

# Policy Update July 2018

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Photo: BULENT GILIC / AFP

## June EU Council Summit Search and Rescue operations Funding for migration

This EPIM policy update covers the June European Council Summit and the developments leading up to it. Whilst the Council [conclusions](#) are not ground-breaking, two points deserve attention. Firstly, they include the concept of 'regional disembarkation platforms' as a new approach to processing those who are saved in Search and Rescue (SAR) operations outside of the EU. Secondly, they mention 'controlled centres' within member states to provide for rapid processing of asylum seekers and other migrants. As further explored in this update's special focus section, [serious questions](#) remain concerning the implications for human rights protection and the feasibility of these new approaches.

This issue also includes concerns about the EU's

approach to dealing with individuals crossing the Mediterranean. Several NGO vessels carrying migrants were denied access to European harbours, with the [Aquarius](#) case featuring most prominently in the public debate. After being caught in a stand-off between Malta and Italy, the ship was finally allowed to dock in Spain.

This policy update also considers the negotiations on the Multiannual Financial Framework for the period 2021-2027. The European Commission's budget [proposal](#) places emphasis on strengthening border management. In parallel, the EU Trust Fund for Africa is set to receive [another package of funding](#), a considerable part of which will go to migration activities. Concerned about a diversion of funding away from development aid, [civil society actors](#) have paid close attention to these developments.

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## SPECIAL FOCUS



## A contentious Council Summit - Overcoming the Impasse?

Asylum | Immigration Detention

June was a highly charged month in the migration field. It had been set as a [deadline](#) for agreement on the Dublin Regulation but, against the backdrop of fundamental political shifts in Germany and Italy, tensions again rose in the context of the relocation debate. This debate has been the source of serious contention since mid-2015 (see [EPIM February Update](#)). A [JHA Council](#) meeting at the beginning of the month had already made it clear that common ground on the Dublin reforms, particularly in respect of refugee quotas, was still a long way off. Amidst [comments](#) that “Dublin was dead” and that the “beginning of the end of the EU” was in sight, the scene was set for particularly fraught discussions at the Council Summit.

Tensions rose further when, following the new Italian government’s entry into office, the Aquarius, a Médecins sans Frontières (MSF) and SOS Méditerranée vessel involved in SAR

missions, was blocked from docking in Italian harbours. A war of words erupted between Italy and France as Italy's new Interior Minister [Matteo Salvini](#) hailed the incident as a 'victory' for Italy and French President [Emmanuel Macron](#) criticised the approach taken by the new Italian government.

In the meantime, the four Visegrád countries (Hungary, Czech Republic, Slovakia and Poland) maintained their staunch resistance to any proposals that included responsibility-sharing mechanisms centred around a system of automatic refugee quotas. On his way into the Summit, Hungarian Prime Minister Orbán [stated](#) that a migrant 'invasion' had to be stopped.

Within Germany, tensions also rose as Chancellor Merkel's (CDU) position was increasingly challenged by new Interior Minister Horst Seehofer (CSU). [Seehofer](#) threatened to use his powers as interior minister to order officials to reject asylum-seekers who had previously been registered in another member state, at the German land borders, unless Chancellor Merkel could obtain an acceptable deal with Germany's EU partners at the Summit. Chancellor [Merkel](#) and several [commentators](#) criticised these calls as placing the future of [the Schengen area](#) at risk. After the Council Summit and discussions with the third coalition partner in Germany, the Social Democratic Party (SPD), an [agreement](#) was reached to accelerate return procedures at the border of asylum seekers that have already filed an asylum procedure in another member state. This, however, excludes the particularly contentious proposal of establishing special transit centres at the German-Austrian border.

Ahead of the main Council Summit, a mini-summit (24 June) of sixteen member states was convened by the Commission on Germany's request. The Visegrád four were [absent](#) and Polish Prime Minister [Mateusz Morawiecki](#) stated: "we don't belong to this migrant-loving group of friends". The meeting was also seen to [aggravate](#) the underlying tug-of-war between the Commission and the Council on which institution should be taking the lead on providing solutions to the political impasse. This was further confirmed by the regular [back-and-forth](#) of different leaked draft Summit conclusions and other documents authored by both institutions.

