement of many fundamental rights, such as the delay in registration of the application for international protection

and cases of arbitrary detentions<sup>26</sup>. The almost non-existing security conditions also led to a serious infringement of the fundamental rights of families and vulnerable people, especially minors (accompanied or not) sharing space with adults, mainly men. Urgent appeals were filed to the European Court of Human Rights against the promiscuity between adults and children, demanding the immediate transfer of the Lampedusa *hotspot* and the evacuation of two families with minors into adequate structures<sup>27</sup>.

While in Italy the reception conditions may vary from one hotspot to another, the reception conditions in all the five hotspots in Greece drastically worsened after the conclusion of the EU-Turkey agreement. Thousands of people are blocked in deplorable situations in the overpopulated camps waiting for the possibility of registering

25 [https://rm.coe.int/16807b6d56;http://www.asylumineurope.org/sites/default/files/re-sources/rapporto\\_cie\\_cpr.pdf](https://rm.coe.int/16807b6d56;http://www.asylumineurope.org/sites/default/files/re-sources/rapporto_cie_cpr.pdf).

26 However, the European Court of Human Rights had already condemned Italy for detaining illegally and in inhuman and degrading conditions the migrants from Tunisia in the first aid and reception centre of Lampedusa in 2011, and for illegally organising their collective expulsion. Case *Khlaifia and others vs. Italy*, application no. 16483/12.

27 One of those families, for example, was accommodated during several days in the same corridor shared with single men and the women declared that she suffered a tentative of rape by one of the men. Her daughter witnessed to that tentative of rape of her mother and, several days afterwards, was victim of the wounds committed by the police in their altercations with the migrants. *Chiuso l'hotspot di Lampedusa-CILD, ASGI e IndieWatch*: “Condizioni disumane e violazioni dei diritti umani”, available at <https://www.asgi.it/asilo-e-protezione-internazionale/hotspot-lampedusa-diritti-minori/>.

their application for international protection. Obligated to live in makeshift tents or containers, both in winter and summer, the migrants are far from benefiting from the material conditions of reception guaranteeing, as stipulated by the European law, an adequate level of life and the protection of their physical and mental health. The fast detection of profiles remains problematic: thus women, minors (accompanied or not) and ill persons are trapped in the *hotspots* rather than in adequate structures.

After 2016, many international and European authorities, such as the United Nations High Commission for Human Rights<sup>28</sup>, the High Commission for Refugees (HCR)<sup>29</sup>, EU Agency for fundamental rights, Council of Europe and the Committee for torture prevention<sup>30</sup> denounce multiple infringements of the rights of migrants in the *hotspots*: sexual violence, limited access to lawyers and information, the length of time in application processing, bad reception conditions (insecurity, lack of hygiene), default evaluation of vulnerabilities, systematic lack of child's rights, etc. They also denounce the fact that the asylum seekers, contrary to the

stipulations of the “Reception” Directive, suffer such disgraceful conditions of life for long periods, which clearly has a negative impact on their mental health.

At the end of August 2018, the HCR urged the Greek government to take immediate measures to solve the situation of asylum seekers on the islands of Samos and Lesbos. It demanded the increase of reception capacity on the continent, fast improvement of the conditions in the reception centres and adapting reception places for the most vulnerable persons. It denounced the ageing sanitary installations, daily violence and cases of sexual harassment, as well as the increasing need for medical and psychosocial care due to the worsening of the health of the received persons. The most vulnerable asylum seekers, such as unaccompanied minors, pregnant women and people with disabilities or victims of sexual violence are left for months in deplorable conditions<sup>31</sup>. The disgraceful, inhuman conditions of migrant reception in Greece are not only due to a lack of funds but are also the result of a political will meant to discourage other people seeking protection from coming to the European continent.

---

28 “Migrant children face grim human rights conditions in Greece”, <https://www.ohchr.org/FR/NewsEvents/Pages/MigrantchildreninGreece.aspx>.

29 “UNHCR redefines role in Greece as EU-Turkey deal comes into effect”, <https://www.unhcr.org/fr/news/briefing/2016/3/56f14c5cc/hcr-redefinit-role-grece-apres-lentree-vigueur-accord-ue-turquie.html>

30 <https://www.coe.int/fr/web/cpt/-/report-to-the-greek-government-on-the-visits-to-greece-carried-out-by-the-european-committee-for-the-prevention-of-torture-and-inhuman-or-degrading-tr?desktop=false>

---

31 “UNHCR urges Greece to address overcrowded reception centres on Aegean islands”, <https://www.unhcr.org/fr/news/briefing/2018/8/5b89508da/hcr-exhorte-grece-soulager-centres-daccueil-sur-peuples-iles-mer-egee.html>

## ARBITRARY DETENTION AND A PSEUDO RIGHT TO FREEDOM

The right to protection against arbitrary detention and the right to freedom<sup>32</sup> are fundamental rights regulated by international and national provisions.

Nevertheless, in Italy the migrants that are not able to get out th *hotspots* after the identification and registration are victims of arbitrary detentions, without any control by the judicial authorities or access to effective remedy. In 2016, Amnesty International denounced a detention contrary to the criminal legislation and to the guarantees offered concerning the limitation of freedom stipulated by article 13 of the Italian Constitution, used in reality as a means to force the migrants to give their fingerprints.

In 2017, the European Committee for the prevention OF torture or inhuman or degrading penalties or treatments (CPT), raised in its report concerns about the legal grounds for the deprivation of liberty in the Italian *hotspots*. Foreign people of different categories could, in fact, be deprived of liberty for weeks. The report recommended putting in place fundamental legal guarantees in order to decrease the risks of refoulement of migrants<sup>33</sup> and denounced the detention of unaccompanied minors<sup>34</sup>. These people,

due to their vulnerability, should benefit from guarantees regarding reception: especially an adapted reception and the right to obtain a tutor, legal assistance and psychosocial and medical care. Italy should fulfil such obligations not only on the basis of its national legislation<sup>35</sup> but also on the basis of international legislation, especially of the International Convention on the Rights of the Child (ICRC)<sup>36</sup>.

