



European Programme  
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# Policy Update October 2019

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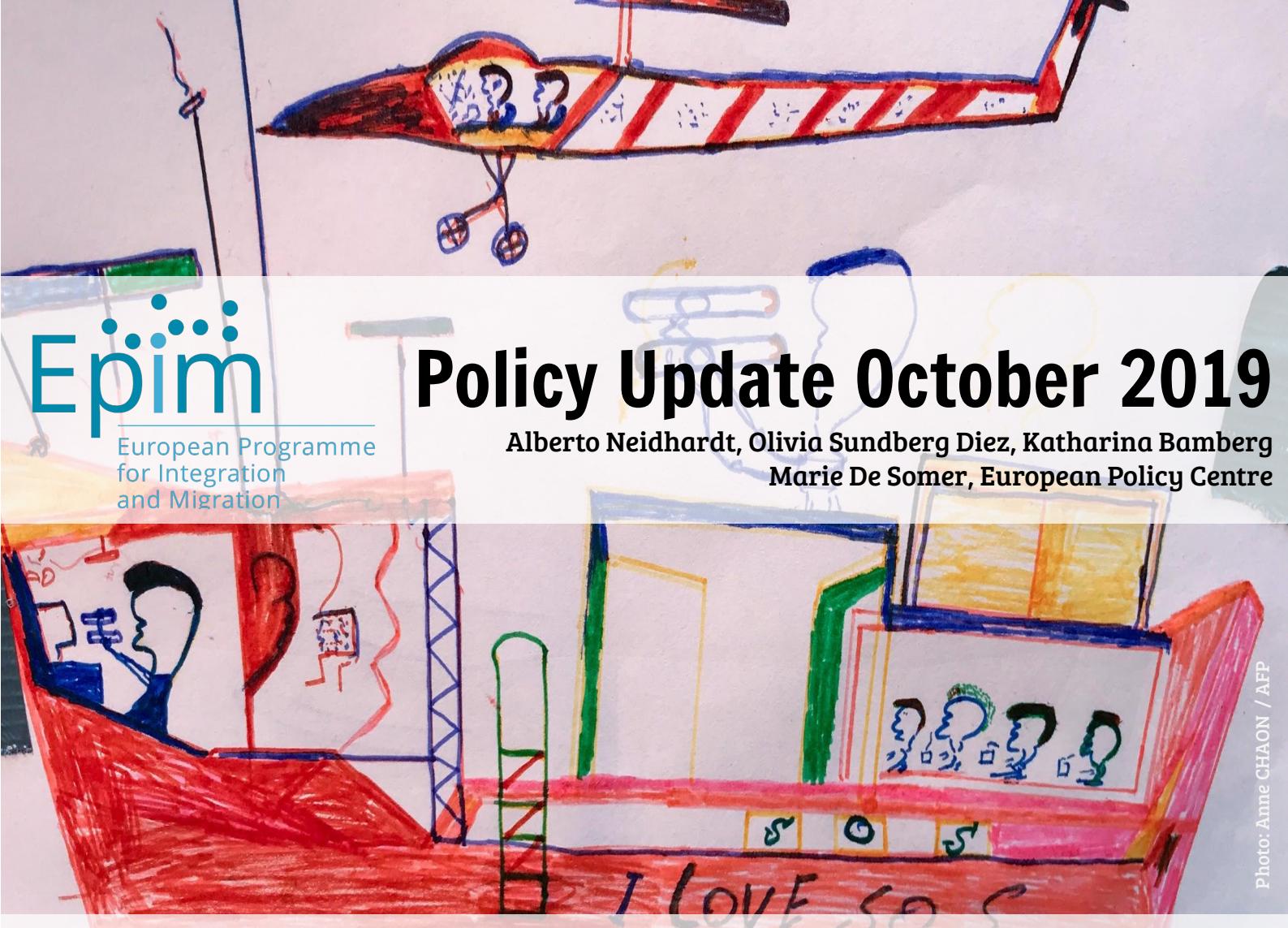


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## Search and Rescue

## New European Commission

## Family reunion after Brexit

The Special Focus of this Policy Update discusses recent attempts to establish a predictable disembarkation and relocation mechanism for the Central Mediterranean. Following a series of [incidents](#) where search and rescue vessels were denied safe harbour, a change of government in [Italy](#) created a window of opportunity to secure access to ports and implement greater solidarity between member states.

This policy update also looks into the composition of the new [European Commission](#) following Ursula von der Leyen's election as President. The designated Home Affairs Commissioner Ylva Johansson was put in charge of developing the [New Pact on Migration and Asylum](#), in close collaboration with [Vice President](#) (VP) Margaritis Schinas. Questions have been raised on the exact scope of proposed changes in migration and asylum policies.

As outlined in the Political Developments section, [political tensions](#) between Turkey and EU member states are rising. At the same time, the number of arrivals to the [Greek islands](#) and [Cyprus](#) is increasing. This has put further pressure on reception centres and has worsened [living conditions](#) for asylum seekers in the region.

In the meantime, [violence and pushbacks](#) in the Balkans and Eastern Europe also continue uninterrupted. Following an [unexpected admission](#) by the Croatian President that Croatian border police uses violence when carrying out pushbacks, civil society organisations have repeated calls for a comprehensive revision of border policies.

In the Closer Look section, [Safe Passage](#) presents their efforts in reuniting unaccompanied children with their families based in the UK. The organisation urges the UK government to keep this vital route open, even in the case of no-deal Brexit.