The Council Summit came very much in the spirit of a renewed migration [crisis](#) but, in reality, took place against the backdrop of relatively low arrival numbers which represent a 96% drop in comparison to 2015 peaks. It is a widely held misnomer amongst the public, in [Italy](#) for instance, that migrant arrival numbers are still very high. This misperception of the actual extent of migration [underlines](#) the [political nature](#) of the crisis. EU leaders discussed new approaches that included 'disembarkation platforms', for which a range of third countries, including Tunisia, Libya and Albania, were circulated as potential options. [Commentators](#) pointed at serious potential human rights issues with this proposal. The chair of the LIBE Committee, [Claude Moraes MEP](#), echoed these concerns and expressed the European Parliament's refusal to cooperate in the implementation of such centres. Several commentators highlighted that these proposals [underestimated](#) the financial, diplomatic and practical resources that would be [required](#).

Heads of state finally gathered for their two-day meeting (28-29 June) amidst high media scrutiny. The [conclusions](#) on migration were agreed just after 4 AM. No agreement was reached on the [Dublin Regulation](#) or the [Asylum Procedures Regulation](#). On the sidelines of the main debate, certain [bilateral agreements](#) were pursued by Germany which sought to address secondary movements. Certain of these [agreements](#) have reportedly [been confirmed](#) while Hungary, the Czech Republic and Austria have [already declined](#).

The Summit's conclusions were [criticised](#) for lacking detail and serious commitments. NGO voices also emphasised the risks of reduced protection and [due process](#) for vulnerable people in [detention](#) and of [drowning](#) in the Mediterranean as a result of reduced SAR efforts. With regard to the participation of UNHCR and IOM in the running of disembarkation centres, they first expressed their [concerns](#) in a [private letter](#) and outlined conditions on how the proposal would have to be conducted in a [press release](#) following the Summit. [Eugenio Ambrosi](#), Regional Director of the IOM EU Office, openly rejected any option that resembled an Australian model of external processing. Looking ahead, the [Austrian Presidency](#) has emphasised security and border management at the outset of its mandate, which jars with the [UNHCR's](#) recommendations for the new presidency.

## POLITICAL DEVELOPMENTS



# A shrinking space for Search and Rescue in the Mediterranean

### Asylum

This spring, a number of legal disputes surfaced surrounding SAR operations in the Mediterranean. To begin with, Italy's Supreme Court [rejected](#) an appeal to release an NGO ship, *Iuventa*, which had been [seized](#) in August 2017 on allegations of collusion with human traffickers in Libya. The seizure of the *Iuventa* had been ordered two days after it refused to sign a controversial [code of conduct](#) for SAR NGOs introduced by the Italian government last summer. Several NGOs, including London-based [Forensic Architecture](#), argued that the evidence used to seize the ship was factually inaccurate. Some other SAR [NGOs](#) reported [difficulties](#) in continuing to operate due to the regulatory hurdles being imposed by Italy.

Meanwhile, Italy's operations in the Central Mediterranean have come under increased scrutiny. A coalition of NGOs has joined 17 survivors of a fatal boat incident in November 2017 to take [legal action](#) against Italy before the European Court of Human Rights. Evidence from [Forensic Oceanography](#) suggests sixteen episodes where Italy coordinated with the Libyan Coast Guard to intercept and return migrants to Libya. In addition, in July, Italy and Libya [agreed](#) to re-activate a pre-Gaddafi era friendship treaty. The original agreement earmarked EUR4.2 billion of Italian investment into Libya, in exchange for Libyan support in stopping irregular migration.

Lastly, the [stand-off](#) over the NGO ship *Aquarius* highlighted the divisions among member states and the failure of the EU asylum system. The ship, operated by SOS Méditerranée and

MSF, was denied safe harbour by Italy and Malta after rescuing 629 people. Eight days after rescuing the individuals on board and amidst [outrage](#) from civil society, the Aquarius was finally allowed to dock in the Spanish port of Valencia on Sunday 17 June. UN High Commissioner for Refugees [Filippo Grandi](#) applauded Spain for their decision and condemned the failure of other states to uphold the responsibility to rescue at sea.

Meanwhile, NGOs emphasised that people's lives were on the line. [Human Rights Watch](#) and [MSF](#) argued that it is shameful to be debating responsibility while people were stranded at sea, and [SOS Méditerranée](#) called for the EU to ensure that similar situations would not arise in the future. NGOs voiced further [concerns](#) about the reduced capacity for SAR missions while the Aquarius travelled to Spain. This fear grew as 220 migrants [drowned](#) off the Libyan coast in the following days.

