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Proposals for a reformed European asylum and migration policy

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Proposals for a Reformed European Asylum and Migration Policy

Clara Albrecht, Yvonne Giesing, Panu Poutvaara, Elitsa Stefanova

Key Messages

- The implementation of a common European asylum policy is difficult due to conflicts of interest between the EU's external border states and the main destination countries, such as Germany.
- The tenor of the reform adopted by the European Parliament in April 2024 was to speed up the asylum application process, especially in terms of rejecting applications deemed to be unjustified.
- One reason for the overload is the lack of legal ways to come to the EU from Africa and Asia, especially for low-skilled people.
- The EU could learn from Germany's Western Balkans Regulation and create legal pathways for migration from African and Asian countries.



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Proposals for a Reformed European Asylum and Migration Policy

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History of the EU's Common Asylum Policy

Efforts to develop a common asylum policy at EU level began in the 1990s. With the abolition of internal border controls as a result of the Schengen Agreement, which came into force in 1995, the focus shifted to the EU's external borders and there was a desire for more control, which required greater cooperation. In addition, the asylum systems of the member states differed greatly from each other, so that for those seeking protection, the country in which they applied sometimes made a big difference to their prospects of remaining. There was also a need to clarify who was responsible for examining asylum applications and to prevent asylum applications from being submitted in several member states (Hanewinkel 2023). For this reason, the Schengen Agreement was supplemented from 1997 by the Dublin Regulation under international law, which stipulated that the state in which the asylum seeker first entered was responsible for examining an asylum application.

Also in 1997, with the Treaty of Amsterdam, EU member states agreed to develop a common asylum and migration policy. Important international agreements, such as the Geneva Refugee Convention, were incorporated into the treaty in a binding manner. Two years later, the European Council finally decided in Tampere to establish the Common European Asylum System (CEAS), which was implemented by 2005 and consisted of five core elements in the form of two regulations and three directives:

- **Dublin Regulation (Dublin II):** transposed the Dublin Convention into EU law and stipulated that the state on whose territory a person seeking protection first enters is responsible for an asylum procedure.
- **EURODAC Regulation:** established a fingerprint identification system and an EU database to support the Dublin Regulation in preventing secondary movements between member States.

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- **Qualification Directive:** established minimum standards for the recognition of asylum seekers and defines the rights of recognized refugees and beneficiaries of subsidiary protection.
- **Reception Conditions Directive:** established standards for the registration, housing and care of refugees.
- **Asylum Procedures Directive:** defined minimum standards for the implementation of asylum procedures.

Challenges of Implementation

On paper, the creation of an EU-wide asylum system had harmonized standards and procedures, but in practice the weaknesses of the new regulation became apparent. As the requirements were often very vaguely formulated, there were serious differences in implementation at the national level. This is particularly evident in the different protection quotas for asylum seekers in different member states (see Figure 3). The Dublin rules, according to which only the country of entry is responsible for carrying out the asylum procedure, have also been inadequately implemented in some cases. The EU countries at the external borders were disproportionately burdened, leading to a real breakdown of the system in 2015/16 and highlighting the shortcomings. Registration in the countries of first entry, particularly Greece, often failed, meaning that those seeking protection moved on within the EU, leading to the massive secondary migration that the Dublin system was supposed to prevent. Germany, as one of the main destination countries for refugee migration from Syria, reacted by temporarily suspending the Dublin rules and carrying out asylum procedures itself, although according to the rules Greece should have been responsible (Bendel 2022 and Berlinghoff 2023).

Conflicts of Interest and Border Protection

The conflicts of interest between the EU's external border states, which do not feel adequately supported and are calling for a fairer division of tasks, on the one hand, and countries such as Germany, which have experienced a large influx due to their comparatively better standards of protection, housing, and prospects for refugees, on the other, have led to a focus at the EU level on deterring those seeking protection as the lowest common denominator (Angenendt et al. 2023). For example, the protection of external borders has been strengthened through the expansion of the European border protection agency Frontex. In addition, state functions were outsourced to third countries to ensure that refugees were prevented from traveling to the EU or taken back in

exchange for financial support in the area of economic and/or development policy (ibid.; Bendel 2022). Humanitarian aspects increasingly took a back seat.