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# CONTENTS

**1 SPECIAL FOCUS** A turning point for Search and Rescue?

**4 POLITICAL DEVELOPMENTS** The new European Commission takes shape | Developments in the Eastern Med |

Violence and pushbacks at the Eastern border | A surge in Channel crossings | Shifting responsibilities in the Western Med

**11 ECJ CASE LAW & LEGAL ACTIONS**

**12 A CLOSER LOOK FROM...** Safe Passage

**13 FACTS & FIGURES** UNHCR statistics on arrivals | Recent Reports | Funding Opportunities

**15 EU CALENDAR: UPCOMING EVENTS** EU Institutions | Other Events

## SPECIAL FOCUS



## A turning point for Search and Rescue?

### Asylum

Search and rescue (SAR) operations in the EU have been faced with a growing number of obstacles. Previous [EPIM Updates](#) have covered the criminalisation of solidarity, the denial of safe harbour to rescue vessels, and the scaling down of EU coast guard operations. The consequences, including several [deadly shipwrecks](#), continued to meet widespread condemnation from [member states](#), [NGOs](#) and [MEPs](#). The first part of this Special Focus discusses the SAR incidents that have taken place since July 2019. The second analyses the recent [change](#) of government in Italy and its implications for the future of SAR. A final section discusses recent efforts to establish a temporary disembarkation mechanism.

The absence of a concrete mechanism for disembarkation and relocation was deeply felt over this summer. In early August, the Italian government entrenched its hostility to SAR as it passed a highly criticised [security bill](#). This built on an [earlier bill](#) passed last December that fined captains of migrant rescue vessels up to €50,000 if they entered Italian ports without permission. The [new bill](#) increased the fine to range from €150,000 up to €1

million, and ships would be automatically seized. In this context, several rescue vessels spent weeks waiting for a safe harbour with hundreds of migrants on board as member states negotiated their fate. These included the [Gregoretti](#), [Alan Kurdi](#), [Open Arms](#), [Ocean Viking](#), [Eleonore](#), and [Mare Jonio](#). These ships were barred from entering Italy and, with the [exception](#) of some people rescued in Maltese waters, also denied access to Malta.

Delays of up to 19 days at sea continued even after other [EU countries](#) had committed to relocate the rescued migrants. [SAR NGOs](#) condemned the [cruelty](#) of prolonging their stay at sea until the situation became critical, as crews reported that migrants were suffering [panic attacks](#), going on [hunger strikes](#) and jumping [off board](#). Furthermore, these delays prevented the ships from conducting further SAR operations where they were most needed. [NGOs](#) warned that this was an “attempt to eliminate the presence of civil society at sea”.

The situations of these vessels were resolved in different ways. Some required the [intervention](#) of Italian courts, or involved a [ship defying](#) the new bill and subsequently being fined and seized. In others, national authorities allowed migrants to disembark after [assurances](#) that other countries would take responsibility, or [gradually](#) following a series of [medical emergencies](#). Specifically, people on board the [Gregoretti](#), [Open Arms](#), [Ocean Viking](#) and [Alan Kurdi](#) were relocated to France, Germany, Ireland, Luxembourg, Portugal, Romania and Spain. All the while as SAR vessels were blocked a few hundred miles from shore, [migrants](#) continued to [arrive](#) in Italy autonomously in smaller boats. In fact, only around [9%](#) of those who arrived in Italy by sea in the past year were rescued by NGOs. This highlights the [weakness](#) of the [argument](#) that SAR NGOs act as a pull factor, and shows the limitations of relocation initiatives, which would exclude all people arriving autonomously.

Other questions linked to relocation remained unsolved. The mechanics by which rescued asylum seekers are distributed between member states remain non-transparent and ad hoc. In the incidents described above, the countries involved varied in each case. It is unclear how the [distribution](#) of rescued migrants between them was decided, including whether criteria such as existing family ties were being considered. Furthermore, in some cases, relocation commitments were [not fulfilled](#); in others, they were not as swift [as promised](#). For example, migrants who disembarked in Malta spent weeks in [detention](#), on the pretext of medical checks, as they awaited relocation. These migrants staged [protests](#) calling for freedom and [clarity](#) about their future, while [NGOs](#) argued that their detention was unlawful. The fate of rescued migrants following relocation was also uncertain. For example, whereas Spain had granted a [45-day](#) right to remain for the 629 people rescued by the Aquarius in June 2018 so that they could apply for asylum, the 15 people received from the Open Arms in August 2019 were given only [one week](#). Therefore, existing approaches to disembarkation and relocation remain far from a [sustainable solution](#).

The [collapse](#) of the Italian government on 20 August created a window of opportunity to address these challenges. Prime Minister Giuseppe Conte successfully formed a [new coalition](#) with the centre-left Partito Democratico, excluding Matteo Salvini’s Lega Nord. Luciana Lamorgese, previously a high-ranking civil servant in the Interior Ministry, was appointed [Interior Minister](#), thus replacing Salvini. After this change of government, [speculation followed](#) over a possible shift in Italy’s stance on SAR and disembarkation.

Shortly after Conte’s second cabinet was sworn in, the Ocean Viking requested access to safe harbour in Italy and Malta. It was allowed to disembark in Italy twice, with [82 rescued people](#) in the first case and [182](#) in the second. Another [35](#) disembarked in Malta. However, in both cases, rescued migrants were only given access to safe harbour after [six days](#), and not before other member states [committed](#) to relocate them. While this is an improvement upon the previous government’s absolute closed-ports policy, the current approach retains many risks and uncertainties for those rescued. [Commentators](#) have suggested that fully

reversing Salvini's policies may take time given the fragility of the governing coalition. This cautious approach may also be part of an Italian [move](#) to secure greater commitments on solidarity mechanisms. In his first days back in office, [Conte](#) signalled his willingness to improve his relationships at EU level. After meeting with Conte shortly afterwards, French President [Emmanuel Macron](#) called for greater solidarity with Italy.