The double function of open and closed centres of the *hotspots* leads to ambiguity between reception and detention. The

---

July 2017. Among them, some were detained since May 2017 and others were detained for several days. Those children were in fact detained with adults in a single tent surrounded by high metallic grills and guarded by army soldiers, without any written order of detention or information on the possibility of seeking asylum. They did not have the possibility to communicate with the outside world. Applications regarding 14 children were filed to the European Court of Human Rights. They were declared admissible by the Court and the Italian government was demanded to answer before 14 May 2018.

35 Among others, Leg.D. no. 286/1998, Leg.D. no. 142/2015 and Law 47 of 2017.

36 According to its article 24, the State Parties recognize “the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. They shall strive to ensure that no child is deprived of his or her right of access to such services”. They shall also recognize “for every child the right to benefit from social security, including social insurance (...)” (article 26). Moreover, the Convention declares that every child has the right to “a standard of living adequate for the child’s physical, mental, spiritual, moral and social development” (article 27). The Convention was ratified by Italy by means of Law no. 176/ 91.

32 Article 5 of ECHR.

33 <https://www.coe.int/fr/web/cpt/-/anti-torture-committee-publishes-report-on-its-visit-to-italian-hotspots-and-removal-centres>

34 Still in the Aida Italy report, ASGI denounces the state of deprivation of liberty of 80 unaccompanied minors in the Tarente hotspot in

national Italian guarantor of detainee rights or people deprived of liberty denounced in its 2018 report the unclear legal relation of places which fulfil various functions and continuously change their role (between reception and expulsion). This control authority remained perplexed with respect to the *hotspots* which, on the one hand, seemed to be places of humanitarian first aid vocation of assistance, information and first reception for those who apply for international protection and, on the other hand, seemed to be places for identification/photo-signalisation procedures and for the start of forced repatriation. Moreover, the ambiguous nature of the *hotspots* is reinforced by the fact that they are also occupied by migrants identified in other centres or by irregular migrants, stopped on the Italian territory and subject to an expulsion order<sup>37</sup>.

The practice of arbitrary detention and deprivation of liberty exercised in such places has created shadow areas in the tutorship of the rights of migrants, as revealed by the European Court of Human Rights<sup>38</sup>.

In Italy, the recent Law no. 132/2018 covers some hypothesis of detention in the *hotspots* and eliminates the ambiguous nature

of such places<sup>39</sup>. However, according to the Italian NGOs, this law risks emphasizing further the classification between economic migrants and asylum seekers and thus favouring the infringement of migrants' fundamental rights by putting in place new procedures at the border, which can not be controlled by the civil society<sup>40</sup>.

In Greece, detention is a mandatory passageway for all the migrants arriving on the islands after 30 March 2016, independent of their nationality, gender, age or vulnerability. Their detention for a period which may last up to 25 days serves for identification procedures. The migrants are not informed about the factual and legal grounds of such detention, which is, additionally, done without any judicial control. After this period and except for the unaccompanied minors, the migrants, identified or not, are generally free to circulate on

37 National guarantees of the rights of detained people or people deprived of personal liberty, Report on the visits to the Centres of identification and expulsion and to the hotspots in Italy, available at <http://www.garantenzionaleprivatiliberta.it/gnpl/resources/cms/documents/6f1e672a7da965c06482090d4d-ca4f9c.pdf>

38 Case *Khlaifia and others vs. Italy*, application no.16483/12.

39 This law provides for a detention period up to 30 days in order to determine the nationality or identity of migrants. If it is impossible to determine or verify the identity or citizenship of an applicant for 30 days, he or she may be detained in a repatriation centre for a maximal period of 180 days. Without engaging in an analysis of these legal provisions, it seems that the detention of an asylum seeker for six months for the only reason that he or she does not have an identity document is a disproportional limitation of his or her right to freedom. It is to remind that the "Reception" Directive stipulates guarantees for the asylum seekers placed in detention, especially the one regarding the shortest possible duration of detention.

40 ASGI: The Legislative Decree on immigration restraints the rights and freedoms of people, available at <https://www.asgi.it/documenti-asgi/salvini-decreto-immigrazione/>

the islands<sup>41</sup>. While it is true that this is not detention in the strict sense of the term, the migrants suffer the consequences of the EU-Turkey Statement and the imposed geographical limitation. Thus, they remain prisoners on the Greek islands for months, until a final decision is taken on their asylum application. Freedom of movement confined to the islands infringes the right to private life and does not allow the asylum seekers to satisfy their elementary needs<sup>42</sup>. In this way, these Greek islands became huge open air prisons for asylum seekers.

### AN APPROACH NOT LACKING CONSEQUENCES

The putting in place of the *hotspot* approach in Italy and Greece led to the increase IN the number of asylum seekers blocked in disgraceful and inhuman reception conditions. While the *hotspot* was put in place to allow the relocation of asylum seekers throughout the entire EU territory, the failure of this relocation plan and of European solidarity contributed to further deterioration of the reception system for the asylum seekers, and to piling up of the applications for protection.

Despite the mandatory nature of the relocation plan and according to the data of the

European Commission, as of 31 May 2018, only 12,690 people were relocated from Italy of the 34,953 that should have been relocated from that country<sup>43</sup>. As of the same date, Greece relocated 21,999 people of the anticipated 63,302. It must be remembered that the initial relocation plan for the EU states to take in 160,000 applicants for protection from Italy and Greece and that this commitment decreased in 2016 to a new minimal objective of 98,000 asylum seekers. Nowadays many of the EU Member States are far from attaining their objectives regarding relocation.