The situation escalated in the following weeks when Italy and Malta [denied access to their harbour](#) to multiple ships with rescued migrants on board. These included the German NGO ship Mission Lifeline, and the Spanish NGO ship Open Arms, carrying 234 and 63 migrants respectively. Matteo Salvini [called](#) for the rescued migrants to be picked up by the Libyan Coast Guard and returned to Libya, stating that they "will only see Italy on a postcard". Spain [allowed](#) the Open Arms to dock in Barcelona. Meanwhile, after six days at sea, Malta [allowed](#) Mission Lifeline to dock, following commitments from [six European states](#) to the ad hoc relocation of some of the migrants on board. In the following days, the Lifeline and a second NGO rescue ship, the Sea Watch 3, were [seized](#) by the Maltese government. Civil society strongly [condemned](#) the crackdown on NGOs' operations, while the [dangers](#) of crossing very much remain in evidence.

## Discussions on the MFF

Asylum

Inclusion

The Commission published its [proposal](#) for the Multiannual Financial Framework (MFF) 2021-2027 in early May. This long-term budget proposal comprises a total of EUR1.135 billion, corresponding to 1.11% of the EU27's gross national income and signifying an overall increase of funding even after the departure of the UK from the Union.

In the Justice and Home Affairs area, the Commission proposed [two funding priorities](#): border management; and asylum and migration policies. In total, the Commission proposed to [almost triple funding](#) for these areas, from a current EUR13 billion to almost EUR34.9 billion.

With regard to border management, the Commission plans to spend a total of EUR21.3 billion. The proposal also includes a new Integrated Border Management Fund with an allocated budget of EUR9,318 billion. This new fund aims to improve the Union's integrated management of its external borders, including funding for 10,000 new borders guards for the European Border and Coast Guard Agency (EBCG) by 2027, alongside a substantial increase in spending for the agency. More generally, this presents a more than threefold increase in funding earmarked for border management, compared to the previous period 2014-2020 (EUR5.6 billion). This [unprecedented boost](#) leads to border management policies receiving the most substantial financial support by far and clearly shows the EU's focus on border controls for the years to come.

With respect to migration and asylum, the Commission proposed an Asylum and Migration Fund (AMF) to receive a total of EUR 10.415 billion, or roughly half of the figure mentioned above which is focused on border management. In June, the Commission followed up with a [proposal](#) for a regulation to establish the AMF for the next funding period. Funding would cover the development of the Common European Asylum System (CEAS), more support for legal migration and integration, and increasing returns.

In turn, long-term integration measures would now be transferred from [AMIF](#) to the [European Social Fund + \(ESF+\)](#) and the [European Regional Development Fund \(ERDF\)](#), although short-term integration of non-EU migrants would remain under the AMF. This distinction has been [praised](#) by the European Council on Refugees and Exiles (ECRE) for promoting a holistic approach to integration under a social agenda of the ESF+. However, ECRE also notes, it poses new risks. Asylum policy affects people's ability to integrate in the long term, so feedback is lost if the two funding areas are disconnected. Furthermore, if not coupled with greater funding for ESF+, integration risks losing out to current ESF priorities, particularly given cuts made to the Cohesion Fund. Although 25% of ESF+ resources under shared management will be [earmarked](#) for social inclusion, there is no specific target for how much should go to refugees or other third country nationals. Before the proposal was published, a [group of 36 NGOs](#) presented ways through which the next MFF could serve as a vehicle for the protection and integration of migrant children in particular.

The Commission proposal plans for six external dimension instruments to be combined under one Neighbourhood, Development and International Cooperation Instrument, with a budget of EUR 89.5 billion. According to the Commission, one of the main aims of this fund will be “to address irregular migration and fight its root causes while creating conditions for the better organisation of legal migration and well-managed mobility”. The inclusion of migration in a development instrument shows that the Commission plans to [diversify its approach to migration management](#) with a view to reducing the number of spontaneous arrivals to Europe. In this context, [CONCORD](#) expressed concerns with respect to a disregard for internationally agreed aid effectiveness principles in favour of strategic geopolitical interest. [ECRE](#) stated that “a narrow focus on funding migration control [...] will undermine humanitarian protection, development and security” and called on the EU to reiterate commitment to the objectives of EU development assistance.