In this context, informal discussions on a predictable mechanism to disembark and distribute migrants rescued at sea were held over the summer. [NGOs](#) had increasingly called for such a mechanism over the [past months](#). The interior ministers of several member states met in [Helsinki](#) on 18 July and in [Paris](#) on 22 July, under Franco-German impetus. The [Commission](#) was present in a coordinating role. Following these meetings, a provisional agreement between France, Germany, Finland, Luxembourg, Portugal, Lithuania, Croatia and Ireland was reached. Six more states backed the agreement in principle, arriving at a [total of 14](#). According to a [leaked draft](#) of the agreement, states committed to contributing to the reception of asylum seekers rescued by private rescue vessels, which were to disembark in the closest safe harbour. The agreement remained provisional ahead of a planned meeting in Malta in September, and was met with [mixed reactions](#). [UNHCR](#) and [IOM](#) praised states for stepping forward. Other commentators saw it as a [repetition](#) of previously failed plans, however, and [warned](#) against making rescue and disembarkation obligations conditional on other states shouldering responsibility.

The [Italian government](#), which at the time still included Salvini, originally refused to join these meetings. However, after its change of government, it participated in a [meeting](#) on 23 September in Malta where a new agreement for a predictive disembarkation and relocation mechanism was found between Malta, Italy, Germany and France. According to the leaked [Joint Declaration of Intent](#), the participating states would allow people rescued by private vessels to have access to a safe port, which may be rotated on a [voluntary](#) basis. Following disembarkation, participating states would relocate the individuals rescued based on pre-declared pledges and within a period of four weeks. The relocations would be coordinated by the Commission. Rescued migrants would become subject to fast-tracked asylum and, if applicable, return procedures. Crucially, this mechanism would only apply to private rescue vessels. Arrival states would remain responsible for individuals rescued by their own state-run operations as well as for people arriving autonomously. The programme would function as a pilot for a minimum of six months. However, it may be suspended if the number of arrivals rises substantially in the meantime. States could also cease participation in the event of "disproportionate migratory pressure", although few details are available as to how this would be determined.

Although [progress](#) in forging this agreement was welcomed, [many commentators](#) also [urged caution](#). The voluntary rotation of ports could leave room for continued stand-offs that would unnecessarily delay the disembarkation of rescued migrants. This could create unnecessary risks on board and lead to a longer absence of rescue capacities. A further point of concern was the Declaration's approach to Libya. For instance, the Declaration stated that rescue vessels would be required to not obstruct operations by the Libyan Coast Guard, and would need to comply with instructions by the relevant Maritime Rescue Coordination Centre. This could entail returning migrants rescued in Libyan waters to Libya, which [UNHCR](#) deems unsafe. In a [joint statement](#), SAR NGOs operating in the Mediterranean called for a bolder mechanism. Among others, they advocated for reviewing the engagement with the Libyan Coast Guard, sanctions for non-adhering countries, a greater voice for cities, and less discretion to member states to suspend the mechanism.

In addition, several implications of the agreement remain unclear. First, there is little detail on what the streamlined asylum and return procedures would entail, and whether they

would comply with international law and minimum procedural safeguards. Second, the relocation process remains non-transparent, including whether individual connections and vulnerabilities would be taken into account. Third, the mechanism's implications for the much-needed Dublin reform are also uncertain. On the one hand, the move was widely praised by certain political actors as a [gesture of solidarity](#) that could serve as a [blueprint](#) for further redistribution, thus perhaps unlocking compromise on Dublin. On the other hand, [scholars](#) have warned that allowing states to pick and choose when to implement solidarity measures is [backwards step](#) for EU migration policy.

The agreement was presented at the Justice and Home Affairs (JHA) Council meeting on 8 October, in order to determine a list of safe ports for disembarkation, secure other states' voluntary participation and establish specific relocation pledges. It was made clear from the [outset](#) that success would [depend](#) on widespread endorsement. However, only [three more countries](#) have confirmed their support to date, namely Ireland, Luxembourg and Portugal. Others, including Sweden, Finland and Slovenia, were [reportedly](#) favourable but undecided. States that have traditionally rejected responsibility-sharing mechanisms, including the Visegrad Four, remained [opposed](#). At the same time, the deal was also rejected by other states on the EU external border. Cyprus, Greece and Bulgaria called for greater focus and resources for the [Eastern Mediterranean](#). As discussed in later sections, this route has recently seen a considerable increase in arrivals. [Spain](#), in turn, welcomed the pilot project but will not participate in relocations. It has [repeatedly](#) argued that solutions must apply to the entire Mediterranean, not only Italy and Malta, and [opposed](#) the differentiation between migrants rescued by NGOs or by its state-led SAR operation, Salvamento Marítimo. Nevertheless, as noted by [ECRE](#), even if several member states do not join this mechanism, their willingness to participate in relocations over the past months is important progress.

Given this lukewarm response, the future of the deal remains uncertain. [Discussions](#) will continue over the coming weeks, with the exact number of participating states and their relocation commitments yet to be determined. The collapse of the agreement also remains a possibility. This would have widespread implications, among others, for the credibility of the new coalition in Italy, the future of Dublin reform, or the [mandate](#) of [Operation Sophia](#).

## POLITICAL DEVELOPMENTS



## The new European Commission takes shape

Asylum

Following the [May elections](#) of the European Parliament, the new European Commission started taking shape. After a period of [uncertainty](#), the European Council unexpectedly

proposed Ursula von der Leyen as [Commission President](#). [Commentators](#) argued that von der Leyen, formerly the German Minister for Defence, is “far from being a bad choice.” However, ahead of her [confirmation vote](#), [MEPs](#) expressed criticism about the lack of concrete policy proposals that von der Leyen wished to advance, including in [migration matters](#). In [response](#), during her [confirmation speech](#), von der Leyen unveiled an [ambitious action plan](#) which included a “[New Pact on Migration and Asylum](#)”. The Pact will be geared towards addressing a [comprehensive set](#) of priorities and long-standing issues, including the expansion of the European Border and Coast Guard Agency, the restoration of the Schengen Area and the relaunch of the Dublin reform. It is open to question, however, how this agenda will be implemented and what the exact scope of the proposed changes will be.

