

## Migration Governance and the Unfinished Business of the CEAS

No. 60 November 2018

By Liska Wittenberg

The unexpected high number of arrivals of refugees and irregular migrants to the European Union between 2014 and 2016 revealed the deficiencies of European asylum, migration and border policies. The pressures placed on the Common European Asylum System (CEAS) exposed the weaknesses of its structure and the execution of European migration mechanisms. The temporary suspension of the Dublin system led to partial national management of EU external borders, including through the erection of fences at external Schengen borders as well as within the Schengen area. In acknowledgement of the shortcomings of the CEAS and in response to the challenges presented, the EU introduced a broad process of reform with the aim of rebuilding the CEAS, reinforcing its external borders by strengthening the border control and security nexus, as well as forming new partnerships with third countries.

In 2016, the Commission presented two reform packages, both of which arrived at different stages of the legislative process after more than two years. Both the Council and the Parliament have reached partial agreements on the most important initiatives of the first package, including the creation of the European Union Agency for Asylum, the Qualifications Regulation, the Reception Conditions Directive and the reform of Eurodac<sup>1</sup> The second package - focused on the Union Resettlement Framework, which includes reforms of the Dublin system and an asylum procedures regulation - is lacking agreeability.

The EU sought general political agreement on the CEAS reforms by the summer of 2018, however, the negotiations of the Council meeting held in July 2018 instead demonstrated a growing gap between EU policy makers and continued politicisation of the challenges. Especially here the challenges presented by the Mediterranean disembarkation crisis, caused by the long known issues of a lack of fair responsibility sharing systems, discussions about the securing of external borders and the ideas of unrealistic oversimplified options of external processing of asylum applications or mass deportations have led to political deadlock.<sup>2</sup>

Over the summer of 2018, the disembarkation of refugees and migrants rescued-at-sea was politicised through an Italian and later also French refusal of letting the NGO ship - the Aquarius - run port, as well as Maltese legal actions aimed at preventing NGO operations at sea.<sup>3</sup> These actions in combination with debates about Tunisian cooperation and political issues inside the German government made the Commission's goal of completing the reform package and adopting the proposal for a Dublin IV Regulation prior to elections in May 2019 seem unattainable. On a more positive note, some of the proposals have made considerable progress, especially when compared to former periods of harmonisation in the areas of asylum and migration, which took over five years to complete. Nevertheless, the reform packages are firmly intertwined - legally and politically - leading to the Council not being

willing to adopt them separately despite the critical state of the current issues not leaving the Union another three years to find an agreement.<sup>4</sup>

In order to find solutions, new concepts have been suggested in recent weeks. However, the “regional disembarkation arrangement” is a reintroduction of outsourcing obligations for disembarkation to third countries with new phrasing, while the creation of “controlled centres” can simply be seen as a new form of the hotspot approach.<sup>5</sup> The first suggestion raises legal questions under international human rights, refugee and maritime law and seems politically unfeasible, the second suggestion does not address and build upon the lessons learned from the already existing hotspot approach. Either way, the main issues remain - the conflicting interests of various member states and the absence of a fair allocation system. Without such a system, continued disincentives for allowing disembarking, due to member states being responsible for those disembarking, will be added. This in turn will further encourage extremist forces and political standoffs with the EU.

These concepts should be viewed in the *modus operandi* of the EU regarding cooperation with third countries in the Mediterranean region, including in Libya, where focus has been placed on an exchange of financial support, training or technical equipment in return for assurances to decrease unauthorised maritime departures.<sup>6</sup> Overall, it should be seen that this *modus operandi* in combination with continued efforts of outsourcing responsibility are undermining foreign policy, security and long-term cooperation efforts in general. In addition, this provides no incentives for third countries to establish functioning asylum systems and search-and-rescue capacities of their own.