The proposals of the Commission will now be debated in the Council which, with the consent of the European Parliament, will decide on the budget by unanimity. The [Commission](#) called for an agreement to be found before the European Parliament elections and the [Sibiu Summit](#) in May 2019. However, negotiations promise to be difficult after a number of member states have already openly expressed their [dissatisfaction](#) with the proposals.

## Progress on the Global Compacts

Asylum Inclusion Immigration Detention

Following negotiations between multiple stakeholders, the third draft of the [Global Compact for Safe, Orderly and Regular Migration](#) and the final draft of the [Global Compact on Refugees](#) were released. The fifth round of [negotiations](#) on the Migration Compact in early June centred on saving migrants' lives, border management and [migration governance](#). The [next round of negotiations](#) is scheduled for mid-July with the [adoption](#) of the Compact planned for the end of this year. Second, the Refugee Compact was discussed during the [sixth and final formal consultations](#) in early July. [Discussions](#) centred on the nexus between

humanitarian action and development cooperation, the linkage between refugees and internally displaced persons and the non-binding nature of the compact. The Refugee Compact is set to be [adopted](#) later in 2018.

One overarching concern voiced by civil society touched on the [potential overlap](#) between the Migration and the Refugee Compact. In this regard, [Refugees International](#) called for the text to reflect the protection needs of migrants. [NGOs](#) also intervened to stress the importance of robust protection, timely and effective responses, as well as meaningful participation and sustainable partnerships between different stakeholders. [Amnesty International](#) and [other commentators](#) called for the Compacts to also include possibilities to manage climate-induced (forced) migration as well as to end [child migration detention](#). Lastly, concerning the Refugee Compact, [civil society actors](#) also called for a clearer and broader definition of the term 'refugee'.

## More funding for the EU Trust Fund for Africa

### Asylum

At the end of May, the [European Commission](#) released another package of funding for projects and programmes under the [EU Emergency Trust Fund for Africa](#), worth a total of EUR467 million. This package focuses primarily on countries in the [Horn of Africa](#) and the Sahel/Lake Chad region. It aims to boost economic growth, especially job creation for young people and vulnerable groups. An additional EUR70 million will be administered on resettlements from Libya to Niger under the UNHCR Emergency Transit Mechanism (EUR10 million) and on voluntary return and reintegration assistance provided by IOM (EUR60 million). As part of the European Agenda on Migration, these new resources would come on top of the EUR3.39 billion allocated to the Trust Fund of which EUR2.98 billion come from the [European Development Fund](#) (EDF) and the EU budget. According to the [Commission](#), this would still leave a funding gap of around EUR1.2 billion. At the Council Summit in June, heads of state and government agreed to transfer a further EUR500 million from the EDF to the Trust Fund and called on member states for further contributions.

[Development aid NGOs](#) and [research institutes](#) have long scrutinised the EU Trust Fund for Africa. Particular concerns relate to a [diversion of development aid](#) to migration management in the context of the EU's migration agenda. In this context, the [Global Health Advocates](#) stated that the "EU should not replenish the [Trust Fund] until it is revised to respect aid effectiveness principles." More recently, the Trust Fund has also been criticised for its [lack of transparency](#) as to how finances were spent.

## Developments in Hungary

### Asylum

Following the Fidesz party's [landslide election win](#) in April, the [Hungarian government](#) passed a [controversial law](#) that will significantly [curtail NGOs' ability](#) to provide services and advocate for asylum seekers and refugees. Individuals deemed to "provide financial means... or conduct this organisational activity (for illegal immigration) on a regular basis will be punishable with up to one year in prison." In parallel, the government also [changed the Constitution](#) to state that an "alien population" could not be settled in Hungary. This has been argued as being [incompatible](#) with EU and human rights law, as well as representing an impediment to [access to asylum](#) in Hungary.

In response, [Amnesty International](#) warned that this led to the criminalisation of essential human rights work, while [UNHCR](#) and a group of [87 European organisations](#) called on Hungary to rescind the law to avoid depriving refugees of much-needed aid and services. In response to these events, the [Hungarian Helsinki Committee](#) announced that it would challenge the bill and continue providing legal assistance to asylum seekers. After experiencing sustained [targeting](#) during the election campaign and in anticipation of a further restriction of their work, the [Open Society Foundations](#) decided to close their international operations in Budapest and move to Berlin.

