

Policy Update December 2016

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Slovak 'effective solidarity' proposal

The outcome of the 2016 US presidential election was probably the most significant political development of this autumn, which casts major doubts upon a wide range of transatlantic challenges, including migration. Donald Trump's harsh rhetoric against Muslim immigrants has put America's leading role in global refugee resettlement into question, in particular President Obama's plan to admit 110,000 refugees into the US over the next year. As argued in a recent EPC [Commentary](#), this could increase migratory pressure on Europe even further. Trump's victory could also further strengthen European anti-immigration parties, which feel emboldened by the result. With elections coming up in the Netherlands, France and Germany next year, migration will continue to dominate political debates and even determine electoral outcomes.

In this political context, the EU's institutions have continued to follow a security-driven agenda on migration, which aims to limit arrivals and restrict migrants' rights. The October European Council

EU travel document for return

[conclusions](#) clearly reflect member states' desire to strengthen border control, reduce irregular migration along the Central and Eastern Mediterranean routes and increase external cooperation to reduce flows. Yet the areas of agreement end there.

Following the fractious Bratislava Summit in September, the Slovak Council presidency floated a [proposal](#) to allow member states to opt out of refugee relocation by providing other types of support to frontline states, such as border guards and temporary reception facilities (more details below). However, this was not well received by other member states. Meanwhile, heated political discussions on the European Commission's proposed reform of the Common European Asylum System continue, while the plan itself has been extensively analysed (and criticised) by NGOs such as the [European Council on Refugees and Exiles](#) and the [Migration Policy Group](#). These issues are sure to remain high on the EU institutional agenda going into the New Year, as Malta has made migration the number one [priority](#) of its upcoming Council presidency starting in January 2017.

UNHCR presents major proposal to EU

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SPECIAL FOCUS



Slovakia proposes 'effective solidarity' plan

Children and Youth | Immigration Detention | CEAS

Slovakia, which currently holds the rotating presidency of the Council of the EU, [presented](#) an informal proposal to reform the Dublin Regulation ahead of a Justice and Home Affairs Council meeting on 18 November. The new [plan](#) envisions an 'effective solidarity' mechanism to deal with high numbers of irregular arrivals to the EU, allowing member states to choose how to respond. Possible measures besides relocation include financial contributions, operational staff deployment via EASO and Frontex, providing

reception capacity for asylum procedures, joint processing of applications and carrying out returns on behalf of another member state. An 'exceptional crisis mechanism' is envisaged in 'severe' circumstances, in which a response would be steered by the European Council, but no details were given regarding concrete measures. The proposal also lacks details on the number of arrivals needed to trigger alternative contributions and the crisis mechanism.

The proposal was not mentioned in the JHA Council conclusions, suggesting a less than warm reception by fellow interior ministers. Malta's interior minister Carmelo Abela openly [criticised](#) the plan, stating that it would only increase the burden shouldered by frontline states. As Malta will take over the Council presidency from Slovakia next year, it appears unlikely that Slovakia's ideas will gain much traction in Brussels. Nevertheless, Slovakia has vowed to present a revised proposal, with Slovak Deputy Prime Minister and Interior Minister Robert Kaliňák apparently [confident](#) that the Slovakian EU Presidency will be able to negotiate an alternative to mandatory relocation quotas.

“it appears unlikely that Slovakia's ideas will gain much traction in Brussels”

Despite the unpopularity of Slovakia's proposal, particularly among member states absorbing the majority of arrivals, some form of compromise may still be reached. Central and Eastern European member states are clearly unwilling to accept large numbers of relocated refugees while Southern and Northern European states want a more even distribution of asylum seekers, but smaller relocation numbers could possibly be agreed in conjunction with more support along the lines of 'effective solidarity'. A lot will depend on the Slovak government's ability to negotiate such an agreement, which some member states have doubted given its confrontational approach to the issue thus far, including its decision to take legal action against the current relocation scheme.