However, despite the financial aid received by Italy and Greece to compensate the costs of their reception system, these arrival countries should not have sole responsibility for the protection of all the people arriving each year to the EU. In fact, the systematic identification of migrants and the application of “Dublin III Regulations”<sup>44</sup> which unfairly puts the weight of the responsibility of processing the asylum applications to the first country of irregular entrance<sup>45</sup>, contributed to the collapse of

41 “The ‘hotspots’ system in Greece: European migration policy at the basis of massive infringements of human rights’, Testimony of Belgian lawyers in mission in Greece, *Revue du droit des étrangers*, 2017, n° 194.

42 Ibidem.

43 “Relocation of asylum seekers from Greece and Italy”, available at <http://www.european-migrationlaw.eu/fr/articles/donnees/relocalisation-des-demandeurs-dasile-depuis-la-grece-et-litalie.html>.

44 Regulations (EU) No. 604/2013 of the Parliament and Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one the Member States by a third country national or a stateless person (revised).

45 In the absence of such criteria as the family relations or regular entrance and stay.

their protection systems, already fragile, to the detriment of the rights of migrants.

Another consequence of the *hotspot* approach and the weakness of this reception system is the creation of secondary movements of migrants, contrary to the objectives established by EU. In fact, while there are disparities at the level of reception conditions and the chance to obtain protection are not equal in the different EU countries, the secondary movements will continue to exist, following simple logic. Thus, a large part of asylum seekers, having arrived in Italy by the Mediterranean Sea and having faced its deficient reception and asylum system, decided to continue their way towards other EU countries. Nevertheless, their need for protection was not taken into consideration by the other Member States, which got rid of their responsibility regarding protection with the excuse of application of the unfair Dublin system. Those migrants, “Dublined” in Italy, often become victims of wanderlust and precariousness.

---

### NEW EUROPEAN PERSPECTIVES

Established to manage the “migrant’ crisis” of 2015 and to “stop the flow” of migrants, this approach, intended to have been temporary, continues to be used by the EU to open controlled centres within it. Indeed, despite the significant decrease of arrivals to the EU in past years, the European Council in June 2018 provided for the reinforcement of fortress Europe and put in place new measures to ensure the protection of the

external borders of EU<sup>46</sup>. This Council, which might have negotiated a more cohesive reform of the EU asylum policy, represented the translation of the serious crises of the EU policy of asylum and reception.

These controlled centres, according to the classification logic of the *hotspots*, would have the objective of classifying the migrants and asylum seekers arriving by the Mediterranean Sea and, afterwards, transferring them to another Member State (which would take charge of them) or proceed to expel them as fast as possible. Such operations would be fulfilled by the Member States on a voluntary basis.

The will to open such centres raises questions regarding the observance of procedural guarantees and fundamental rights (especially, the right of access to information and to legal assistance), regarding the deprivation of liberty, identification and protection of vulnerable people and regarding the removal of people whose asylum was not granted. In fact, the infringements of fundamental rights committed currently in the *hotspots* are flagrant, as well as the arbitrary nature of the procedures, whose victims are the migrants.

Moreover, the failure of the relocation plan and of European solidarity has been taking shape in front of us since 2015. The NGO’s and international authorities protecting

---

46 According to the conclusions of the Council of Europe of June 2018, the arrivals dropped by 96% as compared to 2015, <http://www.consilium.europa.eu/fr/meetings/european-council/2018/06/28-29/>

migrants' rights have regularly denounced since then the dysfunctions of such a migration management approach. The Humanitarian drama, which may be seen every day on some Greek islands, where thousands of people seek protection are kept in disgraceful conditions, is the image of a European Union no longer willing to assume its international obligations.

The new European proposals only reinforced the idea that this approach, instead of alleviating the southern EU States, was only conceived to discourage immigrants from coming to our continent: as a tool of the border externalisation policy, it contributes to pushing away migrants and asylum seekers and strengthening the EU borders, as well as to favouring the refoulement of migrants. Unfortunately for the EU governments, the will to stop the migration flows still seems to prevail over the observance of human rights.

## Advocacy lines and recommendations

The EU and its Member States should strive to guarantee and reaffirm the primacy of the right to asylum and the right to reception in the entire EU territory and at its borders, according to the international and European obligations on the subject. Allowing access to its territory to those who seek protection involves a change of paradigm for the EU. We shall formulate here two advocacy lines for the EU and its Member States to attain such objectives.

### FIRST LINE: REAFFIRM THE RIGHT OF ASYLUM

The right to seek asylum is a fundamental right of any person, recognized by the Geneva Convention of 1951 (and by its additional protocol of 1967), by the Universal Declaration of Human Rights of 1948 (art. 14), by the EU Chart of fundamental rights (art.18) and by the "Qualification" Directive of the European Union (EU)<sup>47</sup>. La Convention de Genève regarding the status of refugee should be applied by the subscribing countries to each person asking for protection, without discrimination based on race, religion or

47 Directive 2011/95 of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

country of origin<sup>48</sup>. The EU Member States, observing the non-refoulement principle and article 3 of the European Convention of Human Rights (ECHR), may not return the migrants towards countries where they would be subjected to torture or inhuman or degrading penalties or treatment. This is a fundamental principle in asylum issues.

According to European legislation, the EU Member States also have, within the framework of international protection, a duty to inform the migrants<sup>49</sup>. They should ensure that all the applicants, independently of their country of origin, receive information, in a language which they understand (or are reasonably supposed to understand) on the procedure to follow and on their rights and obligations during such procedures, as well as on the consequences to which the non-observance of their obligations or the refusal to cooperate with the authorities may lead<sup>50</sup>. The access to complete

and qualitative legal information is thus necessary for the migrants to be able to exercise their right of asylum.

All the people arriving at the EU borders should be considered potential asylum seekers and may not be refouled or expelled on the basis of their nationality, in accordance with the non-discrimination principle provided by article 3 of Geneva Convention of 1951 and by article 18 of the EU Charter of fundamental rights. The “management” of asylum applications on the basis of the declared nationality within the *hotspots*, as the main criteria of access to an international protection system, is contrary to the standards concerning asylum<sup>51</sup>. The registration of the asylum application should be done fast, within the terms provided by the EU legislation<sup>52</sup> and the processing of the application should be the object of an individual, rigorous and complete examination.