## LEGISLATIVE DEVELOPMENTS



## Update on CEAS reforms

Asylum Immigration Detention

### Reception Conditions Directive

The European Parliament and the Council reached a [political agreement](#) on the recast of the Reception Conditions Directive. Under the revised Directive, asylum seekers will be allowed to work within six months of requesting asylum, as opposed to nine months currently. The reform was [welcomed](#) but deemed insufficient to harmonise standards. The [proposal](#) also provides for access to language courses from the moment asylum is requested, ensures children can access a school within two months of arrival, and secures access to healthcare, including mental, sexual and reproductive health care. It also restricts the circumstances where detention of minors is permitted. NGOs had [lobbied](#) to end child detention altogether, yet this did not find its way into the final text. Furthermore, the recast Directive [introduces](#) the possibility of restricting reception conditions to punish secondary movements. It limits the right to reception conditions, such as housing and financial support, to the country responsible for the asylum seekers' application, allows for some support to be provided in kind only, and allows member states to withdraw reception conditions or detain asylum seekers if they do not reside in a specific place or comply with new reporting obligations.

### Qualification Regulation

The Parliament and Council also reached a [political agreement](#) on a new Qualification Regulation. The minimum length of renewable residence permits for beneficiaries of subsidiary protection and refugees remain unchanged at one and three years respectively, although member states retain the option of granting longer permits. The new Regulation

would entail a mandatory review of refugee status in the first renewal. The original [Commission proposal](#), which had raised concerns from [UNHCR](#), also included a mandatory review if there is a significant change in the country of origin, but this was removed following Parliament's objections. Further changes [agreed](#) in late June would allow states to sanction refugees for secondary movements, such as by restarting the clock on the five-year period to obtain long-term resident status.

### **Asylum Procedures Regulation**

Negotiations on the proposal for an [Asylum Procedures Regulation](#) are ongoing and present one of the major obstacles to progress on the CEAS. At the beginning of May, [leaked documents](#) revealed that the Council aims to strengthen "sanctions against asylum shopping and absconding". More specifically, the leaks provided detail on proposals for sanctions for asylum seekers if they did not make or lodge an application in the 'right' member state (being the first member state in which the asylum seeker arrives as provided for in Article 4(1) and (1a) of Dublin Regulation). The [Council position](#) shows member states' objective of installing stricter guidelines for asylum applications. The position deleted a reference to the "principle of solidarity and fair sharing of responsibility" which was previously included in the Commission proposal. It similarly deleted mentions of 'signs of vulnerability' in identifying an applicant for special procedural guarantees. Moreover, the position also waters down the provision on the readiness with which free legal assistance should be provided to applicants.

### **Resettlement Framework Regulation**

The Commission's [legislative proposal](#) for a Resettlement Framework faced prolonged discussions in trilogues. The [overarching tension](#) focuses on whether this legislative instrument should be preserved in its traditional use as a [humanitarian pathway](#) or be utilised as a tool of [migration management](#) to process selected candidates for resettlement to EU member states. A vital issue includes the grounds on which individuals would be eligible for or excluded from resettlement and whether integration potential should be used as an exclusion ground from resettlement. Moreover, the inclusion in the Resettlement Framework of other regular migration channels such as family reunification and humanitarian admission programmes is also the subject of debate. Here, [NGOs voiced particular concerns](#) that the inclusion of other regular migration channels could lead to a watering down of the quality of protection, in particular where individuals would solely be granted subsidiary protection status following a humanitarian admission. Other contentious issues include the small numerical size of voluntary resettlement targets as well as [member states' unwillingness](#) to commit to binding resettlement quotas, a red line for the Council in negotiations. The Parliament most strongly opposes the legislative proposal's inclusion of a conditionality clause with regard to third countries' cooperation on migration and asylum matters. This, as well as increased efforts in return and readmission, improving asylum and reception facilities and strengthening border management would, in turn, ensure the resettlement of individuals in need of international protection to EU member states. Progress on this file may well be tied to compromises on other files, most notably the Dublin regulation.