Some of the more creative elements of Slovakia's proposal are already being implemented on a small scale. For example, Slovakia currently provides temporary reception facilities for 500 asylum seekers while they await a decision on their Austrian asylum applications under a bilateral agreement. Slovakia may still convince the main countries of destination that expanding and institutionalising this kind of cooperation could ease the pressure on governments that struggle to find housing for new arrivals amidst increasing public resistance. However, some form of quota system appears to be unavoidable, particularly to ensure that small states like Malta are not overwhelmed by a new influx.

Time is running out for Slovakia to present an alternative proposal that is acceptable to all member states. With Malta's Council presidency approaching, finding a compromise is critical, given that Malta is likely to insist on precisely the kind of quota-based approach that Slovakia is rejecting. Regardless of the outcome, these negotiations will set the stage for the EU's migration management in the New Year and beyond, as the end of the two-year deadline to relocate 160,000 refugees from Italy and Greece expires in September 2017.



European Council seeks to reduce migrant flows

CEAS

A number of migration-related [conclusions](#) were made at the last European Council summit, which took place on 20-21 October. The main focus areas were strengthening border control, reducing irregular migration along the Central and Eastern Mediterranean routes as well as increasing cooperation with third countries to address flows.

The European Council highlighted the importance of agreements with third countries to reduce flows and called on High Representative/Vice-President Federica Mogherini to present progress made with five selected African countries, including first results on arrivals and returns, at the next European Council meeting.

A better implementation of the EU-Turkey Statement was also agreed upon, in particular by enhancing the efficiency of Greece's asylum system and bolstering support for hotspots. The European Council conclusions further called for the quick operationalisation of EASO's asylum intervention pool, accelerated relocation and resettlement by the member states and work to be continued on the reform of the Common European Asylum System.

Malta presents priorities for Council presidency

CEAS

On 21 November, Maltese Deputy Prime Minister Louis Grech [presented](#) Malta's priorities for its upcoming presidency of the Council of the EU during the first half of 2017. Migration is the number one priority. Malta will push for the swift implementation of agreed measures and continued visibility at the top of the political agenda. In more concrete terms, the following [objectives](#) will be pursued:

“Malta’s Council presidency will be the first in its history of EU membership”

- Strengthening and streamlining the Common European Asylum System in order to distribute the migration load among member states more evenly;
- revising the Dublin Regulation in particular;

- transforming the European Asylum Support Office into a fully-fledged European agency;
- ensuring better implementation of relocation agreements;
- pushing for a holistic approach to migration, including both internal and external aspects, also with a view towards tackling the root causes of migration.

Malta's Council presidency will be the first in its history of EU membership. Deputy Prime Minister Grech noted that this will be both a challenge and an opportunity for Malta to prove that even the smallest EU member state can contribute to the EU's prosperity, peace and security.

Hungarian parliament rejects relocation ban

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The Hungarian parliament narrowly [rejected](#) a proposed constitutional amendment which would have effectively prevented the resettlement of asylum seekers to Hungary under the EU's relocation scheme. The far-right Jobbik party joined other opposition parties in boycotting the vote, stating that it would only support the amendment if Prime Minister Viktor Orbán abolishes an investment immigration scheme that grants residence permits to wealthy foreigners who invest in Hungarian government bonds. The vote comes after an October referendum on the EU's relocation scheme that overwhelmingly rejected resettlement quotas but was not legally valid due to low voter turnout. The proposed amendment appears to have attempted to use a [provision](#) in EU law that permits national derogations on the basis of 'constitutional identity' (particularly special national traditions, laws and interests), thus potentially setting a precedent for the politically-motivated use of this legal instrument.

Visegrad Group announces migration crisis centre

Interior ministers from the Czech Republic, Hungary, Poland and Slovakia [announced](#) their intention to set up a migration crisis management centre at a meeting in Warsaw on 21 November. The crisis centre would be headed by Poland and coordinate the distribution of humanitarian aid to refugees located outside of the EU, in countries like Jordan and Lebanon. Polish Interior Minister Mariusz Błaszczak stated that the initiative is "about allocating money from the budgets of our countries for real help", thus implying that asylum-related funds are better spent outside of the EU rather inside it. This may have a negative impact on the quality of internal responses offered by the Visegrad countries, if internal funding is redirected.