Von der Leyen designated the Swedish candidate Ylva Johansson for the Commissioner portfolio of [Home Affairs](#). Johansson was nominated by the Swedish centre-left [Social Democratic Party](#). Prior to her designation, she was [Minister for Employment and Integration](#) in Sweden. The Scandinavian country remains one of the most [welcoming](#) for migrants in Europe. Her party affiliation and [experience](#) at the national level could be of help in carrying out the mission assigned to her. However, [observers](#) have also noted a recent [restrictive turn](#) in Swedish immigration policy. This shift is sometimes understood as a reaction to the rise of the right-wing [Swedish Democrats](#), which capitalised on the increased political salience of immigration. Ahead of the 2018 national elections, Johansson proposed the attendance of language classes as a [precondition](#) for immigrants obtaining work and welfare benefits. Johansson and the [Social Democrats](#) also vowed to make it impossible for people not residing in Sweden to compete for positions where there is no labour shortage.

Following the [favourable vote](#) by the Parliament’s LIBE Committee, Johansson has been entrusted with developing the [New Pact on Migration and Asylum](#). However, in her challenging [confirmation hearing](#), she struggled to clarify how she exactly intends to do this. On the one hand, she said that “[failure is not an option](#)”. On the other hand, when asked how to unlock the process of reforms, she replied that “I can’t say exactly how this will be done”. [MEPs](#) also expressed frustration over her evasive answers on whether she would support using qualified majority voting to overcome divisions within the Council. In line with her [initial written answers](#), the Commissioner-designate emphasised furthering dialogue with the member states before advancing new policies and initiatives. She also announced that she would make no concrete proposals in relation to the EU’s [asylum reforms](#) in the first [hundred days](#) of her office. [After the hearing](#), Johansson was asked to submit further [written clarifications](#), which led her to take a more assertive stance. She wrote to MEPs that she “will press to set up humanitarian corridors” from third countries and that she “will push for the swift adoption of a new Resettlement Framework”. As part of the future Pact, her focus will also be on increased return rates, although this raises concerns about how to effectively protect against the [risk of refoulement](#).

In developing migration and asylum policies and reforms, Johansson will work in close cooperation with the Greek [centre-right](#) candidate [Margaritis Schinas](#), VP-designate for “[Protecting our European Way of Life](#)”. The wording of the portfolio attracted widespread [criticism](#) for suggesting that migrants pose a threat to European values. Before Schinas’ [confirmation hearing](#), [commentators](#) and [NGOs](#) expressed concerns that European institutions are mainstreaming the fear mongering [rhetoric](#) of the radical right. [NGOs](#) also urged the Commission to be culturally and ethnically inclusive. While von der Leyen defended her choice in an [opinion piece](#) by stating that extremists should not have a monopoly over the language of values and identity, leaders of the populist right celebrated the chosen title as an “[ideological victory](#)”. At his audience with LIBE, Schinas stood behind the title, arguing that it refers to the values of inclusion and diversity. At the same time, he

deftly acknowledged opposing views. [MEPs](#) responded that the title is inherently divisive and that the Commission should invest in a constructive dialogue with progressive forces in the Parliament. Although a large majority in LIBE confirmed Schinas after his [good performance](#) at the hearing, the controversy may still lead to a change to the title.

Questions were also raised about Schinas' [actual powers](#). Von der Leyen restructured her [College](#) to dismantle [hierarchies](#) and minimise [frictions](#), but the new [organisational chart](#) also creates some [confusion](#). As other VPs, Schinas will work closely with the [Secretariat-General](#) to ensure that actions and policies conform to von der Leyen's [agenda](#). However, under the new power [structure](#), only [Executive VPs](#) – which Schinas is not – have direct authority over Directorate-Generals. This may make [conflicts](#) between Schinas and the Commissioner more likely. This issue also intersects with the lack of a clear demarcation of tasks. Schinas will coordinate Johansson's initiatives but also those of other Commissioners, as long as they relate to migration and security. For instance, Commissioner-designate for International Partnerships, [Jutta Urpilainen](#), was tasked with strengthening partnerships with countries of origin and transit. However, [foreign policy](#) falls under the responsibility of [Josep Borrell](#), the appointed VP and High Representative. The horizontal structure and overlapping portfolios may increase collisions between line Commissioners and VPs, rather than reducing them.

The [European Parliament](#) was expected to vote on the new Commission as a whole on 23 October. Due to the rejections of [several candidates](#) for a Commissioner's post, however, additional hearings will have to take place. It is therefore likely that the [final vote](#) will be delayed. This may make it [impossible](#) for the new College of Commissioners to take up its responsibilities on 1 November, as previously announced.

## Developments in the Eastern Med

Asylum Children and Youth

Over the summer, pressure has mounted regarding the migration situation in the Eastern Mediterranean, particularly in Cyprus and Greece. This section studies the developments in those states before linking them to the rise in their geopolitical tensions with Turkey. Cyprus has experienced a surge in the [number](#) of refugees over the last two years, leading to the asylum system and reception camps becoming increasingly overburdened. According to Cypriot government figures, the country has received [4,500 new applications](#) during the first four months of this year. More generally, the country has seen a 69% [increase](#) in asylum applications between 2017 and 2018. Cypriot politicians have observed that Turkey is letting asylum seekers [cross](#) the porous border on the island from the Turkish to the Cypriot side. In fact, the majority of arrivals are reportedly coming via this land route. Others have pointed to the particular rise in the [arrivals](#) of Afghan asylum seekers who are leaving Turkey due to their insecure status there.

In response to this increase in numbers, [Cypriot authorities](#) established a new International Protection Administrative Court in June tasked with tackling a backlog of more than 14,000 asylum applications. In the meantime, the Cypriot Interior Minister Constantinos Petrides also sent a [letter](#) to the European Commission urging member states to take on 5,000 refugees from Cyprus. In response, the current Commissioner for Migration [Dimitris Avramopoulos](#) stated that the Commission would lend operational and financial support to "the implementation of potential voluntary relocation of asylum seekers". However, in the absence of a functioning EU-wide relocation mechanism, it is questionable to what extent this will actually be put into practice (see Special Focus). In mid-September, Cyprus also signed a [hosting agreement](#) with the European Asylum Support Office (EASO).

