A new approach for a common
European asylum and refugee policy

Gerald Knaus, Gesine Schwan
6 May 2018

Draft for feedback

The EU needs a humane and effective policy on asylum and borders. Such a policy must stop people dying in large numbers in the Mediterranean, reduce irregular arrivals of those not in need of protection and preserve the right to asylum. It must also be able to obtain support across the EU from majorities of voters and member states.

The state of EU policy on asylum, borders and migration at this moment is troubling. EU member states have had a system for decades (based on the Dublin regulation) which has never worked as foreseen. Politically, the absence of a credible policy in such a sensitive field is strengthening populist enemies of EU integration and human rights in many member states. The EU and its member states are failing to maintain humane reception standards for asylum seekers on its territory. All member states are failing to return a majority of those who arrived by boat and have *no* claim to remain in the EU. Member states were unable to implement the relocation scheme they adopted in September 2015, which has now come to an end. The whole of the EU resettled fewer refugees in 2016 than Canada alone. The current policy failure comes at an enormous human cost: more than 3,000 drowned in 2017 in the Mediterranean trying to get to Europe.

In September 2017 French president Emmanuel Macron made a plea for a "Europe that protects" at Sorbonne University. He argued that the EU needed to be able to "protect borders effectively", "take in those eligible for asylum" and "quickly return those not eligible." These principles should be the basis for a credible policy: *preserve the right to asylum for those who need it, return those who do not need it, successfully discourage irregular arrivals by boat, increase orderly resettlement.* Legal access and strategic fast returns need to be linked creatively for this vision to be realised.

The richest continent in the world has an interest to support the refugee convention and the right to asylum, and to take a leading role in resettling those in need of protection. It is equally imperative to discourage those without protection needs from embarking on the murderous Russian roulette in dinghies off the Libyan coast. Discouraging irregular arrivals, while respecting core principles, is not only a response to the legitimate expectations of voters in European democracies. It is a moral, life-saving alternative to the current inaction.

The EU needs to take concrete steps towards a better system urgently. To get there it needs to learn from what has worked and failed in recent years and apply these lessons immediately in demonstration projects in Greece and Italy. Current EU debates start from the polarising question of mandatory distribution (relocation) of asylum seekers. This is a mistake. A voluntary system, based on incentives and involving local governments across the EU, as well as credible incentives for countries of origin, is much more promising.

A new concept and practice for Hotspots: Gerald Knaus

Leaders across the EU are looking for a fast, effective and humane asylum system; a system which determines quickly, but thoroughly, who needs protection; creates disincentives for people to get into boats; and manages to return those who are found not to need protection within a short period of time.

The question is how to make this happen. One place to look to for concrete inspiration is the Netherlands. There most asylum claims are decided *within less than two months including appeals* in a procedure fully respecting the rights of refugees. Asylum seekers are supported from the beginning by a lawyer paid for by the state and can state their claim in at least two comprehensive interviews.

A similar system, fully funded by the EU, is needed in Italy, Greece and elsewhere along Europe's Mediterranean borders. An EU-supported demonstration project in 2018 ("Amsterdam in the Mediterranean") would, in combination with the 2016 EU-Turkey statement for Greece and take-back agreements to be concluded with countries of origin for Italy, allow for the swift processing of claims and the prompt return of rejected claimants. It could lead to a sharp reduction in irregular arrivals, prevent deaths at sea and restore control. It would also quickly provide refugees and migrants with certainty about their future.

In Greece, such a demonstration project would help address the overcrowding of the Aegean islands. *All* applicants on the Greek islands would go through a fast and fair process to determine whether they need protection in the EU or can be returned to Turkey. As a result, almost nobody would stay on the Aegean islands longer than two months. Those who get a positive first instance decision would stay less than two weeks. In addition, the establishment of an independent mechanism verifying that reception and asylum conditions in Turkey are ECtHR-compatible could increase the number of those sent back to Turkey. This could reverse the trend of rising numbers of irregular arrivals.

Since 2010 the Netherlands has had an asylum system that achieves a high quality of decisions in fast procedures. It is a combination of quality and speed at both the first instance and the appeals level, which is unique in Europe. In the Netherlands, a refugee can receive the first-instance decision in 17 days (currently it takes 25 days) after entering. A court appeal against a negative first-instance decision extends this period by a maximum of another 35 days (currently around 21-28 days). Nowhere else in the EU are asylum decisions including appeals delivered so fast. And no other system has more focus on the quality of decision making: asylum seekers are provided with free legal aid from the outset and can make their claim in at least two long interviews. A similar system should be built up at the EU's external borders, beginning with demonstration projects in Italy and Greece, under Italian and Greek law, but fully funded by the EU.