The reformed Common European Asylum System (CEAS)

After years of negotiations and disagreements between member states, the reform of European asylum policy was formally adopted by the European Parliament in April 2024. The EU member states, the European Parliament and the European Commission had already agreed on the reform of the Common European Asylum System (CEAS) in December 2023. The final entry into force will take place in two years. The following new rules will be implemented with the reform:

1. **Screening Regulation:** "Screening" procedures must be carried out for irregular entry into the EU. This includes fingerprinting, checks on identity, health status and possible security risks. The screening process, during which immigrants may be detained, should last one week at the most. A monitoring mechanism will be set up to ensure compliance with international human rights standards.
2. **Asylum and Migration Management Regulation** (partially replacing the Dublin Regulation): Responsibility for asylum procedures remains with the country of first entry. However, the new regulation creates the conditions for the distribution of asylum-seekers among EU member states. In cases where the countries of first entry are exposed to increased migratory pressure, other member states can be asked for assistance. The European Commission will prepare an annual report that will serve as a basis for the development of a solidarity package that will define available capacities, financial resources, and a distribution key. A total of 30,000 people seeking protection should be distributed each year and a budget of at least 600 million euros should be made available for reception measures. Member states will decide on a voluntary basis whether and how many refugees they wish to accept, or alternatively they can pledge financial resources to do so.
3. **Asylum Procedure Regulation:** An accelerated border procedure (max. 12 weeks) is introduced. It will be applied to certain applicants: persons arriving from countries with a recognition rate below 20 percent, those who are unable to present identification documents or who have given contradictory statements during the first interview. The "fiction of non-entry" applies, i.e. it is legally assumed that the person has not yet entered EU territory, although this is the case. During this period, people seeking protection can be held in detention-

like conditions and have limited legal recourse against rejected asylum decisions. The Asylum Procedure Regulation also introduces an admissibility check: It allows asylum authorities to check whether a person has arrived from a country where he or she could have applied for asylum or from a so-called “safe third country”. These are countries where there is no fear of persecution or inhumane treatment. These countries must not deport people seeking protection to life-threatening situations, must respect human rights and must guarantee access to health care and livelihoods. The term “safe third country” can also be applied to individual regions of a country, not necessarily the entire country. It is also sufficient for the state to be considered safe only for certain groups of people.

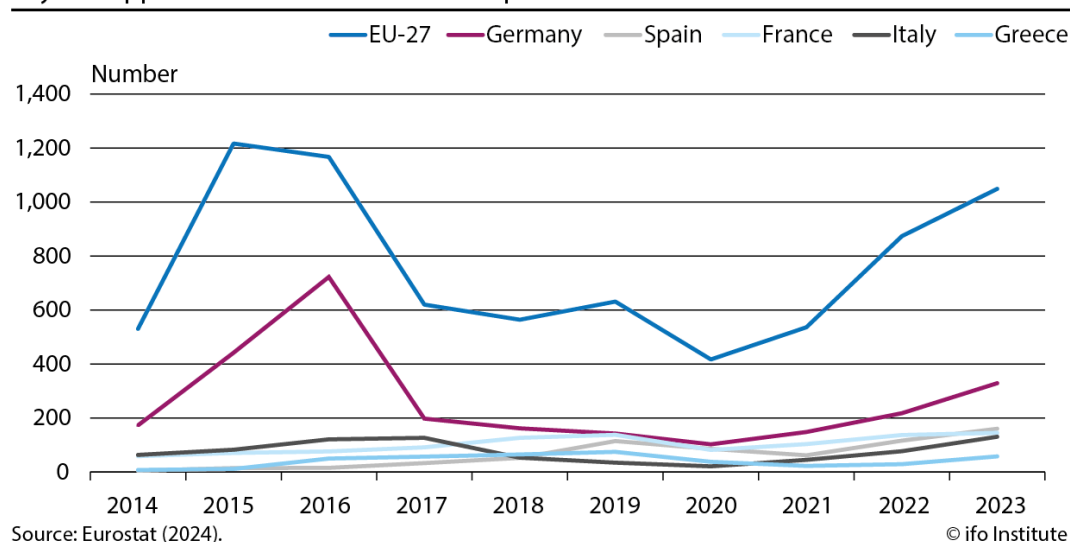
4. **Crisis Regulation:** It can be activated in the event of a mass influx of displaced people and requires a decision by the European Council. If it comes into effect, those seeking protection will be registered in an accelerated procedure. If they are assigned to the border procedure, they can be held in detention-like conditions for up to 18 weeks. If their applications are rejected, they can be deported under the accelerated procedure. In this situation, overburdened member states can ask other EU countries to redistribute protection seekers. Alternatively, member states can offer assistance in processing asylum applications or financial support.