This agreement tasks EASO with supporting Cypriot authorities with the registration of asylum applications and improving the conditions of the accommodation centre in Kofinou and the newly established first reception centre in Kokkinotrimithia.

[NGOs](#) have criticised the Cypriot government of running a malfunctioning asylum system. Reports show that some asylum seekers are stuck in the process for up to a decade. Other points of criticism include the failure of the Cypriot government to comply with the [Asylum Procedures Directive](#) fully, and specifically the absence of adequate legal assistance during the asylum process.

Greece is facing similar issues. Recent months have seen the biggest [increase](#) in the arrivals of refugees to its islands since 2015. In August, close to 10,000 people reached the country by land and sea, and more than 12,000 arrived in September. This has made reception centres even more [overcrowded](#) and unsafe. The Moria camp on the island of Lesbos alone houses over 12,000 [individuals](#), running at four times its intended capacity. There have been reports of [tear gas](#) use by police forces against minors protesting to be transferred out of the camp. In August, an Afghan [teenager](#) was fatally stabbed in a violent [altercation](#). The lethal incident has prompted [UN agencies](#) to renew their calls for the [transfer](#) of unaccompanied children to safe accommodation. At the end of September, at least two persons died as a result of a [fire](#) in the camp, prompting protests by camp residents to which the police responded with more tear gas use. In response, [Amnesty International](#) accused the Greek government and the EU of an abject failure to protect refugees. The [International Rescue Committee](#) and [UNHCR](#) called for the immediate evacuation of all vulnerable people to safe accommodation on the mainland and in other EU member states. [Médecins Sans Frontières](#) has accused Greek and EU authorities of deliberately [neglecting](#) those held on the islands, especially vulnerable individuals such as children. Several other NGOs have continued to condemn the [mistreatment](#) of asylum seekers in Greece and the substandard [conditions](#) in reception centres on the Greek islands.

In [response](#) to the dire situation, the new conservative [Greek government](#) announced [emergency measures](#) at the end of August. Consequently, around 1,500 [individuals](#) were [transferred](#) out of Moria to camps in Northern Greece at the beginning of September. However, one of the camps, Nea Kavala, has also been subjected to [criticism](#) for its lack of adequate infrastructure and healthcare. Amid ongoing [transfers](#) from the islands, more [plans](#) have been reported for the relocation of another 3,000 asylum seekers to the mainland by the end of October. The government also pledged to strengthen [border](#) controls together with Frontex and speed up [return operations](#) of migrants to Turkey. It also called on EU member states to establish a [redistribution mechanism](#) and provide more financial [support](#) to Turkey. Furthermore, the government planned to abolish the second stage of the right to appeal a rejected asylum application. This move, which was intended to [shorten](#) the country's lengthy asylum processes, was heavily criticised by [civil society organisations](#). The Greek [Union of Administrative Judges](#) also called on the Greek government to uphold its [obligations](#) under international law. According to recent media reports, the government has now [abandoned](#) the proposal.

One month later, at the end of September, and following the fire in the Moria camp, the Greek [government](#) announced a further [set of measures](#). These include a plan to return 10,000 migrants to Turkey by the end of next year. In addition, the [government](#) seeks to install more naval patrols in the Aegean Sea and close off reception centres to migrants whose asylum applications were rejected. Instead, these people would be housed in "[closed centres](#)". A turn towards more restrictive policies is also evident in a surge of [arrests](#) of migrants without residence permits and in recent [crackdowns](#) on refugee communities in

Athens. [Human Rights Watch](#) has reacted with concern to these new policies and warned against a wave of human rights violations.

Observers have linked the rise in arrivals to [Cyprus](#) and [Greece](#) to recent geopolitical tensions with Turkey, including in the context of the EU-Turkey Deal which has been [criticised extensively](#) by NGOs. At the end of July, the [Commission](#) adopted new assistance measures for the EU Facility for Refugees in Turkey. Shortly after, however, Turkey announced that it would [suspend](#) the readmission agreement as it accused the EU of not fulfilling its promise of visa liberalisations for its citizens. In early September, tensions rose again when Turkish President [Recep Tayyip Erdoğan](#) stated that his country did not receive sufficient support from its EU counterparts for refugees hosted in Turkey, and therefore considered allowing them to travel onward to Europe. The Turkish government has also repeatedly called on the EU to help create so-called “safe zones” at the Turkish-Syrian border, to which Syrian refugees could be returned or to which they could flee from Syria. This proposal, however, was rejected by EU [counterparts](#). EU states also raised [concerns](#) that a Turkish military operation into Kurdish regions in North Syria, starting in mid-October, could lead to increased numbers of [refugees](#) fleeing from the region.

In addition, Greek Prime Minister, [Kyriakos Mitsotakis](#), warned Turkey not to use threats, while Commissioner [Avramopoulos](#) stated that the deal was not to be used as a negotiating tool. As arrivals of refugees to the Greek islands picked up in the following weeks, [Turkey](#) has been accused of turning “a blind eye to smugglers” operating in the Aegean as a way to exert [pressure](#) on the EU. The Turkish [government](#) has denied these allegations and asserted that its [coastguard](#) is still intercepting boats that attempt the crossing.

## Violence and pushbacks at the Eastern border

### Asylum

Recurring reports of violent pushbacks along the [Balkan route](#) and in [Eastern Europe](#) continue to draw attention to the unlawful treatment of asylum seekers. Collective expulsions and summary returns have the effect of preventing asylum seekers from making an application for protection and are considered [illegal](#) under the Refugee Convention and EU law. Nevertheless, for a number of years, the [media](#), [NGOs](#), [Council of Europe](#) and [UNHCR](#) have documented the widespread use of summary returns and the systematic violence wielded by border officials in the region. NGOs suspect that the involvement of border officials and their systematic use of violence indicate that governments are deliberately using pushbacks as a [deterrence strategy](#). Researchers have shown that such [unlawful practices](#) take place even though the number of persons using the Balkan route has significantly decreased over the years. The [situation](#) could worsen should the number of arrivals rise due to the [growing tensions](#) with Turkey.