### **Schengen Borders Code**

In May, the European Parliament published its first [annual report](#) on the state of Schengen, a new initiative in the face of continued challenges to the implementation of the principles of the Schengen area. The report condemned the sustainment of internal border checks, which it stated were in [breach](#) of the Schengen Borders Code. It also reiterated its support for Bulgaria, Romania and Croatia joining the Schengen area. In June, the Council reached a

[position](#) on the amendment of the Schengen Border Code, which will inform negotiations with the European Parliament once the latter adopts its position. The [Commission proposal](#) enables internal border controls for longer periods of time (with a new maximum of three years), while on the other hand, it adds stricter necessity and proportionality [safeguards](#). Discussions within the Council are reported to have been highly contentious so far, with sharp disagreement on the new proportionality measures.

### **Eurodac Regulation**

A provisional [political agreement](#) was reached between the Parliament and Council on the recast of the Eurodac Regulation, which governs the EU-wide database on asylum applicants and irregular migrants. The new regulation would require facial images, name and ID to be collected from asylum seekers and irregular migrants, in addition to their fingerprints. The age for fingerprinting of minors would be lowered from 14 to 6 years, with the aim to reduce disappearances of migrant children and assist family reunification. The Regulation permits the use of force to take fingerprints or facial images, and the use of “proportionate coercion” in the case of minors.

## SELECTED ECJ CASE LAW & LEGAL ACTIONS



Asylum

Mobile EU citizens

### **Case [C-353/16](#) MP v Secretary of State for the Home Department, 24 April 2018**

The case concerned MP, a Sri Lankan national who was suffering from the after-effects of torture that he was subjected to in Sri Lanka. The UK courts found that MP would not be at risk of ill-treatment upon return to Sri Lanka. However, the UK Supreme Court referred a question to the Court of Justice as to the circumstances in which a member state is required to grant subsidiary protection status to a victim of torture who is suffering severe psychological after-effects of torture. More precisely, the question was whether such an individual should receive subsidiary protection in circumstances where that individual's condition is such that his/her return could seriously exacerbate their condition to the extent that there would be a severe risk of them committing suicide. The Court of Justice stated that [the Charter](#) must be interpreted as meaning that the return of a non-EU national who has a particularly severe mental or physical illness is not sufficient in itself to warrant the granting of subsidiary protection. That is, unless that individual would face a real risk of being intentionally deprived of healthcare. The Court of Justice stated that it is therefore for the UK Supreme Court to assess whether MP is likely, if returned to Sri Lanka, to face such a risk.

**Case [C-673/16](#) Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Others, 5 June 2018**

The case concerned Mr Coman, a Romanian and American citizen, and Mr Hamilton, an American citizen, who married in Belgium in 2010. The couple contacted Romanian authorities to request information on the procedure by which Mr Hamilton, as a member of Mr Coman's family, could obtain a derived right of residence in Romania. Romanian authorities stated that Mr Coman's husband could not be recognised as a 'spouse' and thus benefit from this derived right as Romanian law does not provide for same-sex marriage. In questions raised on the interpretation of EU law in this context, the Court of Justice found that member states enjoy a discretion on whether or not to authorize same-sex marriages. However, they cannot hinder the free movement rights of an EU citizen by denying derived residence rights to his/her same-sex spouse. This freedom may be subject to proportionate restrictions and public policy may thus be used as a justification for such restrictions – as advanced by Romania in this case. However, such restrictions must be interpreted strictly. In particular, an obligation for Romania to recognise a same-sex marriage from another member state, solely to grant an EU citizen's spouse a derived right of residence, does not undermine the institution of marriage in Romania as it does not require that state to enable 'homosexual marriage' in its national law. The case has no immediate effect on Romanian national marriage laws but was still widely celebrated as [a victory for the rights of same-sex couples](#) more generally.

**Case [C-181/16](#) Sadikou Gnandi v Belgian State, 19 June 2018**

The case concerned a Togolese national who applied for international protection in Belgium. His request was rejected, and he was ordered to leave the territory. He appealed this decision and requested the annulment of the order requiring him to leave the country. The issue in question for the Court of Justice was whether states may issue a return decision as soon as an application for international protection has been rejected, even before appeals against that rejection have been exhausted. The Court found that an applicant for international protection can fall within the scope of [Directive 2008/115/EC](#) as soon as the responsible authority has rejected his application for international protection. The Court of Justice found that the mere fact that the stay of a person is categorised as being irregular as soon as his application for international protection has been rejected does not infringe the principle of non-refoulement or the right to an adequate remedy. However, this is balanced by the fact that the return procedure must be suspended pending the outcome of an appeal against the rejection of the application for international protection.