---

48 Article 3 of Geneva Convention of 1951 on the status of refugee.

49 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, whereas clauses 26 and 28, Articles 6(1), 8 and 12. Regulations (EU) No. 604/2013 of the Parliament and Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one the Member States by a third country national or a stateless person (recast), article 4.3.

50 Article 12 of the Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) <https://eur-lex.europa>.

---

[eu/legal-content/FR/TEXT/PDF/?uri=CELEX:32013L0032&from=FR](http://eu.legal-content/FR/TEXT/PDF/?uri=CELEX:32013L0032&from=FR).

51 Gennari Lucia, Ferri Francesco and Caprioglio Carlo (2018), “Within and beyond the hotspot approach. Short reflexions about the operation and significance of the hotspot system in Italy”, in *Studies on the Criminal Issue* online, available at <https://studiquestionecriminale.wordpress.com>

52 Article 6 of the “Procedures” Directive stipulates that the registration should take place within three business days (and in some particular cases, within six business days). Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).

Nowadays more than ever it would seem fundamental to avoid the logics of the “Dublin III Regulations” system to the benefit of a system which not only provides for a shared responsibility among the States, but also for procedural guarantees allowing to protect asylum seekers from the infringement of their fundamental rights, such as the right to seek asylum and obtain protection while being a refugee, to have a decent life during the asylum procedure, or to live in the family<sup>53</sup>.

---

## RECOMMENDATIONS

- The EU and its member States should put an end to the *hotspot* approach and should not promote opening new controlled centres.
- The EU, in accordance with the international legislation and regional provisions subscribed by its Member States, should reaffirm the priority of the right of asylum. This involves stopping differentiated treatment of the applicants for protection and granting them effective remedy.
- The EU and its member States should offer access to international protection to those who are at its borders, independently of their nationality. This is not about fulfilling a humanitarian duty; it is about complying with the international law and regional provisions recognising the right of asylum.
- The EU and its member States should guarantee access to complete and qualitative legal information, at arrival onto the European continent. They should also ensure that any asylum application is the object of an individual, rigorous and complete examination, with the observance of the international law provisions on the matter.
- The EU and its member States should unconditionally ensure the observance of the no-refoulement principle, as well as of article 3 of the European Convention of Human Rights, which stipulates the absolute right not to be subjected to torture or inhuman and degrading treatment. This involves stopping all refoulement practices and any form of violence towards the migrants at the borders.
- The Member States should negotiate a cohesive reform and a shared responsibility within the “Dublin IV Regulations”.

---

53 CIRÉ, “On the urgency to rethink the Dublin system”, <https://www.cire.be/de-lurgence-de-repenser-le-systeme-dublin/>

---

## SECOND LINE: REAFFIRM THE RIGHT TO AN APPROPRIATE RECEPTION

The right to a reception corresponding to human dignity and observing the fundamental rights of asylum seekers is a principle contained in European legislation. This principle may suffer exceptions in certain duly justified cases and for a reasonable duration which shall also be as short as possible<sup>54</sup>. The EU Member States should thus give to the applicants for international protection the access to material reception conditions guaranteeing an adequate level of living and the protection of their physical and mental health<sup>55</sup>. In exceptional cases, the States should always guarantee a reception covering the fundamental needs of asylum seekers.

The Member States should, among other things, proceed to the identification of people with a vulnerable profile (for example, pregnant women, minors, unaccompanied minors. People with disabilities, people having suffered torture, rape or other forms of serious psychological or sexual violence, etc.) so that they could receive the treatment and reception adapted to their special needs. The superior interest of the child should have primacy: states should guarantee minors an adequate level of living to favour their physical, mental, spiritual, moral and social development.

In the very precarious context of the *hotspots*, the risk of not attaining respect for human dignity and being subject to inhuman or degrading treatment is high. It is even higher when we speak about people with vulnerable profiles, such as minors. It is urgent therefore to stop this approach in order to receive people looking for protection with decency. This is not only about showing solidarity with the developing countries that receive 85% of the refugees in the world, but also about fulfilling the obligations provided by International and European law.

Migrants have fundamental rights, independent of their migration status. They should always be able to enjoy the right to human dignity, the right to freedom (which involves not being subject to arbitrary detention) and the absolute right not to be subjected to torture or to inhuman or degrading penalties or treatment. The States of the European Union should observe these fundamental rights on the basis of several European or international conventions, such as the European Convention of Human Rights and the Geneva Convention on the status of refugee.

---

54 Article 18(g) of the “Reception” Directive.

55 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down the standards for the reception of applicants for international protection (recast).

## RECOMMENDATIONS

- EU should put in place an ambitious policy of reception and guarantee enjoyment of the rights stipulated by the international and European provisions. This means the EU Member States should:
  - offer applicants seeking international protection access to proper reception conditions guaranteeing an adequate level of living and the protection of their physical and mental health.
  - proceed to the identification of people with a vulnerable profile so that they can receive the treatment and reception adapted to their special needs. It is necessary to institute efficient mechanisms and tools which allow the identification of such needs.
- The EU and its member States should establish at their borders a decent reception to people asking for protection. They should, in particular, put an end to the management of migration through detention and guarantee the fundamental right to freedom.

## Conclusion

THE EU Instead of establishing policies of reception and protection corresponding to the challenges it faced, focused on the reinforcement of its external borders. Such borders become new laboratories of the border externalisation policy, contrary to the Geneva Convention of 1951 and to the non-refoulement principle, which has guided Europe for decades.

The *hotspot* approach put in place to allow the relocation of asylum seekers and to favour European solidarity, has contributed for more than three years to the infringement of migrants' rights, especially of the right to seek asylum and not to be rejected, and the right to a decent reception. The confinement and arbitrary detention of migrants is the answer to an EU policy which is fundamentally restrictive and reluctant to receive asylum seekers, and which is contrary to the observance of the fundamental right to freedom, although this is ensured by the European Convention of Human Rights.