In 2018 and 2019, reports of [institutional violence](#) led to [several investigations](#) by national ombudsman’s offices. Following its review of cases of [accusations](#) of the Slovenian police ‘handing over’ migrants to Croatian authorities, the Slovenian Ombudsman issued a [statement](#) in February. The statement does not shed full light on whether the actions taken by the Slovenian police made it impossible for asylum seekers to apply for international protection. However, the public office urged the border police to not remove individuals without giving them unhindered access to international protection. In addition, it underlined that police officers should take all necessary measures to ensure full respect for human rights. How effective the actions and recommendations of Ombudsmen will be is open to question. Moreover, [government officials](#) across the region continue to reject

accusations of summary returns and violence. For example, the [Croatian Ombudswoman](#) has been refused access to official records and documentation.

A turning point with international consequences was noticed in July when [Croatian President](#) Kolinda Grabar-Kitarović admitted that Croatian authorities were responsible for the collective expulsion of migrants at the border with Bosnia and Herzegovina. In the same [interview](#), she also acknowledged that border guards had been using force when doing pushbacks. In the aftermath of this admission, [NGOs](#) have called on all authorities to stop forcible pushbacks and to hold those responsible accountable. [NGOs](#) have also called on EU institutions to express an unambiguous condemnation of unlawful border practices.

Protracted border violence also casts doubt on the capacity of [Frontex](#) to effectively monitor and prevent human rights violations. Under its "[Code of Conduct](#)", Frontex must ensure that any person participating in activities which it coordinates or leads complies with human rights law. In the past, [NGOs](#) expressed fears that the border agency preferred to turn a blind eye to abuses at the EU external borders. Furthermore, although [Frontex](#) has publicly condemned unprocessed returns, new journalistic [investigations](#) and recent NGO [reports](#) denounce the Agency's personnel for not only tolerating violent pushbacks but also being actively involved in unlawful practices like the apprehension, detention and forced expulsion of migrants, particularly in Greece, Bulgaria and Hungary.

In addition to pushbacks and border violence, NGOs have also reported an increase in the policing of their activities. These include [acts](#) of intimidation and criminalisation against activists who assist migrants in gaining asylum and protection and those who document abuse and pushback operations. While the [Council of Europe](#) reminded its members of the need to promote spaces for the activities of NGOs in November 2018, rhetorical attacks and systematic criminal proceedings against activists are creating a diffused climate of hostility that undermines the foundations of [liberal democracies](#).

An opportunity to move towards restoring adherence to European [founding values](#) may be found in the infringement procedure against [Hungary](#) in relation to its treatment of asylum seekers in transit zones and its criminalisation of humanitarian activities. The [Commission](#) decided to carry this action forward in July 2019. In the Commission's view, the Hungarian "Stop Soros" legislation unlawfully curtails the right to asylum by making it impossible for asylum applicants to be assisted by humanitarian organisations. Some [experts](#) have raised concerns over the actual impact of a condemnation, fearing delays in the procedure and a lack of enforcement capacity. [Amnesty International](#), however, stated that the procedure at least "exposes the appalling treatment the authorities use to deter migrants and refugees from seeking safety in Hungary".

## A surge in Channel crossings

Asylum   Children and Youth

August and September 2019 saw a sharp surge in attempts to cross the English Channel by sea. About [1,500 people](#) have attempted to cross so far this year, compared to [539](#) in all of 2018, with [record numbers](#) in the late summer. An [Iranian woman](#) and an [Iraqi man](#) were the first known migrants who died attempting to cross the Channel. In response, UK Prime Minister [Boris Johnson](#) warned migrants not to cross the Channel, stating, "we will send you back". [NGOs](#) and members of the [political opposition](#) labelled these statements as dehumanising, inflammatory and misleading. The UK and France agreed to [strengthen cooperation](#), possibly including more funding to reinforce France's patrol efforts. This

follows an earlier [joint action plan](#) on border management between the two countries, as discussed in a previous [EPIM Policy Update](#).

NGOs operating in Calais and Dunkirk have [warned](#) for [months](#), if not [years](#), that the increasing hostility and harassment of migrants in the area by the French police is both cruel and counterproductive. The renewed crackdown has pushed people in already precarious situations to [take greater risks](#) and travel to the UK, despite the [unsafe conditions](#) of the journey. In particular, attempts to cross the Channel were believed to be driven by [imminent evictions](#). In September, over [700 people](#) were forcefully cleared from makeshift camps and a sports hall that had been providing shelter. This amounted to the largest eviction in over a year.

Another factor contributing to the rise in crossings may be the expected Brexit deadline on 31 October, which is leading to fears about tightened border controls. Children, who are already highly vulnerable and have [insufficient protection](#) in northern France, could see their rights and asylum prospects particularly affected [post-Brexit](#). As discussed in the Closer Look section, a no-deal Brexit could lead to the end of [family reunification](#) mechanisms for asylum seekers, which are currently in place under the Dublin Regulation. In the UK, the EU Home Affairs [Sub-Committee](#) called on the UK to establish an interim agreement to protect the rights of asylum seekers, particularly unaccompanied minors, echoing other calls from civil society for more [legal pathways](#) into the UK.

## Shifting responsibilities in the Western Med

### Asylum

Although most attention this summer centred on developments in the Central Mediterranean, the only SAR operation in the Mediterranean Sea that is managed by an EU member state – Spain's Salvamento Marítimo – was also facing important changes. The agency is being gradually stripped of [staff](#) and [resources](#), particularly in the [areas](#) with the greatest number of crossings. In addition, in the past few months, there has been a [noticeable shift](#) in its operations. Salvamento Marítimo's [new policy reportedly](#) involves conducting SAR operations [only](#) in Spanish and shared SAR zones, effectively ceding more ground to Moroccan authorities. By contrast, [one third](#) of the 50,000 people Spanish authorities rescued in 2018 were rescued in Moroccan waters, with the government's authorisation. Meanwhile, spokespersons from the agency's [staff union](#) state that Moroccan authorities have also started operating within Spanish SAR areas.