Erdogan threatens to end EU-Turkey deal

Children and Youth | Immigration Detention | CEAS

Turkish President Recep Tayyip Erdoğan warned that he would allow migrants to leave Turkey for Europe if the EU goes any further in its criticism of Ankara's policies. The [announcement](#) came after the European Parliament passed a non-binding resolution to freeze Turkey's EU accession negotiations. The resolution passed with an overwhelming majority of votes (479 to 37), thus sending a strong signal of discontent over recent political developments in Turkey. Erdoğan reacted angrily to the vote, stating that the EU had "betrayed its promises". EU leaders are due to discuss the issue again during the next European Council summit in mid-December. Concerns over the impact of a new influx of

refugees to Greece will likely result in more moderate tones towards Ankara by EU governments.

LEGISLATIVE DEVELOPMENTS



Council adopts EU travel document for returnees

Immigration Detention CEAS

On 13 October, the Council [adopted](#) a Regulation establishing an uniform European travel document for the return of illegally residing third-country nationals, laying down standards for its format, security features and technical specifications. The common use of such a 'European travel document for return' across the EU is hoped to facilitate the recognition by third countries and speed up the returns in the framework of readmission agreements. It should also reduce bureaucratic and administrative burdens and the length of the administrative procedures necessary for ensuring return and readmission.

Internal Schengen border controls prolonged

Children and Youth CEAS Mobile EU citizens

On 25 October, the European Commission [recommended](#) to extend temporary internal border controls inside the Schengen Area for another three months. The Council subsequently [adopted](#) an implementing decision on 11 November allowing the prolongation of the border checks. The following border controls were authorised for a period of three months:

- in Austria, at the Austrian-Hungarian land border and Austrian-Slovenian land border;
- in Germany, at the German-Austrian land border;
- in Denmark, in the Danish ports with ferry connections to Germany and at the Danish-German land border;
- in Sweden, in the Swedish harbours in the Police Regions South and West and at the Öresund bridge;

- in Norway, in the Norwegian ports with ferry connections to Denmark, Germany and Sweden.

According to the implementing decision, these border controls should be targeted and limited in scope, frequency, location and time, and reviewed weekly with a view towards ending them whenever appropriate. The Commission's recommendation cites the persistently high number of irregular migrants in Greece prone to secondary movements and stretched asylum capacity in the five states mentioned as factors supporting the extension of border checks, and calls for the restored full application of Dublin rules concerning Greece.

Other developments

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Unrest on Greek islands as tensions heighten

Violence broke out at reception centres on the Greek islands in October and November, highlighting increasing tensions and frustrations among both refugees and the local population. On 24 October, refugees burned down EASO offices inside the Moria reception centre on the island of Lesbos to [protest](#) against delays in processing their asylum applications. No one was injured in the incident, but EASO staff was evacuated and their work was suspended pending a re-evaluation of on-site security. Just over a month earlier, part of the camp was heavily damaged due to another fire that broke out during clashes between police and refugees.

In a separate [incident](#), attackers threw Molotov cocktails and rocks into the Souda reception centre on the island of Chios on two successive nights in November. Tents were burned down and a Syrian man was assaulted while a Nigerian boy was hit by a rock. Far-right Golden Dawn party supporters are thought to be behind the attacks, which followed a two-day visit by Golden Dawn and Belgian far-right MPs to the island. It is nevertheless unclear how the violence started, with the town's mayor claiming that the unrest began after Algerians and Moroccans stole alcohol and fireworks from a local shop. Refugees refused to return to the camp fearing new attacks, and found shelter in a nearby car park.

Calais migrant camp closed

French authorities began [clearing](#) the Calais migrant camp on 24 October in a final attempt to close the facility. Around 5,000 migrants were relocated to reception centres around France, while around 200 unaccompanied minors were transferred to the United Kingdom under a special arrangement. Yet the majority of children in the camp were not granted access to the UK ahead of its closure, with some initially [remaining](#) in the camp under difficult conditions while it was being demolished. Many other former camp residents who refused to be relocated created small new [camps](#) across northern France with the intention of continuing their attempts to reach the UK. Paris experienced a sharp [increase](#) in homeless migrants following the Calais closure as well, which resulted in more police action to clear tents and makeshift shelters in various parts of the city. There is little doubt that some may make their way from temporary accommodation facilities across France back to the Calais area if they refuse to claim asylum in France or return to their countries of origin.