What is the current situation?

Figure 1 shows the number of asylum seekers in the five main EU destination countries and in the EU-27 as a whole over the last ten years. Germany remains the most popular destination country for asylum seekers in the EU. Although Ukrainians are not included in these statistics as they are not obliged to apply for asylum, it is clear that the number of asylum applications in the EU as a whole and in the main destination countries has increased again in recent years.

Figure 1

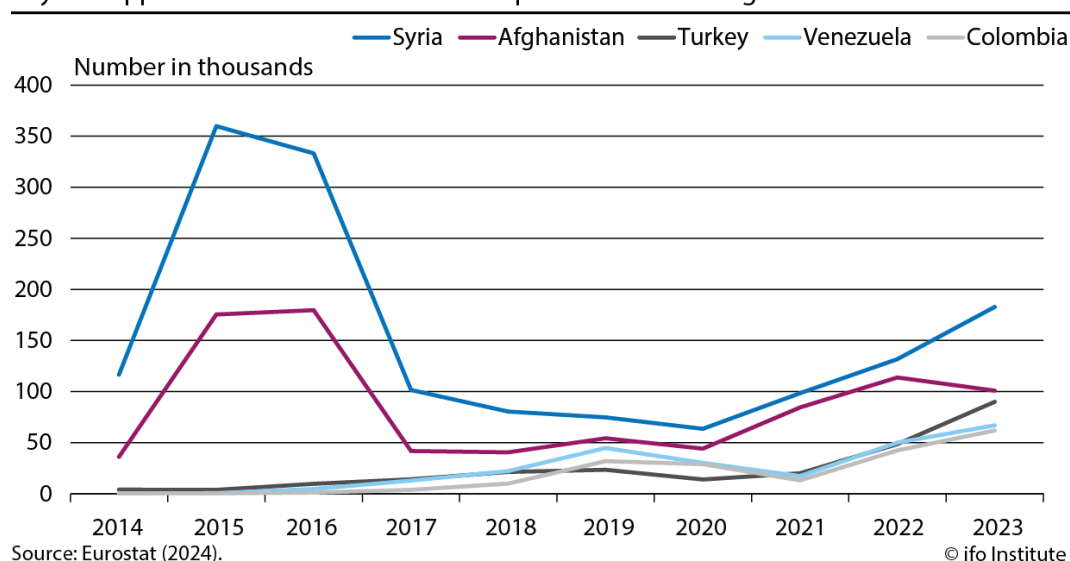
Asylum Applications in the EU and the Top 5 Destination Countries



Looking at the countries of origin of asylum seekers, Syria is the main country of origin of asylum seekers. It is interesting to note that applications from Syria and Afghanistan have increased again since 2020. More applications have also been submitted from Turkey, Venezuela and Colombia since 2020. Almost all Colombian and Venezuelan asylum seekers apply in Spain, which has one of the lowest recognition rates among the top five destination countries. Due to the rising numbers, a reform of the asylum system is urgently needed.