These are the various steps of the procedure in the Netherlands:

Registration – 3 days: Refugees arriving by land are taken to the registration centre Ter Apel in northern Netherlands where they are identified, registered, fingerprinted, debriefed, and undergo security and medical checks (contagious diseases). Here they also express their intention to claim asylum and have a first short interview with the asylum authority, the Immigration and Naturalisation Service (IND).

Rest and preparation – 6 days minimum, currently 14 days: Asylum seekers rest and prepare for the asylum procedure. Each claimant is briefed and supported by the Dutch Refugee Council, an independent NGO, and has a first meeting with their lawyer who is free of cost to them and who will support them throughout the procedure. The claimants have time to obtain documents they might need (scans are accepted). They undergo a medical check to confirm that they are mentally and physically fit for the asylum procedure. During this time, Dutch police also continue to check the authenticity of the documents they initially submitted.

General asylum procedure – 5 to 8 days: The Dutch describe it as an 8-day procedure, but a procedure with a positive outcome takes only 5 days, and one with a negative 7-8 days. During this process, the claimant is interviewed twice. Both times, the IND interviewer types simultaneously a transcript, which the lawyer can amend afterwards (the lawyer usually does not sit in on the interviews, but the Dutch Refugee Council sends somebody at the request of the claimant or in sensitive cases). During the interviews, the interviewer has online access to researchers who can verify/follow up on information provided by the claimant.

The procedure day by day is as follows:

> • *Day 1*: Interview on identity, nationality, itinerary; submission of relevant documents; transcript.
> • *Day 2*: The lawyer checks and amends the transcript and prepares the claimant for the main interview the next day.
> • *Day 3*: Interview on the substance of the asylum claim (1-4 hours); transcript (20-25 pages).
> • *Day 4*: The lawyer checks and amends the transcript. On this day, the IND also decides whether it has enough information to make a well-founded decision; if it feels that this is not the case, it sends the case into the "Extended Procedure".
> • *Day 5*: The IND issues either a positive decision in which case the process ends here; or it issues a *preliminary* negative decision. (The decisions are explained in detail on typically 8-10 pages. The IND decision-maker is usually, but not always, different from the interviewer.)
> • *Day 6*: The lawyer provides comments on the preliminary negative decision, explaining why the claimant does deserve protection.
> • *Day 7/8*: The IND issues the final decision.

Court appeal – 3-5 weeks: A rejected asylum seeker has 1 week to appeal the negative decision before a court. The court has to make a decision within 4 weeks after the appeal was lodged, but often does so already after 2-3 weeks. An appeal has a suspensive effect, except in cases of safe countries of origin, other manifestly unfounded decisions and inadmissibility. In these cases, the claimants can still ask for a court injunction to be allowed to stay. (If an extended procedure results in a negative decision, the deadline for an appeal is 4 weeks and the appeal always has a suspensive effect.)

Imagine a Dutch-style system operating in 2018 for all applicants in Greece as a European demonstration project, starting with the Aegean islands.

All applicants would go through this process to determine whether they are safe in Turkey or need to be offered protection in Greece. In case of the former – and with credible and verifiable guarantees from Turkey - those who are found to be safe in Turkey could be returned within a few weeks. The same would be true for those whose claims are rejected on substance.

Credible appeals panels with qualified (ex-) judges would play the role of the first instance courts in the Netherlands. As a priority the Greek government would need to ensure that there

is a sufficient number of these dealing swiftly with all new cases of arrivals. There would still be a possibility of onward appeals to courts. A court appeal would have no suspensive effect, but the claimant would be able to request an injunction to suspend readmission until the court's decision on substance. However, given that the first and second instance decisions will be well argued and that the claimant will have had legal advice all along, the court should be able to decide on the injunction within a week.

Within two months (almost) all decisions would be made. Only few – those appealing to courts and being granted injunctions against readmission - would stay on the Aegean islands longer than two months. Those who receive a positive first instance decision would stay less than two weeks. This would resolve the problem of overcrowding on the Greek islands. In return for sending more people back to Turkey, the EU should increase the voluntary transfers from Turkey to EU member states as part of the voluntary humanitarian resettlement foreseen in the EU-Turkey statement.