First Progress Report: Migration Partnership Framework

Four months after the [publication](#) of the new Partnership Framework with third countries, the European Commission [presented](#) its first progress report on 18 October. The

aim of this Partnership Framework is to mobilise and focus EU action and resources on external migration management.

According to the report, the new partnership approach has started to yield results, as cooperation with the priority countries (Niger, Nigeria, Senegal, Mali and Ethiopia) is being intensified, the compacts with Jordan and Lebanon are ready for endorsement and increased funding has been made available to the priority countries through the EU Trust Fund for Africa. Niger has taken action to combat migrant smuggling and has set up an institutional framework for managing migration together with the EU, while strengthened operational cooperation is being put in place with Senegal and Mali and negotiations on a Readmission Agreement with Nigeria have begun.

As stated in the [Annex](#) of the progress report, the European Commission aims to deploy European Migration Liaison Officers by the end of the year, and strengthen EU agencies' involvement on the ground (e.g. the European Border and Coast Guard in Senegal). The Commission's second progress report is scheduled to be published before the December European Council.

UNHCR presents proposals on EU refugee management

The United Nations High Commissioner for Refugees (UNHCR) [published](#) a set of proposals on 5 December 2016 that aim to improve the way refugee flows are managed in the EU. The proposal was publicly presented at an event with High Commissioner Filippo Grandi which was hosted by the European Policy Centre in Brussels. The proposal package includes measures to enhance the EU's external engagement in order to strengthen the asylum capacities of third countries, improve funding mechanisms, link refugees and development, and expand legal channels for migration. Further measures include the development of an early warning and response planning system, ensuring standby capacity and improving coordination mechanisms.

The UNHCR also proposed several modifications to the Common European Asylum System. These include:

- a common EU registration mechanism;
- the prioritisation of family reunification;
- simplified and accelerated asylum decision procedures;
- a distribution mechanism for member states under pressure;
- a common approach to child refugees;
- incentives for compliance such as family reunification transfers;
- an efficient return system based on fair procedures and a preference for voluntary return.

The package also covers integration and makes several proposals in this area. The main focus areas are increased funding for integration programmes, better integration services and fostering engagement between refugees and host communities through volunteer programmes and civic orientation courses.



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ECJ Case [C-429/15](#) *Evelyn Danqua v The Minister for Justice and Equality, Ireland*,

This case concerned a Ghanaian national who, upon rejection of her applications for international protection and humanitarian leave to remain, had applied for subsidiary protection. This application was also rejected because she had failed to lodge it within fifteen working days from the day that she had been notified that her application for asylum had been rejected. There is no applicable EU law with regard to such a timeframe and, as such, it remains the prerogative of each member state to adopt specific rules by which rights and remedies that are derived from EU law, are to be enforced. However, that particular procedural autonomy for member states is subject to the principle of effectiveness.

The principle of effectiveness requires that the specific rules adopted by the member state must not render it impossible to exercise rights which have been conferred by EU law. The Court found that a procedural rule, such as the Irish fifteen-day rule, was capable of compromising the ability of applicants for subsidiary protection to fully avail themselves of the rights conferred on them by Directive 2004/83. Thus the principle of effectiveness must be interpreted as precluding the Irish fifteen-day rule. The Court further found that such a time limit could not reasonably be justified for the purposes of ensuring the proper functioning of the procedure for examining an application for subsidiary status.



Challenges to refugee protection in Hungary

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Immigration Detention

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By Márta Pardavi, [Hungarian Helsinki Committee](#)

While there is no end in sight to the conflicts that force people to flee and seek safety elsewhere, Hungary gets away with dismantling protection space for refugees.