While overall a “regional disembarkation arrangement” could fundamentally be a useful instrument, it has to be based on the long-term goals of fully operational asylum systems in the entire Mediterranean region. Short-term priorities should then be focused on agreements between European frontline states to share obligations of disembarkation, as already is the norm with Frontex-led actions, accompanied by allocation mechanisms which then include non-frontline states. This could be realised through disembarkation protocols overseen by the Commission or continued as ad hoc mechanisms, which have proven to work over the summer. These types of ad hoc agreements could also be the baseline for future solutions and steadily formalised, in combination with the creation of strong financial and political consequences for those states trying to “opt-out”.<sup>7</sup>

In order to find consensus on the necessary reforms and further the CEAS agenda, prior to EU elections in 2019, the EU needs to focus on re-establishing trust overall but especially with the countries of the southern Mediterranean.<sup>8</sup> Additionally, the EU and its leaders need to focus on not just communicating the obligations and commitments of those countries in an effort of shifting responsibilities, but instead share responsibilities with them<sup>9</sup>. Most importantly, it needs to be remembered that outsourcing or external processing not only brings with it legal and practical challenges, but could have a lasting impact on the international standards supporting the refugee regime and territorial asylum.<sup>10</sup> Overall, the lack of a fair allocation system based on unresolved issues of migration governance remain the main challenges and the CEAS’s point of vantage.

**Liska Wittenberg**, *ZEI Master Alumna “Class of 2016”*, is a *ZEI Research Fellow*.

ZEI Insights are part of the Research Project - Governance and Regulation in the EU: [The Future of Europe](#)

ZEI Insights provide commentary and critical analysis on governance and regulation issues related to the future of the European Union. Authors are responsible for their own views.

**Endnotes:**

1. European Parliamentary Research Service, *EU asylum, borders and external cooperation on migration – recent developments*, September 2018, available at: [http://www.europeanmigrationlaw.eu/documents/EPRS\\_EU-Asylum-Borders-ExternalCoop-dev\\_Sept2018-EN.pdf](http://www.europeanmigrationlaw.eu/documents/EPRS_EU-Asylum-Borders-ExternalCoop-dev_Sept2018-EN.pdf) (accessed 10 November 2018)
2. Council of the European Union, *Outcome of the Council Meeting – 3641st Council meeting, (SN 4228/1), Justice and Home Affairs, 11 and 12 October 2018, Luxembourg*, available at <https://www.consilium.europa.eu/media/36698/sn04228-en18.pdf> (accessed 10 November 2018)
3. Lixi, L., 2018, *After Revolution, Tunisian Migration Governance Has Changed. Has EU Policy?*, Migration Policy Institute, available at: <https://www.migrationpolicy.org/article/after-revolution-tunisian-migration-governance-has-changed-has-eu-policy> (accessed 10 November 2018)
4. European Parliamentary Research Service, 2018.
5. European Parliament, 2018, *Migration and Asylum: a challenge for Europe*, available at: [http://www.europarl.europa.eu/RegData/etudes/PERI/2017/600414/IPOL\\_PERI\(2017\)600414\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/PERI/2017/600414/IPOL_PERI(2017)600414_EN.pdf) (accessed 10 November 2018)
6. Tubian, J., Warin, C., and Saeneen, G., *Multilateral Damage – The impact of EU migration policies on central Saharan routes*, September 2018, CRU Report, Clingendael, available at: <https://www.clingendael.org/sites/default/files/2018-09/multilateral-damage.pdf> (accessed 10 November 2018)
7. European Council on Refugees and Exiles (ECRE), *Asylum at the European Council 2018: Outsourcing or Reform?*, ECRE's analysis of the proposals launched at the June 2018 European Council and its updated assessment the CEAS legislative reforms, with recommendations on the compromise texts, August 2018, Policy Paper 4, <https://www.ecre.org/wp-content/uploads/2018/08/Policy-Papers-04.pdf> (accessed 10 November 2018)
8. European Council on Refugees and Exiles (ECRE), 2018.
9. European Council on Refugees and Exiles (ECRE), 2018.
10. Collett, E. and Frantzke, S., *Europe Pushes to Outsource Asylum, Again*, June 2018, Migration Policy Institute, available at: <https://www.migrationpolicy.org/news/europe-pushes-outsourcing-asylum-again> (accessed 10 November 2018)

ZEI Insights are part of the Research Project - Governance and Regulation in the EU: [The Future of Europe](#)

ZEI Insights provide commentary and critical analysis on governance and regulation issues related to the future of the European Union. Authors are responsible for their own views.