**Other relevant case law**

Case [C-213/17](#) X v Staatssecretaris van Veiligheid en Justitie, 5 July 2018

Joined cases [C-331/16](#) and [C-366/16](#) K v Staatssecretaris van Veiligheid en Justitie, HF v Belgian State, 2 May 2018

[Case C-82/16](#) K.A. and Others v Belgian State, 8 May 2018

[Case C-647/16](#) Hassan v Préfet du Pas-de-Calais, 31 May 2018



# New exclusions from healthcare for some EU migrants

Mobile EU citizens

Inclusion

By Johanna Offe, [Doctors of the World Germany](#)

The German section of Médecins du Monde/Doctors of the World is offering free healthcare and counselling for people with restricted or no access to the healthcare system in Hamburg, Berlin, Stuttgart and Munich. In the past few years, EU citizens – mainly Romanians and Bulgarians – have become our largest client groups. More than [four million citizens](#) from other countries of the European Union lived in Germany in 2016. While the majority have health insurance through the European health insurance card (EHIC), through a regular job or a working family member, EU citizens from new EU member states without regular employment face severe difficulties in accessing healthcare.

A [recent law](#) passed in December 2016 has worsened the situation of several groups of EU citizens. The law excludes EU migrants from social protection services, including basic health care coverage, if they have not been regular residents of Germany for at least five years, if they have no right of residence or if their right of residence results solely from the purpose of finding work or from having children in education in Germany (Article 10 of the [EU Regulation](#) on the freedom of movement for workers).

For these groups, only so-called ‘bridging benefits’ are provided for a maximum of one month and only once within two years. These benefits include basic health services required for the treatment of acute illnesses and pain. After receiving these reduced benefits for one month, the affected groups of EU migrants have no entitlement to the coverage of any – even emergency – healthcare services within the next 23 months in Germany.

Beyond access to healthcare, the law dangerously impedes the living conditions of many EU citizens, because the newly excluded groups are also not entitled to welfare benefits, homeless shelters, or other social welfare services.

The exclusion from social services, including healthcare, has led to critical reactions from many stakeholders. In reply to a letter signed by 37 civil society and welfare organisations, the Ministry of Work and Social Affairs stated that it considers the health coverage of affected EU citizens as sufficient because in individual cases healthcare can be covered if

special circumstances exist. There is, however, no entitlement on this and individual case decisions often take a long time.

The right to access healthcare is part of the International Covenant on Economic, Social and Cultural Rights. It remains the duty of the state to ensure non-discriminatory access to healthcare. Thus, under the coordination of Doctors of the World, [a civil society submission](#) to the UN Commission on Economic, Social and Cultural Rights (CESCR) was made on the right to health in reaction to the periodic state report of the German government in July 2017.

Ensuring access to healthcare for the population is a genuine duty of the state. While Doctors of the World is providing healthcare for those left without support, this important task cannot and should not lie with voluntary civil society organisations.

## FACTS & FIGURES

**Total arrivals to Spain overtake Italy and Greece in the number of sea arrivals with over 18,000 so far in 2018.**

Source: UNHCR, July 2018.

## UNHCR statistics on arrivals

### Asylum

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

- 46,274 sea arrivals have been recorded since the beginning of the year. 16,919 have arrived in Italy, while 13,749 have arrived in Greece and 15,533 have arrived in Spain;
- So far, an estimated 1,408 people have been reported dead or missing in 2018;
- In Italy, the majority of refugees come from Tunisia, Eritrea and Nigeria, Guinea and Cote d'Ivoire, while almost two third of refugees arriving in Greece originate from Syria and Iraq. In Spain, the majority of refugees come from Guinea and Syria.

## Relevant reports

### Asylum

### Inclusion

### Mobile EU citizens

### Children and Youth

### **FRA: Age assessment and fingerprinting of children in asylum procedures**

The EU Fundamental Rights Agency (FRA) [highlights](#) divergence across the EU in the process of determining legal age and fingerprint collection of children in asylum procedures. As a result, the FRA recommends higher protection standards for when and how age assessment medical tests and fingerprinting may be conducted.

