

Policy Update April 2019

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Operation Sophia Reform of the Frontex regulation European Parliament elections

This policy update's Special Focus covers the [extension](#) of Operation Sophia without naval assets, which raises [questions](#) regarding the future of Search and Rescue (SAR) activities in the Mediterranean and has been strongly condemned by [civil society organisations](#). NGO SAR activities continue to be [blocked](#) and migrants are [stranded](#) on boats, barred from docking at European harbours. With the EU further decreasing its involvement in SAR activities and member states unable to share responsibility for [migrants](#), crossing the Mediterranean is likely to become ever more [dangerous](#).

At the same time, the EU is intensifying its relations with [North African countries](#) with the aim of enhancing control over migration. The contentious League of Arab States-EU [summit](#) of late February can be seen as a [recalibration](#) of EU foreign policy towards prioritising migration management in its

relations with non-EU countries. This is controversial among African states, as a leaked [position paper](#) from the African Union on the topic of disembarkation platforms shows.

The EU's increasing focus on migration control and border management also transpires from the [agreement](#) reached on the reform of the European Border and Coast Guard, or Frontex. Measures include a strengthened body of 10,000 border guards as well as an expanded role for Frontex to conduct operations in third countries. [Civil society organisations](#) have expressed concerns about these developments.

In the meantime, the European Parliament elections at the end of May are drawing nearer. In the Closer Look section, the European Council on Refugees and Exiles describes their campaign [#YourVoteOurFuture](#). The campaign aims to mobilise progressive Europeans who are already engaged in the work for and with refugees and migrants.

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SPECIAL FOCUS



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Scaled down Operation Sophia endangers SAR

Asylum Immigration Detention

This Special Focus analyses the extension of Operation Sophia's mandate and how the downscaling of the mission and the discontinuation of naval support affect the situation in the Mediterranean. In light of the ongoing criminalisation of NGOs conducting Search and Rescue (SAR) missions and the increasingly volatile political situation in Libya, the withdrawal of EU naval assets exacerbates the risks already faced by migrants attempting to cross the Mediterranean Sea.

At the end of March, the [EU Council](#) agreed to extend the mandate of EUNAVFOR MED, commonly known as 'Operation Sophia', until September 2019. The official mandate of the operation will continue to be the disruption of the 'business model' of migrant smugglers in the south-central Mediterranean. However, the deployment of naval assets will be suspended for the duration of the extension, a decision which has been criticised by the EU

High Representative for Foreign Affairs, [Federica Mogherini](#). According to the agreement, Operation Sophia will only use air patrols to search and identify vessels. The end of naval support means that the mission will from now on depend on closer collaboration with the Libyan Coast Guard to conduct maritime operations, including SAR. Support to the Libyan Coast Guard will be reinforced through enhanced monitoring and training, as stipulated by the extended mandate. The downscaling of Operation Sophia is the result of the inability of member states to resolve the disagreement over the [ambiguous nature](#) of the mission, which could be seen as an instrument for curbing migration or as a tool for saving lives. Despite its official mandate to deter human trafficking networks, Operation Sophia was [launched](#) in June 2015 following a series of tragic shipwrecks. All ships, including those that operated under the mission, are obliged under international law to respond to emergency calls sent by other vessels and to rescue those in distress at sea. Between 2015 and 2018, [naval operations](#) conducted as part of Operation Sophia reportedly saved more than 49,000 people trying to cross the Mediterranean. Over time, however, member states split over the formal anti-smuggling mandate and the de facto extension of the mission's activities to SAR.

When the new Italian government took office in March 2018, the coalition of states participating in Operation Sophia engaged in an argument over where to disembark those saved and which state should be responsible for rescued migrants applying for asylum. Most migrants saved while Operation Sophia was ongoing, were disembarked in Italy, which, in most cases, was both the nearest port of safety and the rescue centre coordinating SAR activities. Upon taking office, Italy's interior minister, Matteo Salvini, accused the EU of placing an [unfair burden](#) on his country. Italy refused disembarkation unless other member states also started taking in rescued migrants through [a relocation mechanism](#). This is also connected to the inability of member states to agree on a [corrective fairness mechanism](#) to the Dublin regulation and on the [reform](#) of the Common European Asylum System more generally. The [unresolved conflict](#) between participating member states gave way to the [disputed](#) practice of [ad hoc relocation](#) arrangements.

The Operation's naval assets were [crucial](#) for SAR missions. The implications of the downscaling for the safety of those attempting the dangerous sea crossing could be disastrous, especially in the context of the simultaneous criminalisation of NGOs. In this respect, it is [noteworthy](#) that the Italian defence ministry issued a [directive](#) restraining civil rescue operations while negotiations to extend the full mandate of Operation Sophia were falling through. The Italian directive mandates all ships participating in rescue missions to follow the instructions of the competent centre for a given SAR area - [controversially](#), also Libya - and it specifies that rescue ships that do not comply with the regulation will be sanctioned accordingly. The directive produced an immediate effect as the crew of the Italian ship [Mare Jonio](#), which headed towards Lampedusa after rescuing fifty migrants off the coast of Libya, were charged with 'facilitating illegal migration', a criminal act under Italian law.

