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Matthias Lücke

Managing “Mixed” Migration to the EU: The Challenge of Sharing Responsibility to Protect Refugees in the 21st Century

IMMIGRATION GOVERNANCE IN THE EU: LABOR MIGRATION VS. REFUGEE PROTECTION

The EU’s governance of immigration by non-EU citizens distinguishes sharply between labor migration and refugee protection. It is a competence of EU member states to manage access to their labor markets (i.e., labor migration) according to their own preferences and labor market needs (Art. 79(5) TFEU). While there are EU rules regarding visa procedures and the rights of migrants (e.g., the Long-Term Residents Directive 2003/109/EC), the number of work permits – and hence the number of immigrants – is determined by each member state.¹

At first sight, this high level of individual member state control over labor migration to the EU may seem surprising given the single market and freedom of movement for EU citizens. However, non-EU citizens with a residence permit in one EU member state only become entitled to live and work in another EU member state if and when they obtain a particular long-term resident status (“Settlement Permit EU”) or become naturalized in their original member state. This is often a lengthy process and typically requires immigrants to be economically self-sufficient. Once immigrants have gone through this process, only a few move on to another member state (Neidhardt 2023).² Therefore, there is little controversy in the EU over the management of labor migration by individual EU member states and no need for fundamental reform.

By contrast, EU law sets out in detail the conditions under which member states must receive asylum seekers, process their applications, and host recog-

¹ One exception is the EU Blue Card, which gives very high-skilled workers labor market access throughout the EU, subject to various conditions (EU Blue Card Directive 2021/1883). The implicit assumption is that those who qualify for the EU Blue Card complement, rather than compete with, local workers anywhere in the EU; in this case, their presence normally has a positive economic impact on residents. Use of the EU Blue Card varies widely across EU member states; in 2023, Germany issued more than 80 percent of the EU total of just under 90,000 EU Blue Cards (Eurostat time series: migr_res-bc1).

² There is anecdotal evidence that some non-EU immigrants (including from Bangladesh) may have intentionally moved to one member state with relatively liberal rules for naturalization (Italy) in order to later move to another, more attractive member state as EU citizens (at the time, the UK; see Montagna et al. 2021).

KEY MESSAGES

- Worldwide, many people aspire to migrate to the EU for various motives, including persecution at home and better economic prospects in the EU – hence the notion of “mixed” migration
- Without restrictions, far more people would migrate to the EU than the EU can or will accommodate. This is true even for individuals who would qualify for asylum in the EU
- Therefore, the EU should strive to ensure that persecuted individuals have access to protection (though not necessarily in the EU) while limiting mixed migration to the EU
- One way to do this is for the EU to provide financial and policy support for the reception and hosting of refugees and migrants along migration routes, while partner countries curb people smuggling and irregular onward movements
- Among EU member states, better responsibility sharing may require a stronger financial and operational EU role in the asylum system, given the public-good nature of refugee protection and open borders within the EU

nized refugees.³ Under international and European law, everybody has the right to apply for asylum (or a similar protected status such as subsidiary protection) in (any) one EU member state. If an asylum seeker meets certain criteria, they must be recognized as a refugee. This applies even if the asylum seeker has entered the EU irregularly.⁴

Therefore, short of establishing a new Iron Curtain at the external EU border, neither individual member states nor the EU as a whole can control the num-

³ European Parliament, Fact Sheet Asylum Policy (June 2024) gives an overview over pertinent legislation: <https://www.europarl.europa.eu/factsheets/en/sheet/151/asylum-policy>.

⁴ This description cuts a long story short, arguably, to the point of oversimplification. The various incarnations of the Dublin Regulation since 1990 have sought to allocate responsibility for every asylum seeker to the EU member state where they first entered the EU. However, for many different reasons, this approach has never worked effectively in practice.

ber of asylum seekers that they receive and whose applications they must process. While not all asylum seekers are ultimately recognized as refugees, the relevant criteria are defined by international and EU law and cannot easily be manipulated to fit the perceived needs of host countries. Furthermore, for various reasons, many rejected asylum seekers never return to their countries of origin but remain in the EU.