Figure 2

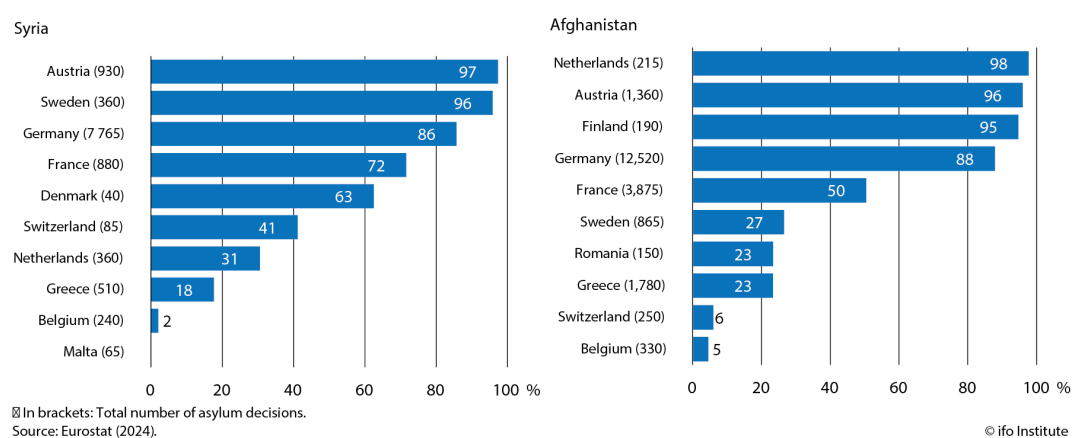
Asylum Applications in the EU from the Top 5 countries of Origin



Looking at the ten European countries with the highest number of asylum applications, we see that there are large differences in recognition rates. While Austria, Sweden and Germany accept almost all asylum applications from Syria, the Netherlands, Austria and Finland have the highest recognition rates for refugees from Afghanistan. Greece and Belgium have very low acceptance rates for both Syrian and Afghan applicants. These figures illustrate why it is important to agree on uniform standards across the EU, and also highlight the fact that this has failed in the past.

Figure 3

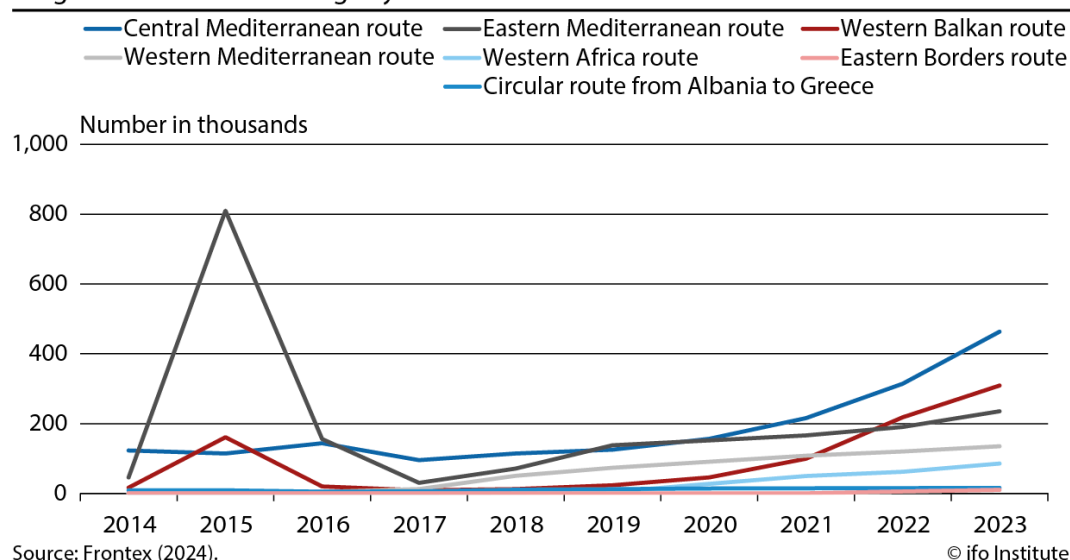
Approval Rates of Syrian and Afghan Asylum Applications in Top Destination Countries, 2022



A historical overview of the main border crossings into the EU shows that the Eastern Mediterranean route (EU entry via Greece, Cyprus and Bulgaria), which was very busy around 2015, is now much less used after the agreement with Turkey than the Central Mediterranean route, which is currently the most used. This has put pressure on Italy and Malta as the main receiving countries for all irregular border crossings. Although the EU has also concluded agreements with North African countries to reduce the number of crossings on the Central Mediterranean route, this seems to have had less effect. Especially since 2020, border crossings have increased again on almost all routes and it is likely that the countries in Southern Europe will be overloaded.