This approach, put in place by the EU to manage the "migrant crisis" of 2015 and to "contain the flow" of migrants, continues to be proposed by EU by means of opening controlled centres within its borders. Such centres, according to the classification logic of the *hotspots*, would have the objective of classifying the migrants and asylum seekers arriving by the Mediterranean Sea in order to transfer them afterwards to another Member State which would take charge of them, on a voluntary basis.

## The *hotspot* approach

As in the case of the *hotspots*, the opening of such centres raises questions regarding the observance of the procedural guarantees and fundamental rights (especially, of access to information and to legal assistance), regarding the deprivation of liberty, identification and protection of vulnerable people and removal of people to whom asylum is not granted.

This approach of managing migration, the dysfunctions of which are regularly denounced by the NGOs and international authorities ensuring the rights of migrants, leads to the marginalisation of migrants and asylum seekers and favours their refoulement. Pushed nowadays to its paroxysm, this cynical, inhuman policy is conducted in net contradiction with the fundamental values and observance of human rights, on the basis of which the European Union was built.

# “EU GOVERNMENTS FEAR OVER RIGHT-WING VOTING.”

## **INTERVIEW**

Philippe Lamberts is the co-president of the Greens/  
ALE group in the European Parliament. For the Euro-  
deputy Ecolo, the EU migration policy remains in the  
hands of the Chiefs of States and governments. But  
also, in the hands of the citizens electing them.

**Since 2015, the European Union has answered to the migration crisis in two ways: establishing “hotspots” at the southern borders of EU and externalising to third countries the borders’ control. Has such externalisation, which makes pressure on the third countries to retain the migrants far from EU, become the only common migration policy of the European Union?**

**PHILIPPE LAMBERTS:** It is the case of the European Council, namely of the Chiefs of States and governments. This policy may be summarized in two words: Fortress Europe. On the one hand, it is about spoiling the life of those who have come here so that they would send to their countries of origin the message: “don’t come”. And on the other hand, it is about making everything, absolutely everything so that no one could approach the territory of the European Union, closely or remotely. To do this, they use the money for European cooperation and development to pay to dictatorial regimes so that they transform their countries in open air prisons, and when there is no such State, they deal with armed gangs.

**You mean the Libyan coast guards...**

They speak about the coast guards because this sounds well and this leaves the message that Libya is a State with coast guards who want to save people, but those are armed gangs locking up, raping the migrants and subjecting them to forced labour. I am knocked down by the perversion of language used by the European decision makers. When they say: “we shall fight against the reasons for migration” this should be translated “we shall do in such

way that people would not be able to leave their countries anymore”. They don’t speak about asylum seekers, they speak about “illegal migrants”, using an adjective to qualify these people knocking at our doors. To speak in such is an act of dehumanisation justifying the fact that they are subjected to degrading treatments. They speak about “hotspots” in order not to say prisons. Or about “disembarkation platforms” or “controlled centres... But those are still prisons.

**In your opinion, what has led the European Chief of States to conduct such policy with little care about the fundamental rights of migrants? What was the starting point?**

The extremely right-wing voting. They often ask me if I am concerned that the European Parliament could be blocked by the extremely right-wing as a result of the future elections. In fact, we have already several extremely right-wing people elected in the current Parliament and we will undoubtedly have even more right-wing MPs in the next legislature.

The European Parliament was not impeded to adopt a reform of the asylum procedure, thanks to a majority constituted of five political groups. The text is missing the safe and legal ways of access to the European continent, but we still could find a balanced position. In the European Council, the extremely right-wing represents the minority. It is present in the Austrian, Hungarian, Italian governments but is limited to them. Consequently, all the Chiefs of States are terrorised by it. I don’t know anyone who would slam his fist on the table saying: “You want to frighten people, but EU is able to

receive the migrants and we can do this appropriately”.

Look at the attitudes regarding the “Dublin” issue. Emmanuel Macron and Viktor Orban are on the same line in order not to review such regulations. Emmanuel Macron, who pretends to be liberal, locks his border in Vintimille and returns the people to Italy. By the way, the asylum policy conducted in France is part of the strategy of “spoiling the life” of migrants to avoid what the extremely right-wing calls the call of air. We have again the problem of terms: previously with a high political connotation, now is expanding everywhere.

Yes, I agree that we have to manage our borders together. I plead for a European border agency, but when we see the horrors they wanted to do in Frontex! They were speaking about allowing Frontex to do repatriations from third countries to third countries. Could you imagine the European policemen going to Libya to repatriate the migrants to Soudan? If they federalise the border police at EU level, this should be placed under democratic control, as the national police is.

### **So, what to do? What to expect from the future European elections?**

I think that the future Parliament should confirm its position on the immigration package, and I have good reasons to believe that it will. The question remains about the European Council. I hope that the future Belgian government will be a government without extremely right-wing MPs, namely without N-VA. And I hope it will be able to adopt a position different from the one of

the Council and forming an active minority, or even to form a “coalition of volunteers”. It is not possible to change the European Regulations by means of a “coalition of volunteers”, but at least this would allow to change the attitudes. Let us take the example of Dublin Regulations: there is no obligation for the States to return the migrants to the first country of reception. It is just a possibility.

### **Do you hope that a coalition of volunteers, of which Belgium could be part, would be able to influence the other governments from the Council?**

Yes, I hope so. What else to do? For now, the Council is totally buttressed on the Fortress Europe.

### **So, the evolution of the EU migration policy depends on the national elections?**

Obviously. It is a ratio of political forces. Of course, I don't expect that Lega would move back in Italy and Viktor Orban would undoubtedly strengthen its absolute majority. It would not be obvious for the European Parliament to keep a progressive majority. But if N-VA loses in Belgium, it will be a good sign.