In 2016, Hungary took new legal and practical measures to deter and stem the flow of refugees and migrants arriving in the country, thereby denying access to protection for refugees. In late winter, as border controls were reinforced and borders were closing on the Western Balkan route, many people again started arriving at the Hungarian/Serbian border. The fence that Hungary erected on its Serbian and Croatian borders in autumn 2015 meant that people trying to continue their route northwards into and across Hungary faced two options.

The first option, and one that many migrants took, was to climb through the border fence, an act that could be aided by smugglers. This has been a criminal offense since September 2015 and is part of a wider policy of securitisation aimed at criminalising migration and the act of seeking asylum itself. Between 15 September 2015 and 31 October 2016, out of 2,895 persons prosecuted, 2,843 were convicted for having crossed the border fence. The verdict was typically expulsion and an entry ban of 1-2 years, irrespective of whether the defendant had applied for asylum or what the outcome of that asylum procedure was.

The second option was to wait at the border area to be granted access to one of two transit zones. These zones are small enclosures built into the border fence where Hungarian authorities process asylum claims. Starting in March, hundreds of migrants began a weeks-long wait in order to gain entry into a transit zone. These migrants included many families with small children. By summer, anywhere up to a thousand people were often forced to camp amid squalid conditions and without adequate access to water, sanitary facilities and help from Hungarian authorities. This is despite being in close proximity to the Hungarian authorities and despite actually being on Hungarian territory.

Over time, fewer and fewer people have been able to apply for asylum in the transit zones; now it is barely 20-30 persons per day. Families and other vulnerable persons are treated

with priority but single males have to choose between waiting for several hundred days for access or climbing through the border fence.

From January to October, 28,075 persons claimed asylum in Hungary, most of whom are fleeing conflict zones. A good proportion of the claimants arrived in the country by crossing through the border fence.

In July, to further reduce the flow of migrants and asylum applicants, the government began pushbacks across the border. Under a new law, the police forcibly escorted all migrants who had been apprehended within eight kilometres of the border fence, back to the other side of that fence. This pushback denies migrants and refugees the right to seek international protection, in breach of Hungary's obligations under international and EU law.

From 5 July to 30 October 2016, 13,869 migrants were pushed back in this way across the Hungarian-Serbian border. Many of them reported that they had been beaten and pepper sprayed by personnel in uniform after being caught at the fence. Human Rights Watch, Amnesty International and UNHCR have also documented this practice.

Meanwhile, the conflicts that drive refugees to flee their homes rage on with no end in sight and, as of the end of November 2016, only 578 asylum applicants were still remained in reception centres or asylum detention centres in Hungary. Since January, 380 persons have received international protection status.

FACTS & FIGURES

Over one year after the Council Decisions to relocate 106,000 asylum seekers, only 6,925 relocations have been carried out.

Source: **European Commission**

Commission report on relocation and resettlement

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On 9 November, the European Commission [published](#) its seventh report on relocation and resettlement:

- As of 8 November, 5,376 relocations from [Greece](#) and 1,549 from [Italy](#) have taken place, amounting to 6,925 relocations in total.
- As regards to resettlement, more than half of the agreed number has been resettled so far (11,852 out of 22,504). The majority of people have been resettled from Turkey, Jordan and

Lebanon. 2,217 persons have been resettled within the 1:1 mechanism set out in the EU-Turkey Statement.

UNHCR statistics on arrivals

Children and Youth CEAS

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

- As of 4 December, 350,679 arrivals to Europe have been recorded. 173,799 have arrived in Greece, and 171,909 in Italy.
- 4,715 have been found dead or are missing in the Mediterranean since the beginning of the year. This compares to a total number of 3,771 dead or missing persons in 2015.

Relevant reports

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ECRE analysis of CEAS proposals

In light of the European Commission's presentation of seven legislative proposals for the reform of the Common European Asylum System (CEAS) in May and July, ECRE has [completed](#) a detailed analysis of each proposal. In general, ECRE points out that the conversion of several Directives into Regulations bears the risk of creating lower levels of procedural and protection standards in EU member states. Moreover, the Commission's overall strong focus on preventing secondary movement gives rise to many punitive measures, which are of grave concern to ECRE.