The [Spanish Commission for Refugees](#) and [local NGOs](#) have denounced the reliance on Morocco as irresponsible, stating that it may contribute to a [rise](#) in [avoidable deaths](#). Moroccan authorities are poorly funded and have much larger delays in responding to reports of ships in danger. Furthermore, reports suggest that migrants are now taking greater risks to avoid being intercepted by Moroccan authorities. Fearing that they will be immediately sent back, smugglers are [reportedly](#) waiting much longer to warn Salvamento Marítimo when migrants attempt a crossing.

These developments also take place against the background of growing cooperation between Spain and Morocco to [reduce arrivals](#) to Spain by 50%. In July 2019, Spain allocated [€30 million](#) to strengthen Morocco's border management capabilities, on top of another [€140 million](#) that the EU committed in December 2018. However, other aspects of this cooperation are also placing migrants at risk. These include [violent raids](#) by the Moroccan police against migrants near the Spanish enclaves of Ceuta and Melilla, and the [continued](#) practice of pushbacks by Spain.

# SELECTED ECJ CASE LAW & LEGAL ACTIONS



Asylum      Mobile EU citizens

## Case [C-94/18, Nalini Chenchooliah v Minister for Justice and Equality](#)

This case concerned the situation of Ms Nalini Chenchooliah, a Mauritian national, who met and married a Portuguese national while lawfully residing in Ireland. After her marriage, she applied for a residence permit as the spouse of a Union citizen on the basis of the EU [Citizens' Rights Directive](#) (2004/38/EC), Article 7. This Article governs the rights of EU citizens and their family members to reside in another member state for periods of over three months. Her application was refused, however, as she had failed to show that her spouse was involved in economic activity, as required under that Article. Several years later, and following Ms Chenchooliah's declaration that her spouse had returned to Portugal, a deportation order was issued against her. This deportation order, following Irish law, would remain in force indefinitely. In effect, this amounted to an entry ban. Following an appeal by Ms Chenchooliah, several questions were raised on whether her situation was covered by EU law and, if so, how the rights she derived from EU law applied to the circumstances at hand. The CJEU started by observing that even if Ms Chenchooliah had failed to obtain a right of residence for more than three months, she had nevertheless been covered by the right of EU citizens and their family members to reside in another member state for a period up to three months (Article 6). As the Court continued, given that she had in the past enjoyed a temporary right of residence under EU free movement law, an expulsion decision against her continued to fall within the scope of that law. This meant that that decision had to meet the procedural safeguards of the Directive, including in relation to judicial redress, and that, in any case, an entry ban could not be imposed on her.

## Case [C-93/18 Bajratari v Secretary of State for the Home Department, 2 October](#)

This case concerned the residence rights of Mr and Mrs Bajratari, who are Albanian nationals living in Northern Ireland with their children. Mrs Bajratari had applied for a residence card under the [Citizens' Rights Directive](#) (2004/38/EC). She based her application on her role as the primary carer of her two children, who are Irish nationals. In order to derive a right of residence, she first had to prove that her children had sufficient resources not to become a burden on the host member state. The family was supported by Mr Bajratari's earnings. However, he was working despite his residence card and work permit having expired. The Home Office rejected Mrs Bajratari's request, arguing that unlawful income should not be considered when assessing her children's self-sufficiency. The question before the CJEU was whether a child can be considered self-sufficient if they are only supported by the earnings of a parent who is working unlawfully. The CJEU had previously

held in Case C-200/02 [Zhu & Chen](#) that the conditions for self-sufficiency are met whenever the child has access to sufficient resources, regardless of their origin. However, the Court had not specifically ruled on situations where the income was unlawfully obtained. The Court conceded that resources made available by a parent who works unlawfully would be more precarious due to the unlawful nature of his or her residence. However, the Court considered, first, that the restriction on the sources of self-sufficiency could not be derived from the wording of the Directive. Second, it held that it would constitute a disproportionate interference with the EU citizen minor's right of residence. The Court also highlighted that Mr Bajratari had been paying tax and social security contributions even while being unlawfully employed and that the family had not received any social assistance over the past decade. As such, refusing to recognise his earnings would go manifestly beyond what is necessary to protect the member state's resources. Finally, the UK government had referred to public policy grounds to restrict the family's free movement rights. However, the Court found that Mr Bajratari's unlawful employment did not amount to a genuine and serious threat, and so the conditions to invoke these grounds did not apply.

#### Other relevant case law

Case [C-410/18](#) Aubriet v Minister for Higher Education and Research of Luxembourg, 10 July

Case [C-89/18](#) A v Udlændinge- og Integrationsministeriet, 10 July

Case [C-556/17](#) Alekszij Torubarov v Bevándorlási és Menekültügyi Hivatal, 29 July

Case [C-544/18](#) Henrika Dakneviciute v The Commissioners for HMRC, 19 September

Case [C-70/18](#) Staatssecretaris van Justitie en Veiligheid v A, B, P, 3 October

Case [C-302/18](#) X v Belgische Staat, 3 October

## A CLOSER LOOK FROM...



Photo: Safe Passage International

## Safe Passage

Asylum Children and Youth

By Beth Gardiner-Smith, CEO of [Safe Passage](#)

In 2015, a group of volunteer lawyers, faith leaders and activists formed Safe Passage, determined to find a legal and safe way to reunite hundreds of unaccompanied children in the 'Calais Jungle' with their families in the UK. In theory, the family reunion provisions of

the Dublin Regulation were one of the few legal routes for such children to reach safety. However, until then, these provisions had never been used to reunite a child in France with their family in Britain. With the support of several legal partners, three children and one vulnerable adult won a [landmark ruling](#) in January 2016 against the UK's Home Office's refusal to admit them to join their family. The case opened up a safe and legal route for children seeking family reunion and laid the foundation for Safe Passage's work. Just two months later, the first unaccompanied minors travelled to the UK through the Dublin Regulation's family reunion provisions.