This (inevitably) brief characterization of “asylum migration” to the EU helps to identify the key challenges that shape the current, controversial debates. Without proper legal means to limit the (often irregular) immigration of asylum seekers, several EU member states along with the European Commission have implemented restrictions whose legality under international and EU law is often contested. These restrictions range from ever higher fences at the external EU border to security cooperation with, arguably, rogue militias. At the same time, globalization has made irregular migration to Europe (and elsewhere from poor to rich countries) far cheaper and accessible to far more people – in ways that could never have been imagined when the 1951 Refugee Convention, which still underpins the international refugee protection regime, was negotiated and signed.

This raises the question of how the international governance of refugee protection can be “future-proofed” to safeguard protection without overwhelming host countries. With no prospect of a global reform, we focus on steps that the EU and its member states can take toward a more resilient system in line with humanitarian standards and with well-defined responsibilities for the actors involved.

We first consider the global context of migration aspirations that far exceed the willingness of destination countries to receive refugees. While persecution and conflict are real enough in many countries of origin, observed migrant movements reflect multiple motives and are best described as “mixed” migration. We then discuss how the EU can manage mixed migrant movements in its wider neighborhood (i.e., along irregular migration routes to Europe from Africa and the Middle East), while bearing its fair share of responsibility for protecting refugees and safeguarding the rights of migrants. Our point of departure is the ongoing reform of the Common European Asylum System (CEAS). Finally, we discuss how these global challenges affect how EU member states share responsibility for the EU asylum system.

MORAL DILEMMAS, MIXED MIGRANT MOVEMENTS, AND REFUGEE PROTECTION AS AN INTERNATIONAL PUBLIC GOOD

One (arguably) anachronistic feature of the current asylum system is that individuals must normally be present on EU territory to apply for asylum. By requiring physical presence, EU member states effectively ration access to asylum, limiting it to those who are

(relatively) rich and physically fit enough to travel irregularly, expensively, and often dangerously to the EU. This de facto rationing is hardly fair as it excludes many of the most vulnerable individuals from asylum in the EU.

At the same time, it would be practically and politically infeasible for the EU to open its external border to all asylum seekers, for example, by offering a humanitarian visa to anyone with a good prospect of being recognized as a refugee according to EU rules. The number of asylum seekers and recognized refugees would multiply way beyond the EU’s reception capacity. For example, the European Court of Justice (C-608/22) has recently decided that all female citizens of Afghanistan should automatically be granted asylum because the Taliban regime discriminates pervasively against women. Quite likely, not all 14 million women in Afghanistan (plus Afghan refugees in Pakistan and Iran who often live in precarious circumstances) would want to live in the EU, even if they could safely travel here to apply for asylum. However, several million Afghan women might well want to come to the EU if they could do so legally and safely. They would likely seek to bring along family members (including men) under the EU’s rules for family unification. In the process, they would likely overwhelm the reception capacity of EU member states, not least because many would seek out countries of asylum with particularly favorable reception conditions.

This example demonstrates the broader point that, worldwide, far more individuals are persecuted and affected by violent conflict than the EU and its member states are able and willing to receive and host. By restricting access to EU territory in many ways and thus rationing access to asylum, the EU and its member states limit the number of asylum seekers and keep the asylum system from collapsing. While there may be no politically feasible alternative, such rationing does make the promise of refugee protection in Europe ring hollow.

This conflict between an individual’s right to apply for asylum and the severe rationing of access by the EU and its member states is only one current moral dilemma in asylum policy. Another dilemma arises from the way some EU neighbors (Türkiye in 2020; Belarus and Russia since 2022) have instrumentalized migrants by facilitating their illegal border crossings into the EU, in order to apply political pressure on the EU and affected member states. The latter have pushed back by securitizing their external borders further through higher fences, better digital surveillance, etc. While such measures helped to reduce irregular immigration as intended, closing the border also, arguably, defeats the purpose of the asylum system.

Apart from such moral dilemmas, which can be only managed but not resolved, two further fundamental issues complicate EU asylum policy. First, individuals who migrate irregularly to escape persecution

or conflict are part of a much larger irregular migrant population whose migration motives vary widely, including the pursuit of economic opportunities along with safety from persecution (“mixed migrants”; MMC 2024). In the absence of regular migration opportunities, many mixed migrants find that applying for asylum is their best chance to achieve regular status in their intended destination countries. As a result, acceptance rates for asylum applications (“positive decisions”) vary widely across countries of origin, with Syria and Afghanistan close to 100 percent and some countries where emigration is mostly driven by economic concerns in the low double digits.⁵

At the same time, many rejected asylum seekers never return to their countries of origin – in part, (because) countries of origin have little incentive to cooperate in the mandatory return of their citizens. As a result, countries of destination including the EU have an even stronger incentive to ration access to asylum by restricting irregular immigration.