Such a process would help Greece and the Greek islands. It would prevent deaths at sea and quickly resolve the status of refugees and migrants in a thorough and serious process, allowing them to start planning their future. It would stabilise the EU-Turkey statement. In parallel there should be a strategy to establish fully funded pilot EU RICs (Reception and Identification Centres) on the Greek islands that would meet all Greek and EU reception standards. Obtaining verifiable guarantees from Turkey that Syrians, Iraqis and others are treated in accordance with Turkey's laws would allow more and faster returns, which in turn could reduce arrivals on Greek islands back to the level of early 2017 (and then lower), when only 9,000 people arrived in half a year.

The EU should then try to extend the EU-Turkey statement to its land borders with Turkey. In Bulgaria there would be a similar pilot EU RIC and Dutch-style asylum operation funded by the EU, which would raise reception standards and reduce irregular arrivals. This is an achievable vision for an effective European approach to asylum and border policy.

The same approach should be extended to the Central Mediterranean. Last year 130,000 people applied for asylum in Italy, a majority from West African countries. The same year 12,000 applicants were granted international protection. But almost everybody stays in Europe, regardless of their asylum status. One obvious reason for this is the reluctance of countries of origin to cooperate in the identification and return of their citizens. In 2016 more than 100,000 people arrived in Italy from six West African nations; around 4,300 citizens of these countries were granted international protection. And only 255 returned, voluntarily or by force.

The priority of EU policy should be to secure statements similar to the EU-Turkey statement with key African countries of origin to take back all failed asylum seekers arriving after an agreed date. This would quickly discourage many new arrivals. In return these countries should be offered an annual contingent of regular visas to EU member states for work or study.

Western support to the Libyan coast guard and the Libyan authorities should be linked to a clear condition: that anybody intercepted by its boats and taken back to Libya should be offered immediate evacuation to Niger by the International Organization for Migration (IOM). The numbers involved make this possible: In 2017, the Libyan coast guard intercepted fewer than 1,500 people a month on average. In Niger, those who choose not to apply for asylum should be offered assisted return to their countries of origin via the IOM. Those who do apply for asylum should be resettled to a safe country if found to be in need of protection. The same should happen with the approximately thousands of people currently held in Libyan detention

centers. Finally, a stronger common effort is needed to ensure sufficient search-and-rescue capacity beyond Libya's territorial waters. In the first six months of 2017, more than 2,500 refugees and migrants drowned. Some 600 people still drowned in the second half of the year despite the reduction in departures.

Discouraging irregular economic migration requires a quick, but fair, asylum process that should seek to award a protection status or move to deport those found to have no claim within two months at most. As a joint European effort, it is doable. Any political party that fails to promise to control borders renders itself unelectable. At the same time, there are a lot of European citizens who care about the right to asylum, who do not want to see thousands drown or anyone who reaches the EU treated badly. What is needed is a progressive policy that combines empathy and control.

All of this leaves the following concrete questions to be discussed at the workshop:

1. How could EU RICs (instead of the current hotspots) on the Greek islands, which meet all European standards for humane treatment of asylum seekers be set up quickly as part of this demonstrationpi project?

2. How many human and financial resources would be required to be able to process all new incoming asylum applications on the islands within at most two months (concerning Greek asylum officers, support from EU member states, interpreters and other administrative support, but also a sufficient number of appeals panels)?

3. For Greece to be able to return asylum seekers and irregular migrants to Turkey on the assumption that they are safe there as defined by the jurisprudence of the ECtHR. Turkey would need to provide assurances for each individual case and allow for a mechanism to verify how domestic asylum laws and other relevant legal obligations are applied in practice. To implement the EU-Turkey statement, Greece, Turkey and the EU need to set up a mechanism to monitor returns. How could such an "Ombudsperson for the EU-Turkey Statement" be set up?

4. How to ensure that as part of this project voluntary relocation of recognized refugees from Greece can continue to a group of EU member states.

5. Where would the financing for the demonstration project come from?

A new approach for decentralized settlement of refugees: Gesine Schwan

During her recent visit to Poland German chancellor Angela Merkel proposed that instead of a forced scheme of resettling a defined contingent of refugees within every country EU member states should agree to finance a European Fund which would support primarily Italy and Greece concerning the additional costs of refugees which are arriving and settled in the southern European countries. In his speech to the European Parliament on 17 April French president Emmanuel Macron likewise proposed the creation of a European program to "directly financially support local communities that welcome and integrate refugees."