Discussions collected  
by Martine Vandemeulebroucke

**“THE EUROPEAN  
UNION HAS SENT  
A DEPLORABLE SIGN  
TO THE WORLD...”**

**INTERVIEW**

The European Deputy, Christine Revault d'Allonnes Bonnefoy (PSE), is storming at the migration policy put in place by the European Union. It calls for the creation of a humanitarian visa.

### What conclusion could you make from the externalisation policy put in place by the European Union?

**CHRISTINE REVAULT D'ALLONNES BONNEFOY:** It simply should not conduct such a policy. The only suitable answer would be that the member States should take in charge the reception of refugees together. The Parliament opposed this approach, nevertheless the Council preferred to do business – there are no other words – paying to Turkey so that the refugees do not arrive on our coasts. This is shocking, it is contrary to the international law on migration and reception of refugees. We have opposed a lot in the Parliament, but, as the EU institutions are like they are, the voice of the Council was carried away. It is an acknowledgement of failure of the European Union and its member States to authorise such system with Turkey. Besides this country, we also have the case of Libya, despite the catastrophic situation in which the refugees are received in Turkey, where the situation is already abominable.

### What do you think about this policy of hotspots?

It should have been done on the EU territory, on the Greek and Italian coasts, as the first areas of reception of the people arriving to the EU territory, in order to be able to receive the correctly from the administrative, sanitary and humanitarian points of view. This was what the European Commission has provided, and the Parliament has voted for. The Council preferred to put disembarkation platforms outside the European Union, in third countries. Moreover, legally, this is inconceivable, intolerable to delegate the reception of refugees to third countries,

which, besides, are not very safe. Legally this is shocking, humanly this is intolerable.

### In your opinion, is it possible to speak about a Fortress Europe?

This would be the worst choice, both politically and historically. The European Union may not be a fortress. It is entirely able to receive the refugees asking for this. It should have a “management”, an organisation of the reception of those people as intelligent as possible, without thinking of border, police, criminalisation of migrants...

### You remind of the role of the European Council and its high will to decrease the flow of refugees...

I insist to say the EU could not conceive a migration policy in this way. There is a legal and political mistake of the Council. The Geneva Convention requires the countersigning States to decently receive any person seeking for asylum, from the moment when it has such status. The Council decided to close the doors in front of asylum seekers, disregarding this international convention. In this way, the European Union has sent a deplorable sign to the world and, moreover, one simply contrary to the law.

### Another sign of the same type is the one launched by some countries, such as Hungary...

From the enlargement, allowing the entrance of such countries as Hungary, but we can also mention Romania, Bulgaria or Poland, these States undertook to observe the fundamental rights and the EU legislation. The issues relating to migration and reception of asylum seekers are the competence of EU. From the moment when a State does

not observe the EU provisions, it is failing in the relation to even as regards its right to be in the European Union. This is what we have denounced to the European parliament voting the claims for sanction regarding the Hungarian government. Unfortunately, in this regard, it would have been necessary that the European Council vote for this sanction unanimously. We would imagine wrongly, that Hungary would vote against itself.... And Poland was equally solidary. It is well understood that it touches – and this is dramatic – the weakness of our institutions to be able to impose the law which should have been applied everywhere in the EU.

**Other debates concern the Dublin procedure, which rigidity is constantly mentioned and criticized. The European Parliament voted for the revision of this procedure.**

The Parliament voted for a set of provisions – the asylum package – with the reform of Dublin regulations. The will was not to make of the first country of entrance the country of reception of the refugee, and thus, put in place a real policy of solidarity among the member States at the EU level, without which the States, including France, continue to say that Dublin does not allow them to process the files of the people arriving from Italy, for example. Likely, the Parliament voted for the reform of the EU asylum agency so that it has real competences and to be able to organise the reception of refugees in various member States. We voted for the mechanism of solidarity and distribution of refugees within the European Union, taking into consideration the family situation of those people. If an asylum seeker already has family members in one Member State,

the idea was that he or she could join them, organising the things humanly, decently and in a coherent way. All these were voted by the Parliament and, one more time, the Council did not work on those legislative proposals.

**The Parliament also voted for a resolution allowing the creation of a humanitarian visa.**

Christine Revault d'Allonnes Bonnefoy: Indeed, this resolution was adopted and allows the people wishing to seek asylum in EU, even before taking this long trip which often endanger their lives, to be able to ask for a humanitarian visa in the Consulate of an EU country. Once the visa is approved, the transportation shall be taken in charge by the EU. A way of avoiding the permanently sinking ships and ensure to the refugees' good arrival conditions to our territory. It will be necessary that the future legislature ensure the putting in place of this procedure, another package on which the EU institution should also work is the one regarding the economic migration. The situation in EU leads to the fact that some regions and countries need workers. We need the economic migrants, even if this is a difficult topic within hostile political opinions. Consequently, we have to revise bottom-up the entire field of economic migration and to make it possible within the European Union.

Discussions gathered by Pierre Jassogne

**“SUCH A CRISIS CAN  
NO LONGER  
BE MANAGED AT  
NATIONAL LEVEL.”**

**INTERVIEW**

Philippe De Bruycker is specialized in European immigration law and professor at the Université Libre de Bruxelles. He recapitulates on the European migration policy.

### How do you evaluate the hotspots policy launched by the European Union?

**PHILIPPE DE BRUYCKER:** It is difficult to deny the efficacy of this externalization policy. This does not mean that I have a favourable opinion regarding this choice, but by means of the agreement concluded either with Turkey or with Libya, this policy has led to a huge decrease of the migration flows towards the European Union.

### Though this involves a cost in terms of observing human rights...

Indeed, this fact raises a lot of legal questions. It is still necessary to distinguish, undoubtedly, the case of Turkey from the one of Libya. The mechanism is the same, but the context is totally different. In the case of Turkey, the key issue remains to know whether it is a safe third country to which it is possible to return the asylum seekers. For example, a safe third country should have ratified the Geneva Convention. Still, despite having ratified it, Turkey maintained a geographical reserve according to which only Europeans have right of asylum in Turkey. If the case of Turkey seems questionable from the legal point of view, the case of Libya is totally indisputable. Obviously, it is not a safe third country.