### **European Commission: Annual Report on Migration and Asylum**

This [report](#) outlines the annual progress made on legal migration and mobility, asylum, irregular migration, border control, and integration. It analyses the state of play on the implementation of EU readmission agreements and outlines new initiatives on cooperation with third countries in the area of border and migration management.

## UNHCR and OECD: Engaging with Employers in the Hiring of Refugees

This ten-point [action plan](#) makes several recommendations to improve the inclusion of refugees in the labour market. It emphasises the need to identify skills and qualifications early, provide training and education opportunities, and match refugees' talents to employer needs. It advocates for greater legal certainty, the coordination and streamlining of support services, and notes the importance of long-term support from employers.

## ECAS: Freedom of Movement in the EU: A Look Behind the Curtain

ECAS [examines](#) the difficulties that EU citizens and their families face with regard to entry and residence rights in another EU country. This report emphasises that grey areas in the Citizenship Directive must be clarified so that EU citizens' rights are not compromised.

# EU Funding opportunities

## Inclusion

## Asylum

### Calls for proposals - EU funding

- [REC-RRAC-HATE-AG-2018](#): Restricted call for proposals for public authorities on preventing and combating racism, xenophobia and other forms of intolerance, and in particular hate crime and hate speech
  - call out on 25.04.2017 - Deadline: 27.09.2018
- [REC-RRAC-RACI-AG-2018](#): Call for proposals to prevent and combat racism, xenophobia and other forms of intolerance
  - call out on 25.04.2018 – Deadline: 04.10.2018
- [REC-RRAC-ONLINE-AG-2018](#): Call for proposals to monitor, prevent and counter hate speech online
  - call out on 25.04.2018 – Deadline: 11.10.2018
- [DT-MIGRATION-06-2018-2019](#): Addressing the challenge of migrant integration through ICT-enabled solutions
  - call out on 06.11.2018 – Deadline: 14.03.2019
- [MIGRATION-01-2019](#): Understanding migration mobility patterns: elaborating mid and long-term migration scenarios
  - call out on 06.11.2018 – Deadline: 14.03.2019
- [MIGRATION-03-2019](#): Social and economic effects of migration in Europe and integration policies
  - call out on 06.11.2018 – Deadline: 14.03.2019
- [MIGRATION-07-2019](#): International protection of refugees in a comparative perspective
  - call out on 06.11.2018 – Deadline: 14.03.2019

### Other opportunities

[“Rethinking Inclusion”: Unlocking innovative solutions for migrant inclusion and social cohesion with a whole-of-society approach](#), EPIM and Impact Hub; Deadline: 15.09.2018

# EU CALENDAR: UPCOMING EVENTS

## European Council and Council of the European Union

 12-13 July JHA Council

 17-18 October European Council

## European Parliament

 29-30 August LIBE Committee Meeting

 3 September LIBE Committee Meeting

 6 September LIBE Committee Meeting

 10-13 September EP Plenary

 27 September LIBE Committee Meeting

## Other events

 11 July [The situation of migration in the EU: Debate on EMN 2017 Policy Report](#), Odysseus Network

 12-14 July [Human Rights, Migration, and Global Governance](#), Academic Council on the United Nations System

 20 September [ES NCP National Conference: Maximising the Positive Impact of a Regular, Orderly, and Safe Migration](#), European Migration Network

 3 October [Conference: Crisis of Governability? The Politics of Migration Governance in Latin America & Europe](#), Migration Policy Centre

 18-19 October [Vienna Migration Conference](#), 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 17 April 2018 to 09 July 2018. We kindly ask the readers to keep in mind that the present Policy Update is composed of a selection of documents and does not claim to be exhaustive.

Should you, as representatives from EPIM's Partner Foundations or EPIM-supported organisations, have questions related to the analysis provided in this document or on EU developments in the field of migration and integration in general, you are invited to contact the authors ([k.bamberg@epc.eu](mailto:k.bamberg@epc.eu), [m.desomer@epc.eu](mailto:m.desomer@epc.eu), [f.mcnamara@epc.eu](mailto:f.mcnamara@epc.eu), [o.sundberg@epc.eu](mailto:o.sundberg@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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