This concept of a European Fund to finance the relocation and integration of recognized refugees need and migrants needs to be developed further.

Based on this a solution of the European asylum and migration challenge might work as follows:

Instead of forced relocation of asylum seekers all European governments agree to the establishment of a European "Integration and municipal Development Fund".

This builds on a recent important decision already taken by the European Parliament, which introduced the following paragraph (86) in its recent report approved by a large majority in its plenary session on 13 March:

> The European Parliament "asks the Commission to assess whether the role of European cities within the European asylum policy could be strengthened by introducing an incentive scheme that offers financial support for refugee accommodation and economic development directly to cities in return for receiving refugees and asylum seekers."

European municipalities should be invited to apply directly to such a fund to finance the integration of refugees whom they wish to welcome. At the same time, they should receive a similar amount of funding for their own development projects.

Solidarity would thus be rewarded through support for local development. This also contributes to more justice between European and non-European people in need.

National governments in the European Council should agree that they would accept a certain number of refugees who would be welcomed by their communities.

In order to support the integration of refugees in local societies, increasing democratic political participation and broadening support for this in municipalities, multi-stakeholder councils should be formed in these municipalities following the invitation of the local government. Here representatives of politics, business and NGOs, including those of refugees, would prepare strategies for integration as well as for local development. This participation offers citizens that want to engage in projects new possibilities of action.

Regular meetings of integrating municipalities should be organized for the exchange of experiences, knowledge and challenges. A a horizontal network would not only stimulate the Integration/development of communities but also of the European Union, combining multilevel cooperation and transparency.

All the steps of such a **decentralized refugee settlement** need to be developed further. Already inside the "hotspots" if possible there has to be presented an effective "matching system"

between the needs of the refugees and those of the municipalities. The EU would need a system for application and refunding criteria for municipalities and a procedure to decide on applications. There is a need for an operational strategy for local multi-stakeholder committees which should prepare the decisions of the municipality administration so that it would be backed by their people.

The European LEADER program, working successfully since the 1980s, can offer a blueprint for this new approach to welcome European refugees.

This would be **only one component in a comprehensive European refugee-strategy**. Of course, this includes the often cited "Remediation of the causes of flight", which, however, involves many different dimensions, including the change in European interest policy and will take decades to be implemented. What is important is a development cooperation that is based on a real partnership with the countries of origin, which must not be used for own national investments and profits or for preventing immigration into Europe. We also need the promotion of Good Governance (rule of law, anti-corruption initiatives) in the integration process. Again, it seems most promising to promote such cooperation at the local level.

In order to refine the operationalization of the new approach for the integration of refugees and asylum seekers a demonstration project should be started very early which would gain experiences with this new approach to be evaluated for its implementation before starting the new Financial Framework from 2021 on.

In such a demonstration project, starting as soon as possible, national governments of some countries - France, Germany, Sweden, Austria, the Netherlands, Spain, Portugal, Belgium … - should agree to contribute to a demonstration "Municipality Integration and Development Fund" and allow their municipalities to welcome refugees recognized in the new EU Reception and Identification centers in Greece or Italy or resettled from Turkey under the EU-Turkey statement.

Such municipalities would be financially supported by the previously agreed upon fund concerning the integration costs and additionally to the same amount concerning communal development projects. They would have based their decision on the participation of multi-stakeholder groups invited by the municipalities' administration.

In preparation of that demonstration project we should mobilize municipalities within the cited national states so that a great number of them would be ready to welcome refugees.

All of this leaves the following concrete questions to be discussed at the workshop:

6. Are there blueprints for a matching system between the offerings/needs of the municipalities and the offerings/needs of the refugees/migrants?

7. What could be criteria for the application and refunding for the municipalities?

8. What procedure to establish for deciding about the applications?

9. What could be an operational strategy for the multi-stakeholder committees which should prepare the decisions of the municipality administration including an anti-corruption program?

10. How to organize and establish regular exchanges of municipalities' experiences, knowledge, challenges and strategies also in order to strengthen horizontal European integration und stimulate innovative initiatives?