### With this refolement policy, EU has become a fortress...

There is clearly a trend towards closure. Moreover, the European Council is very clear, using an extremely strong and new language, which one could never imagine in the past, stating its wish to exhaust the migration flows... if there is a fortress, it is mainly electronical, built on data basis which will allow to increasingly control the

migration flows. There are already various informational systems like Schengen or Eurodac for the fingerprints of asylum seekers. In future they will be joined by Ethias, a travel authorisation system for the people not subjected to a visa obligation. We should not forget about an entrance and departure system to and from EU for third country citizens.

### You mentioned that the European Union is increasingly assuming the closure of its borders. Besides this regrettable choice, one also has the impression that EU was totally unprepared to manage the so-called migration crisis...

Yes, it is absolutely possible to speak about unpreparedness. Several years before the crisis, the United Nations High Commissariat for Refugees warned the EU authorities on the worsening of the refugees' situation in Turkey, Jordan or Lebanon. It seems that EU didn't act upon such warnings. But the responsibility, in addition to belonging to the EU institutions, is first of all of the member-States which are deemed to put in place the EU legislation. According to the EU rules, the Greeks should have controlled all the people arriving on their territory, take their fingerprints, record and process the asylum applications, put in place also procedures for their return, etc. The problem is not that Greece would not want to apply the EU legislation; the fact is that Greece could not do this. Taking into consideration the crisis through which it passes, Greece, as well as Italy, by the way, has very good arguments to put forward, namely that the rules on sharing the control of asylum seekers and the assessment of their applications are totally inequitable, as they place the

responsibility on the States located geographically in the places through which the refugees enter the European Union.

**With such an inequitable system, we shouldn't be surprised that the European Union is completely divided as regards the reception of refugees?**

Indeed. We came to the logics of everyone for himself. Actually, if one should be cynic, one could affirm that the Dublin Regulations are based on the logics of everyone for himself. Every country is coping with the refugees arriving onto its territory. One could even try to prove that the current system is contrary to the EU legislation, at the extent at which the solidarity between the member States is a principle included in its Treaties and a legally binding one. Some countries, such as Croatia, Slovenia or Hungary, organise the transfer of migrants through their territories so that they could transit towards other countries, skilfully infringing the EU legislation. With such crisis, all the legal regulations have splintered, collapsed as a house of cards, in particular Dublin regulations which were not applied at all. Personally, the only way that I see to get out of this crisis is the furthermore intervention of the European Union...

**In what way?**

Through the work of the EU agencies, namely Frontex, the European Asylum Support Office or Europol, like they have already started to do in the hotspots. This is a form of solidarity, as these agencies are remunerated directly from the EU budget. The national echelon is not any more the level at which such a crisis may be managed. However, the problem is that concerning

asylum and immigration the EU legislates and the member-States put in place the legislations. It is necessary to stop this and to pass to the European echelon. This is the way for the future, even if the Europeanisation of the asylum policy would not solve everything. If only the examination of the asylum applications is Europeanised, the more problematic issue of distribution and relocation of the refugees in the member States will be raised again, and we have seen the results of the relocation policy in the last years...

**The future will be more difficult for the asylum seekers...**

I'm afraid, yes. The European Union absolutely wants to fight against the movements of the asylum seekers through its territory. In the "asylum package" which should have been adopted before the European elections, more and more sanctions were found among the proposals of the Commission for the asylum seekers not staying in the responsible State, especially in terms of reception. They shall lose the right to all the conditions of reception if they move to another State. Alongside with Dublin, the asylum seekers risk to be closed in a new trap... Fortunately, this legislative package was not adopted.

Discussions collected by Pierre Jassogne

# ECRE PROPOSES AN ALTERNATIVE TO CURRENT TRENDS IN EU POLICY ON ASYLUM

ECRE is an alliance of 102 NGOs across 41 European countries. 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.

<http://www.ecre.org/our-work/>

The EU's strategy to externalise responsibility for protection of people seeking asylum has come at a great human cost. As highlighted by UNHCR, although the overall number of deaths at sea in the Central Mediterranean more than halved in 2018 compared to the previous year, the rate of deaths per number of people attempting the journey rose sharply. Measures taken as part of internal policy to create a 'hostile' environment are combined with practices aimed at refusing access to protection across internal and external borders of Europe. Via its external policies, Europe is outsourcing protection responsibilities to third countries. As the humanitarian crisis, caused by political decisions continues, a toxic political debate and initiatives which are discussed or implemented in many European countries undermine support to newcomers and the establishment of inclusive societies.

In response to these developments, ECRE is proposing a four-point alternative, which the next European Parliament and European Commission should act upon:

## FUNCTIONING ASYLUM SYSTEM IN EUROPE

Europe's response to the increase in arrivals of refugees in 2015/2016 has been to step up efforts to externalise asylum, that is, to prevent access to European territory and asylum procedures, and to persuade, pay or force third countries to assume additional responsibilities. This is in addition to policies of non-entrée and pushbacks in violation of the principle of non-*refoulement* which are pursued in practice, including at the EU internal borders, and mainstreamed in the political discourse. The race to the bottom in terms of asylum policy and practice including the increased use of detention needs to stop. Instead of finding ways to further reduce access to protection in Europe, governments need to ensure that EU asylum law is applied consistently and that the right to claim asylum in Europe is upheld. The European Parliament and the European Commission have a role to play in monitoring progress in this regard and holding governments to account, for instance via infringement procedures.