It is worth emphasizing that many potential migrants are deterred by the absence of legal opportunities and by dangerous journeys. Based on a conjoint experiment in Uganda and Senegal, Detlefsen et al. (2022, Figure 9) find that access to legal (as opposed to illegal) migration and a safe journey (rather than a 1 in 6 risk of dying) make a positive (hypothetical) migration decision far more likely (by 1.3 points on a scale from 0 to 5). Conversely, if countries of destination were to create more legal migration opportunities, hoping thereby to reduce irregular migration, this would work only if new opportunities were strictly targeted at current irregular migrants, rather than being open to all potential migrants – which seems unlikely. Similarly, the Gallup World Poll (Ray and Pugliese 2024) finds that 16 percent of adults worldwide would like to migrate (i.e., move permanently to another country) if they had the opportunity. By contrast, actual migrants of any age account for only about 3 percent of the world’s population. We may safely conclude that potential migration, assuming legal and safe migration corridors to attractive destination countries, is far greater than the migrant movements that we currently observe.

Second, asylum policymaking in the EU is complicated because refugee protection is an international public good. Potential destination countries may host refugees for altruistic reasons or out of self-interest – for example, because large numbers of people on the move with nowhere to go could pose a security risk. If one country hosts refugees and bears the associated costs, all other countries enjoy the same benefits for free; this is the meaning of non-rivalry and non-excludability in the consumption of the public good of refugee protection. Therefore, potential destination

countries need to cooperate to, collectively, dedicate enough resources to refugee protection. Otherwise, a race to the bottom might result, with countries worsening reception conditions to make refugees go elsewhere (while still hoping to enjoy the benefits of refugees being hosted elsewhere).

In its Preamble, the 1951 Refugee Convention recognizes the need for cooperation but does not establish a formal mechanism for responsibility sharing among parties to the Convention. When the Convention was negotiated, this may have mattered little because the Convention was originally meant to protect (only) those individuals who had become refugees through events until the end of 1950 (Article 1). Furthermore, refugees were implicitly expected to move directly from where they were persecuted to their country of asylum (Article 31). Accordingly, irregular migration for protection would be of limited regional scope and the total number of refugees covered by the Convention was known in principle.

In the 21st century, however, declining transport and communication costs have made long-distance international travel much cheaper, including irregular migration across continents. The public-good nature of refugee protection and the associated risk of a race to the bottom in terms of reception conditions have become more prominent. Therefore, the absence of effective responsibility sharing from the 1951 Refugee Convention and its later updates has turned into a serious gap in the architecture of the international governance of refugee protection.

CEAS REFORM AND RESPONSIBILITY SHARING BETWEEN THE EU AND NON-EU COUNTRIES

While advocating for the European Commission’s proposal for reforming the Common European Asylum System (CEAS), Margaritis Schinas, the former Commission Vice President responsible for migration, repeatedly described the proposed institutional architecture of CEAS as a building with three floors:⁶ first, migration agreements with neighboring countries (external dimension); second, the accelerated border procedure for a substantial share of asylum applications at the external EU border; and, third, flexible but mandatory solidarity among EU member states. In this and the following section, we discuss how each “floor” can be constructed further in keeping with humanitarian standards and the public-good nature of refugee protection.

The overall aim of migration agreements with countries of transit or origin (the “first floor” in the



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⁵ Figures on positive decisions can be difficult to interpret because many negative first-instance (tribunal) decisions are later overturned by administrative courts (Eurostat time series: migr_asydcfsta and migr_asydcfina).

⁶ <https://www.brookings.edu/articles/the-eus-new-pact-on-migration-and-asylum-is-missing-a-true-foundation/>.