11. How to proceed for a demonstration project to be implemented soon?

12. Where could the financing for the demonstration project come from?

13. What could one propose already for conclusions for the meeting of the European Council in June?

Further reading / core facts and statistics:

- Newsletter: [Macron, Italy and the mirage of mass return](#) (18 March 2018)

- Core facts: [The Italian Magnet – Deaths, arrivals and returns in the Central Mediterranean](#) (13 March 2018)

- Core facts: [Refugees and asylum in the Aegean – The impact of the EU-Turkey statement](#) (26 January 2018)

- ["Amsterdam in the Mediterranean" – How a Dutch-style asylum system can help resolve the Mediterranean refugee crisis](#) (26 January 2018)

- Refugees Deeply, [How Italy Can Combine Migration Control With Human Rights](#) (13 March 2018)

- Internationale Politik, [Eine prinzipientreue europäische Asylpolitik ist möglich und mehrheitsfähig](#)(September 2017)

Annex (ESI)[1]

EU asylum applications in 2013 (before 2015 record arrivals)

Total applications: 431,090[2]

	Applications	Percent EU total	Fair share[3]
Germany	**126,705**	**29**	**18**
France	66,265	15	14
Italy	**26,620**	**6**	**12**
Spain	4,485	1	9
Poland	15,240	4	6
Netherlands	13,060	3	4
Portugal	500	0.1	4
Romania	1,495	0.3	4
Czech Republic	695	0.2	3
Sweden	**54,270**	**13**	**3**
Belgium	21,030	5	3
Austria	17,500	4	3
Greece	**8,225**	**2**	**2**
Denmark[4]	7,170	2	2
Hungary	18,895	4	2
Slovakia	440	0.1	2
Estonia	95	0.02	2
Croatia	1,075	0.2	2
Finland	3,210	0.7	2
Bulgaria	7,145	2	1
Latvia	195	0.04	1
Lithuania	400	0.1	1
Slovenia	270	0.06	1
Luxembourg	1,070	0.2	0.9
Malta	2,245	0.5	0.7
Cyprus	1,255	0.3	0.4

---

[1] More: www.esiweb.org/refugees
[2] Eurostat, "Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data"
[3] Rounded percentage of share as per the European relocation scheme from 2015.
[4] Denmark did not participate in the 2015 relocation scheme but has been included here for comparison.

EU Asylum applications in 2017 (after 2015 record arrivals)

Total applications: 706,000[5]

	Applications	Percent EU total	Fair share[6]
Germany	**222,560**	**32**	**18**
France	98,635	14	14
Italy	**128,850**	**18**	**12**
Spain	31,120	4	9
Poland	5,045	0.7	6
Netherlands	18,210	2.6	4
Portugal	1,750	0.2	4
Romania	4,815	0.7	4
Czech Republic	1,445	0.2	3
Sweden	26,325	4	3
Belgium	18,340	2.6	3
Austria	24,275	3.4	3
Greece	**58,705**	**8**	**2**
Denmark[7]	3,220	0.5	2
Hungary	3,390	0.5	2
Slovakia	160	0.02	2
Estonia	190	0.03	2
Croatia	975	1.4	2
Finland	4,990	0.7	2
Bulgaria	3,695	0.5	1
Latvia	355	0.05	1
Lithuania	495	0.07	1
Slovenia	1,475	0.2	1
Luxembourg	2,430	0.3	0.9
Malta	1,840	0.3	0.7
Cyprus	4,600	0.7	0.4

---

[5] Eurostat, "Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data"
[6] Rounded percentage of share as per the European relocation scheme from 2015.
[7] Denmark did not participate in the 2015 relocation scheme but has been included here for comparison.

Dublin IV Commission proposal (spring 2016) – a simulation

	Applications	150% share	Above share[8]
Germany	**222,560**	**183947**	-38,614
France	99,330	141506	
Italy	**128,850**	**118238**	-10,613
Spain	31,120	90875	
Poland	5,045	56322	
Netherlands	18,210	43440	
Portugal	1,750	38847	
Romania	4,815	37449	
Czech Republic	1,445	29759	
Sweden	26,325	29160	
Belgium	18,340	29060	
Austria	24,715	26165	
Greece	**58,650**	**18974**	-39,677
Hungary	3,390	17876	
Slovakia	160	17775	
Estonia	190	17576	
Croatia	975	17276	
Finland	4,990	17177	
Bulgaria	3,695	12483	
Latvia	355	12084	
Lithuania	495	11585	
Slovenia	1,475	11484	
Luxembourg	2,430	8489	
Malta	1,840	6891	
Cyprus	**4,600**	**3894**	-706
Total	**665,750**		

---

[8] This is the total number of asylum seekers who would have to be relocated under the Commission Dublin IV proposal (presented in spring 2016). It shows why it makes sense to have a demonstration project in Greece and Italy.