Any reform of EU asylum law needs to be rights based and remove the dysfunctions of the current system. Higher numbers of arrivals of persons seeking protection in 2015/2016 laid bare the problems with the Common European Asylum System (CEAS). Purportedly to address gaps in the functioning of the CEAS, the European Commission tabled seven legislative proposals for reform, in two packages, published in May and July 2016. Progress on the negotiations over the course of the last two years has been uneven across the different files. The

eventual adoption of the different proposals in the next legislature remains unclear but any sustainable solution must include a deep overhaul of the Dublin system with permanent responsibility sharing and procedural safeguards to protect asylum seekers from fundamental rights violations. The European Parliament, as a co-legislator, should ensure that any reform of CEAS protects and expands, rather than reduces the rights of asylum seekers and refugees.

In the short term, an agreement among EU Member States on an immediate contingency plan for disembarkation in Europe for people who have been rescued at sea needs to be facilitated. The persisting divisions between EU Member States on the reform of the CEAS and the Dublin Regulation in particular, have fuelled a “disembarkation crisis” unfolding in the Central Mediterranean in the course of 2018 and early 2019. The current ship-by-ship approach is causing suffering, risk and reputational damage. People stranded on board ships prevented from landing are used as bargaining chips to extract concessions for political reasons.

In lieu of the resolution of the underlying causes of the crisis, arrangements should be put in place to ensure timely disembarkation and distribution of rescued persons among EU Member States which should be facilitated by the European Commission. Concrete proposals for relocation arrangements following disembarkation have been made by ECRE. The point of a contingency plan, negotiated and agreed *in advance*, is to avoid the situation of negotiations and planning happening while people sit on a ship; when an incident occurs the plan

should be invoked in order to immediately allow a ship to dock. The work on a contingency plan does not preclude the necessary deep reform of the Dublin system to ensure fair sharing of responsibility for refugee protection across the EU and to foster protection and trust between asylum seekers and state authorities. Before a plan is in place, the humanitarian imperative is to disembark first and argue later.

---

### EXPANSION OF SAFE AND LEGAL CHANNELS TO ACCESS PROTECTION IN EUROPE

Significantly expanding safe and legal routes to the EU and safeguarding the right to claim asylum in Europe are key contributions Europe can make to global displacement and the implementation of the Global Compact on Refugees which was adopted in December 2018. The EU should continuously expand its resettlement from the current 50,000 places pledged over a two-year period, a commitment that runs out in October 2019. Any policy framework related to resettlement discussed, agreed or funded by the EU must safeguard the humanitarian nature of resettlement. Proposals that would instrumentalise resettlement to support migration control or introduce exclusion grounds based on an individual’s “integration prospects” undermine the essence of resettlement and should be rejected by the European Parliament.

In addition to an increased resettlement commitment, European governments should expand other safe and legal routes for refugees. Withdrawing restrictions for

family reunification, such as for beneficiaries of subsidiary protection, and broadening the rules that govern family reunification to make it a less restrictive safe and legal pathway to and within Europe would be an important step in the right direction.

---

### **INCLUSION THROUGH ACCESS TO RIGHTS AND INVESTMENT IN INCLUSIVE SOCIETIES**

European States must invest in building inclusive societies benefitting both refugees and host communities. This will help build bridges, avoid xenophobia and social exclusion. Adequate resources, both at national and EU level, are needed to support inclusion and should build on local innovative partnerships with municipalities, local chambers of commerce, civil society, private citizens and businesses. The European Parliament has a key role to play to ensure that adequate levels of EU funding is available for inclusion of asylum seekers and refugees and that Member States are required to spend it in support of this purpose throughout and beyond the next legislature.

---

### **PROMOTION OF REFUGEE RIGHTS AND ADDRESSING FORCED DISPLACEMENT IN EU EXTERNAL ACTION**

At a time where a record number of people are forcibly displaced, supporting them and the communities which host them must be an urgent priority for the EU, including the next European Commission and High Representative for Foreign Affairs and Security Policy. However, the EU's engagement should happen independently of whether people find themselves on what are considered as migration routes to Europe or in long-term displacement. Indeed, it is the lack of mobility and the situation of being stuck that is most characteristic for the vast majority of the world's displaced people.

The EU should consolidate its role in tackling the real causes of forced displacement, including conflict, absence of security, societal violence and repression supporting durable solutions to prevent the prolongation of displacement. The EU could also support other countries and regions to build asylum systems and support refugee rights but the latter requires Europe to stop dismantling the right to asylum within its own territory.





## Coordination et initiatives pour réfugiés et étrangers

Established in 1954, the CIRÉ has a pluralist umbrella structure involving 27 organisations as varied as social services assisting asylum seekers, trade unions, services for continuing education and international organisations. Our aim is to deliberate and act together on questions linked to issues to do with asylum seekers, refugees and foreigners.

CIRÉ asbl rue du Vivier, 80-82 | B-1050 Bruxelles  
t +32 2 629 77 10 | f +32 2 629 77 33 | cire@cire.be | www.cire.be

 Your support counts! **donate**

IBAN : BE91 7865 8774 1976 – BIC : GKCCBEBB

### Member organizations

- Aide aux personnes déplacées (APD)
- Amnesty international
- Association pour le droit des étrangers (ADDE)
- BePax
- Cap migrants
- Caritas international
- Centre d'éducation populaire André Genot (CEPAG)
- Centre social protestant
- Centre des Immigrés Namur-Luxembourg (CINL)
- Convivium
- Croix-Rouge francophone de Belgique (département accueil des demandeurs d'asile)
- CSC Bruxelles-Hal-Vilvorde
- CSC Nationale
- Équipes populaires
- FGTB Bruxelles
- Interrégionale wallonne FGTB
- Jesuit refugee service – Belgium (JRS)
- Médecins du Monde
- Mentor-escape
- Mouvement contre le racisme, l'antisémitisme et la xénophobie (MRAX)
- Mouvement ouvrier chrétien (MOC)
- L'Olivier 1996
- Présence et action culturelles (PAC)
- Point d'appui
- Service social de Solidarité socialiste (SESO)
- Service social juif (SSJ)

With the support of the Walonie-Bruxelles federation



FÉDÉRATION  
WALLONIE-BRUXELLES  
CULTURE.BE