House of CEAS) should be fair responsibility sharing between the EU and partner countries for protecting displaced people and safeguarding the basic rights of all migrants. What is “fair” will have to be negotiated, but a comprehensive and balanced approach will probably include at least the following elements:

- Refugees have access to protection in partner countries along (irregular) migration routes or through orderly resettlement to the EU.
- The human rights of all people, including irregular migrants, are respected.
- The EU helps pay for the reception and hosting of refugees in partner countries. As needed, the EU assists partner countries in setting up and operating their asylum systems.
- Partner countries restrict irregular migration to the EU through their territories, for example, by preventing migrant smuggling and unsafe transportation – as needed, with technical assistance from the EU.
- Similarly, partner countries cooperate fully with EU member states in readmitting their own citizens if they no longer have the right to remain the EU.
- In line with its standard procedures, the EU works actively with partner countries toward visa facilitation and visa liberalization, with a particular focus on expanding visa access for work and study.

This list is remarkably similar to the March 2016 EU–Türkiye statement on policy measures that ended the large migrant movement from Türkiye to Central Europe in late 2015.⁷ In particular, Türkiye applied its own Temporary Protection Regulation to refugees from Syria, granting them a firm legal status along with access to social support, health care, and education (some of which was financed by the EU).

The history of EU–Türkiye relations since 2016 also demonstrates that a comprehensive migration partnership along these lines depends on good cooperation in many separate policy areas. Bilateral relations between Greece and Türkiye were afflicted by disagreements about Greek sovereignty over certain islands and the possible exploitation by Türkiye of energy resources in the Eastern Mediterranean. These unrelated issues spilled over into bilateral migration cooperation, which should have included returning irregular migrants from Greece to Türkiye in an orderly manner and in accordance with international law. EU visa liberalization for Turkish citizens failed to materialize because of the deteriorating human rights situation in Türkiye. When Türkiye attempted to instrumentalize migrants by facilitating their illegal crossing of the land border with Greece in early 2020, Greece responded robustly by fortifying the land border and also, reportedly, pushing back irregular

migrants to Türkiye even though they had applied for asylum in Greece, which would be illegal under European and international law.

The example of EU–Türkiye migration cooperation shows that comprehensive and constructive EU cooperation with countries along migration routes (the “first floor” in the House of CEAS) can go a long way toward jointly protecting refugees (MEDAM 2021). Recent EU attempts to conclude similar agreements, including with Tunisia, appear to suffer from an over-emphasis on limiting migrant movements to the EU at the expense of protecting refugees and safeguarding migrants’ rights in the partner country. This deficiency is not only regrettable from a humanitarian point of view, but also calls the political sustainability of such agreements into question.

At the same time, unrestricted irregular migration to the EU, often in unseaworthy boats across the Mediterranean, or opening the EU border to all would-be immigrants are not politically viable options either. The EU should make it clear that it is willing to invest significant resources in constructive migration cooperation with partner countries, reflecting the public-good nature of refugee protection. However, the ultimate outcome for refugees and “mixed” migrants depends on whether partner country governments engage with the EU and develop political ownership of refugee protection and migrant rights more broadly put simply, it takes two to tango.

CEAS REFORM AND RESPONSIBILITY SHARING AMONG EU MEMBER STATES

The second floor in the House of CEAS, according to Margaritis Schinas, is the EU’s planned border procedure: fast-tracked asylum processing at the external border for applicants from countries with a low rate of positive asylum decisions, with a view to quickly returning rejected applicants to their countries of origin. While the individual EU member states remain responsible for all asylum processing, the border procedure allows for support from EU institutions and member states.

The border procedure not only aims to accelerate asylum processing, although this is important in its own right. The broader objective of the border procedure is to discourage migrants without a well-founded claim to asylum from applying in the first place. This is relevant because the asylum system needs to deal with bona fide refugees as well as many migrants with mixed motives (see above). The success of the border procedure hinges on the ability of the member state in charge (with the support of EU institutions and other member states) to quickly return failed applicants to their countries of origin. In this respect, the border procedure depends crucially on good cooperation with countries of origin that are targeted by migration agreements under the external dimension (“first floor”) of the CEAS architecture.

⁷ <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkiye-statement/>.

The third floor in the House of CEAS is a permanent mandatory solidarity mechanism to support any member state that faces migratory pressure due to high current arrivals or a “significant migratory situation” because of high cumulative arrivals. The need for such support is identified by the European Commission through an annual monitoring exercise. Each member state is expected to offer support, given total needs, based on its share of EU population and GDP. Member states may provide support by receiving asylum seekers through relocation; through financial contributions; or through other measures such as seconding staff (for example, for asylum processing at the external EU border) or in-kind support. If a member state is entitled to receive support, it may be exempted from its obligation to provide support.