Figure 4

Irregular EU Border Crossings by Route



Lack of opportunities for labor migration

One reason for the overload of the European asylum system is the lack of legal opportunities to come to the EU from Africa and Asia, especially for low-skilled people. In 2015 and 2016, the International Organization for Migration surveyed more than 20,000 migrants who came to Europe via the Mediterranean. The surveys were conducted in 11 languages by trained data collectors from diverse cultural and linguistic backgrounds. The surveys were anonymous, and respondents were assured that their answers would not be shared with the authorities in their destination country and would therefore not affect the outcome of their asylum procedures. Respondents were asked to identify the main reasons for their migration. 77 percent cited conflict or persecution and 18 percent economic reasons as the main motivation for their emigration (Aksoy and Poutvaara 2021). Only two percent of respondents cited limited access to basic social services (such as schooling and health care), lack of food or shelter as the main reason. Another two percent cited natural disasters or other reasons. However, there were significant differences between countries of origin when it came to the main reasons for emigration. More than 90 percent of respondents from Eritrea, Iraq, Somalia, Sudan and Syria stated that they had left their country due to conflict or persecution. At the other end of the scale, a large majority of respondents from Morocco and Algeria cited economic conditions as the main reason for leaving their home countries. In countries such as Iran, Pakistan and Nigeria, the main reasons were mixed, with some migrants motivated by conflict and persecution and others by economic reasons.

According to the Geneva Convention on Refugees, only migrants who have crossed the Mediterranean due to conflict or persecution are entitled to asylum. Those who have

come for economic reasons are considered irregular migrants. As a result, the asylum system is prone to error with respect to the countries of origin of both refugees under the Geneva Refugee Convention and economic migrants: on the one hand, this can lead to the rejection of asylum applications from people who meet the requirements because they are misclassified as economic migrants and, on the other hand, to the granting of asylum applications from people whose main reason for flight is economic.

Policy Conclusion

A major problem overburdening the asylum system is the lack of legal pathways for low-skilled people from Asian and African countries to work in the EU. In the past, Germany faced a similar situation with low-skilled migrants from the Western Balkans, particularly from Albania and Serbia. In 2015, there were many asylum applications from both countries, although the recognition rates are very low (0.2 percent to 0.6 percent of asylum seekers from Albania and Serbia were granted protection status, according to Eurostat). This led to an overload of the asylum system. Germany reacted by introducing the so-called Western Balkans regulation. For citizens of the Western Balkan states of Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia, an additional access route to employment was created on January 1, 2016, which gives them the opportunity to apply for a visa to take up employment, regardless of their qualifications. As a result, the number of asylum applications from these countries fell drastically. For example, the number of applications from Albania (Serbia) fell from 53,805 (16,700) in 2015 to 3,775 (2,330) in 2017 (Eurostat).

The Western Balkans arrangement can serve as a model for more comprehensive agreements between the European Union and African and Asian countries. The European Union could offer citizens of qualified countries a legal path to work in Europe if these countries are willing to take back irregular migrants and rejected asylum seekers in return. To qualify, a country would have to be a safe country of origin to which the return of rejected asylum seekers is reasonable. Similar to the Western Balkans regulation, the legal route could be limited to those people who have not yet applied for asylum in the European Union.

Work visas issued under such a scheme could be temporary and restricted in the sense that they would not give access to social benefits and the visa holder would have to leave the country if he or she did not obtain an employment contract. Work visas could also be extended, provided that a previous visa has not been overstayed. Such a system would benefit migrants who could apply for a work visa and enter the European Union legally without having to make the dangerous journey across the Mediterranean and pay smugglers. This would benefit the EU by cutting the cost of asylum applications,

weakening the business of smugglers, and reducing the informal economy through legal employment opportunities. Such a solution would also make life easier for asylum seekers who are entitled to asylum under the Geneva Refugee Convention, as decisions could be made more quickly by diminishing the burden on the asylum system.

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