2016 Vision Europe Summit reports

Several articles were published within the framework of the 2016 Vision Europe Summit, organised by a consortium of think tanks and foundations collaborating to tackle some of the most pressing public policy challenges facing Europe. The articles [cover](#) a diverse range of subjects in the context of the migration and refugee crisis. The collection aims to identify the most contentious issues and to present recommendations. One of the [articles](#), entitled "From Conflict to Equilibrium: The Construction of a Common Ground for Social and Political Consensus on Migration", was authored by Yves Pascouau, Director of Migration and Mobility Policies at the EPC.

Amnesty International report on Italian hotspots

On 3 November, Amnesty International released a report entitled: 'Hotspot Italy: How EU's flagship approach leads to violations of refugee and migrant rights'. The report [considers](#) the hotspot approach and describes alleged human rights violations arising out of its implementation. In particular, the report looks at the breach of rights that occurs when ill-treatment and arbitrary detention are imposed by the Italian authorities in an effort to register a migrant. Amnesty also argues that there is too great an emphasis placed on organising and enforcing returns. The report concludes with a number of recommendations to the Italian authorities and to the EU on the reform of the hotspot approach.

Report on detention in Greece

A report [published](#) on 10 October by Aitima scrutinises developments in relation to the detention of asylum seekers and irregular migrants in Greece. It provides detailed

information from visits to various detention centres and police stations. It finds that several of the facilities visited fail to provide the minimum standards for the detention of non-nationals. In addition, the report reveals problems in the assessment of legality of detention for the purpose of removal or during an asylum procedure.

EMN report on the return of rejected asylum seekers

With a view to investigating the challenges and good practices of the return of rejected asylum seekers, the European Migration Network (EMN) [published](#) a report on 3 November compiling information from 25 EU member states. It finds that several countries have undergone a shift from incentivising return to dis-incentivising stay, which may increase the likelihood of absconding and destitution. Rejected asylum seekers are likely to be affected by return challenges, which may be addressed through cooperation arrangements with third-country authorities, use of database checks, the provision of medical support throughout the return process, and detention.

FRA report on key migration issues

The EU Fundamental Rights Agency's (FRA) October report [examines](#) four particular areas which have emerged since September 2015 and which have been identified as giving cause for particular concern. The four areas are unaccompanied children, safety and protection at reception facilities, impact on local communities and violence and hate speech against migrants. The report states that these areas remain in need of priority action by the EU member states.

EU Funding opportunities

Children and Youth **CEAS**

Call for proposals

In the framework of the 'Rights, Equality and Citizenship Programme', the following calls for proposals have been opened or will soon be opened:

- Capacity building on right of the child and child protection for professionals in asylum and migration
 - [call out](#) on 13.09.2016 – Deadline: 13.12.2016
- Support dialogue and exchange of best practice in fostering tolerance and mutual respect
 - [call out](#) on 15.09.2016 – Deadline: 05.01.2017
- Inclusion and participation of EU citizens in their host EU country's civic and political life
 - [call out](#) on 17.11.2016 – Deadline: 17.01.2017

EU CALENDAR: UPCOMING EVENTS

European Council and Council of the European Union



8-9 December

JHA Council



15-16 December

European Council

European Parliament



8 December LIBE Committee Meeting



12, 23-24, 30-31 January LIBE Committee Meeting



16-19 January Plenary Session

Other events



15 December [EMN Ireland Conference](#): Responding to the refugee crisis, European Migration Network, Dublin



23-27 January [Integrating minority, migrant & refugee children at European schools & society](#), SHIPCON Limassol Ltd., Cyprus



2-3 March [European Migration Forum](#), European Economic and Social Committee, Brussels (application deadline: 12 December)

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) Reforms of the Common European Asylum System; (3) Children and youth on the move, and (4) Mobile EU citizens' access to rights and covers the period from 6 October 2016 to 5 December 2016. 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 (m.funk@epc.eu, f.mcnamara@epc.eu, n.rose@epc.eu and y.pascouau@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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