This solidarity mechanism is a response to the somewhat arbitrary way in which responsibility for receiving and hosting asylum seekers is allocated in the EU. The various versions of the Dublin regulation, including the current Asylum and Migration Management Regulation (AMMR), allocate responsibility for every asylum seeker to the member state where the asylum seeker first entered the EU (with a few exceptions). This is meant to discourage onward movements to other EU member states; similarly, there may be few incentives for a race to the bottom in terms of reception conditions because most irregular migrants may have little choice about where they enter the EU. At the same time, small member states at the external border may still end up being responsible for a disproportionately large number of asylum seekers.

In this situation, will the solidarity mechanism be sufficient to hold CEAS together by giving each member state confidence that they will not (be overburdened) because support from the EU and member states through relocation of asylum seekers, financial, and other means will be available when needed? Given that the various elements of CEAS are carefully calibrated and take into account the interdependencies between actors at the global, European, and national level, one may optimistically hope that cooperation will catch on among EU member states and become mutually reinforcing.

However, refugee protection is a public good not only at the international level but also among EU member states. Even with tighter rules for mutual support, EU member states still have many opportunities to free-ride on their CEAS obligations. Within the Schengen area, asylum seekers may in practice travel freely to seek out the member state with the most favorable reception conditions, while the Dublin procedures may not provide an effective remedy. Hence, each EU member state still has a strong incentive to deter asylum applications by offering less favorable treatment than others, including after asylum seekers are recognized as refugees. Across EU member states, (living conditions) living conditions, basic incomes, support for social and labor market integration, etc., all vary widely.

At the same time, member states of first arrival may be tempted to ignore their obligation to register newly arriving asylum seekers and thus avoid becoming responsible for their asylum processing under Dublin rules. If other member states respond by introducing internal border checks to detect asylum seekers moving onward within the EU (possibly contravening the spirit or even letter of the Schengen Borders Code), the Schengen area could gradually disintegrate and refugee protection in the EU as a whole would suffer.

Throughout the history of European integration, some crises have generated the necessary momentum to move toward a higher level of integration. If the solidarity mechanism in CEAS proves not strong enough in the next few years to keep the asylum system together, one option will be to take the public-good nature of refugee protection seriously and concentrate operational and financial responsibility for CEAS within the EU institutions. Such a move would continue the recent shift toward a greater role for EU institutions in refugee protection, including the recent expansion of Frontex and the EU Asylum Agency. Given the considerable cost of receiving asylum seekers, “unionizing” the asylum system would require a major recalibration of the EU budget and additional revenue for the EU. On the other hand, member states that host a disproportionately large number of asylum seekers would benefit from fiscal centralization at the EU level.

POLICY CONCLUSION

The ongoing reform of the Common European Asylum System (CEAS), which is meant to be fully operational by spring 2026, appropriately reflects the public-good nature of refugee protection and the connectedness of the global, European, and EU member state dimensions of the asylum system. However, the proposed responsibility sharing with partner countries outside the EU and among EU member states is mostly voluntary. This is necessarily the case in the EU’s relations with sovereign partner countries (the external dimension of CEAS); for intra-EU cooperation, allowing member states a high degree of flexibility in how they deliver solidarity was probably a precondition for achieving broad political support for CEAS reform across the EU.

In the best possible case, the carefully designed mechanisms of the new CEAS will lead to a virtuous circle of voluntary cooperation within the EU and with partner countries along migration routes to Europe. It is also possible, however, that the perceived benefits of cooperation are not large enough to overcome the incentives that various actors still have to attempt to free-ride on others. In this case, the outcome may be less responsibility sharing, more securitized external and internal EU borders, and worse living conditions for refugees in Europe and elsewhere.

Conceivably, such (further) disintegration could put the full “unionization” of the asylum system at the EU level on the political agenda. In this case, the EU would move beyond rule-setting for member states (like now, mostly) to financing and operating the asylum system. This would be expensive and involve major institutional changes in key policy areas, including social policy, such as similar standards for basic income support and for the social and economic integration of refugees throughout the EU. Whilst a tall order, “unionization” would take the public-good nature of refugee protection in Europe seriously by ensuring that asylum policies and practices reflect a full assessment of the benefits and costs for all parties involved.

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