Safe Passage continues to support cases directly; last year we supported 40% of successful family reunification cases of unaccompanied children from France to the UK. We have expanded our work to Greece and also support some of the first reunions of unaccompanied minors from Italy. With the help of EPIM's "[Never Alone](#)" programme, we now also provide training and legal advice to other practitioners to build capacity across the system. We also continue to use strategic litigation to improve the application of the Dublin Regulation.

The family reunion provisions of the Dublin Regulation remain one of the few legal routes for unaccompanied children. This is why this route to the UK must not close overnight in the event of a no-deal Brexit. In 2018, Safe Passage led a campaign that saw legislation passed to guarantee rights for unaccompanied children comparable to those of the Dublin Regulation even after Britain's departure from the EU. In the event of a no-deal scenario, this legislation will not apply. [Secondary legislation](#) commits the UK to process Dublin applications it receives by the date of exit. However, the UK has no legal obligation to accept children with a family claim where an application has not been received. Even for claims submitted within time, there is no guarantee that the EU will cooperate to facilitate the transfers, nor any clarity over the process for appealing against a rejection.

While the UK's domestic immigration laws include some provision for family reunion, these fall far short of the rights enjoyed under the Dublin Regulation. Unless steps are taken by both the UK government and EU to maintain family reunion to the Dublin standards, there is a real risk that a no-deal Brexit will lead to children disappearing from the system. Without further legal options, more children may attempt to make their own way via dangerous routes such as the Channel crossing – a route which has already claimed the lives of at least six children since 2014. Safe Passage has launched an awareness-raising campaign amongst partners and practitioners across Europe and is [campaigning](#) in the UK to secure a guarantee that this vital legal route will not be closed down as a result of no-deal Brexit. Unaccompanied children must not be made the unwitting victims of a no-deal Brexit.

## FACTS & FIGURES

**At the end of June 2019, 880,300 pending applications for asylum protection were under consideration by the national authorities of EU member states.**

Source: [Eurostat, September 2019.](#)

# UNHCR statistics on arrivals.

## Asylum

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

- 67,838 sea arrivals have been recorded since the beginning of the year. 7,923 have arrived in Italy, while 38,123 have arrived in Greece and 19,413 have arrived in Spain;
- So far, an estimated 1,071 people have been reported dead or missing in 2019;
- In Italy, the majority of refugees come from Tunisia, Pakistan and Côte d'Ivoire, while more than half of all refugees arriving in Greece originate from Afghanistan and Syria. In Spain, the majority of refugees come from Morocco, Mali and Guinea.

## Relevant reports

### Asylum   Inclusion   Children and Youth

#### **UNHCR, Unicef and IOM: Access to education for refugee and migrant children in Europe**

This [joint report](#) discusses the situation of children with migrant backgrounds in Europe, including their profiles, access to education, school attendance and learning outcomes. It also highlights common challenges, promising practices and recommendations.

#### **Refugee Action and No Accommodation Network (NACCOM): Missing the Safety Net**

The situation of people who have been denied asylum in the UK but are unable to return to their countries of origin is highlighted in this [report](#) by Refugee Action and NACCOM. Their data shows significant delays in the processing of applications for support. These delays, during which people may lack access to basic necessities, have significant impacts on their health and can lead to homelessness and destitution.

## EU Funding opportunities

### Asylum   Inclusion   Children and Youth

#### **Calls for proposals - EU funding**

- [\*\*AMIF-2019-AG-CALL-01\*\*](#): Fostering the integration of persons in need of protection through private sponsorship schemes.
  - Call out on 30.07.2019 – Deadline: 30.01.2020
- [\*\*AMIF-2019-AG-Call-02\*\*](#): Social orientation of newly arrived third-country nationals through involvement of local communities, including mentoring and volunteering activities.
  - Call out on 30.07.2019 – Deadline: 30.01.2020
- [\*\*AMIF-2019-AG-Call-03\*\*](#): Social and economic integration of migrant women.
  - Call out on 30.07.2019 – Deadline: 30.01.2020
- [\*\*AMIF-2019-AG-Call-04\*\*](#): Awareness raising and information campaigns on the risks of irregular migration in selected third countries and within Europe.
  - Call out on 30.07.2019 – Deadline: 30.01.2020

- [AMIF-2019-AG-Call-05](#): Support to victims of trafficking in human beings.
  - Call out on 30.07.2019 – Deadline: 30.01.2020
- [AMIF-2019-AG-Call-06](#): Protection of children in migration.
  - Call out on 30.07.2019 – Deadline: 30.01.2020
- [AMIF-2019-AG-Call-07](#): Transnational projects by Member States for training of experts in the area of asylum and immigration.
  - Call out on 30.07.2019 – Deadline: 30.01.2020

## EU CALENDAR: UPCOMING EVENTS

### European Council and Council of the European Union

	17-18 October, 12-13 December	European Council
	2-3 December	JHA Council

### European Parliament

	21-24 October, 25-28 November & 16-19 December	EP Plenary
	6-7, 11-12 & 21 November, 2-3 & 9 December	LIBE Committee Meetings

### Other events

	23 October	<a href="#"><u>Legal Migration Pathways to Europe for Low- and Middle-Skilled Migrants</u></a> , Migration Policy Institute
	23-24 October	<a href="#"><u>ECRE Annual General Conference</u></a> , ECRE
	24-25 October	<a href="#"><u>From Tampere 20 to Tampere 2.0</u></a> , EPC, EMN-Finland, Odysseus Academic Network
	21 November	<a href="#"><u>Working together for Socio-economic Integration of Migrant Women: Final Conference for Smart Volunteering Project</u></a> , European Network of Migrant Women and Smart Volunteering
	21-22 November	<a href="#"><u>Vienna Migration Conference 2019</u></a> , ICMPD

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

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

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