After the NGO 'Mediterranea' announced in mid-April that Mare Jonio had set sails for a new [rescue mission](#), the Italian government issued a [second directive](#) explicitly [targeting](#) its activities. The criminalisation of humanitarian operations is causing a deterrent effect, as was discussed at the [LIBE Committee](#) meeting of early April 2019. Ships are blocked in [European ports](#) or are stuck in international waters for weeks, as exemplified by the situation of the blockaded rescue ship '[Alan Kurdi](#)'. After Italy refused to disembark all but the [mothers and children](#) on board, the ship of the NGO 'Sea Eye' was stationed for days outside the Maltese territorial waters, and living conditions [became unsustainable](#) for those on board. At long last, the stranded people were able to [disembark](#) in Valletta and were then [relocated](#) from there to Germany, France, Portugal and Luxembourg. Crew members of the

German NGO, however, were denied permission to come ashore, an act that the [organisation](#) considers evidence of the government's intention to further suppress their activities.

Against this background, the suspension of naval missions of Operation Sophia puts the lives of those who attempt to cross the Mediterranean Sea in real danger. The new mandate means that, except for a few civilian ships resisting criminalising and restraining measures, large parts of the Mediterranean Sea will not be monitored by vessels capable of promptly engaging in rescue missions. In view of this, the [Assistant Secretary General](#) for Human Rights of UNHCR has declared that restrictions on life-saving work of humanitarian organisations should be lifted so that they are no longer "obliged to stand by, helplessly, while human beings drown before their eyes". The Council of Europe [Commissioner for Human Rights](#) also issued a statement urging European countries to stop criminalising NGOs that provide humanitarian aid. In spite of such pleas from the international community and the [evidence](#) of acts of intimidation against NGOs, the European Commission has not taken a firm position on the matter.

Instead, the EU is relying ever more strongly on cooperation with the Libyan authorities for monitoring movements across the Mediterranean Sea. Under the Operation's new mandate, EU air patrols should in principle report emergency situations to the Libyan Coast Guard. Due to the recent [escalation of violence](#) in Libya and the [rapidly deteriorating](#) humanitarian situation in the country, however, it remains to be seen if and under what circumstances Operation Sophia will cooperate with Libyan coastal authorities in the future, especially in respect to SAR operations. Upholding human rights standards will continue to be a major challenge, as migrants intercepted by the Libyan coastguard and placed in detention face [grave abuses](#) such as extortion, torture and [sexual violence](#). In light of the political crisis and [military conflict](#), the [UNHCR](#) evacuated several refugees to Niger and called for the [immediate release](#) of detained migrants. It is [reported](#) that migrants still trapped in Libya have been shot at indiscriminately during the clashes. [Evidence](#) is also emerging that detained migrants are being forced to take part in the Libyan armed battle.

In contrast to those who claim that SAR operations constitute a 'pull-factor' for migrants, these reports draw the attention to the weight of '[push factors](#)' from Libya. The incident involving the oil tanker [El Hiblu 1](#), the details of which remain [unclear](#), is a case in point. Some [media](#) reported that migrants rescued by the ship at the end of March forced its captain to change its course towards Europe, which led Italian interior minister [Salvini](#) to describe it as an '[act of piracy](#)'. According to [other sources](#), they threatened to jump off the ship once they realised that they were heading back to Libya. As a result of the incident, a 19-year-old, a 15-year-old and a 16-year-old were accused of '[terrorist activities](#)' in Malta, where the cargo vessel eventually docked. Although the incident is subject to an ongoing [investigation](#), experts have [pointed out](#) that the seizure of the vessel does not constitute an act of piracy under international law and that Malta may not have jurisdiction over the incident. The accusation against the teenagers seems therefore especially worrying, since their actions could be described as an act of [self-defence](#) against the risk of being returned to Libya. In light of the systematic abuses which migrants are subjected to in Libya, the increased support to the Libyan Coast Guard envisaged under the new mandate of Operation Sophia could, [directly or indirectly](#), contribute to human right violations. In this context, the [UN High Commissioner for Human Rights](#) has cautioned that the EU and its member states should "urgently reconsider their operational support to the Libyan Coast Guard". If this call remains unanswered, Operation Sophia may be transformed into an [instrument of refoulement](#) and, as experts have argued, the [member states](#) and the [EU](#) could be held responsible for violating international law. This is a serious risk, considering, as Secretary General of the UN [António Guterres](#) remarked that "no one can argue that Libya is

a safe port of disembarkation” after his visit to detention centres in Tripoli in early April 2019.

The previous mandate of Operation Sophia was neither clear nor [widely supported](#). However, in the present circumstances, the suspension of the operation’s naval support is a reason for [growing concern](#) as it will further weaken the EU’s capacity to save the lives of those migrants who find themselves in an emergency situation. Whilst the number of sea crossings [have decreased](#), the rise in the number of [fatalities](#) recorded in recent months shows that the journey across the Mediterranean is becoming ever [more dangerous](#). The downscaling of Operation Sophia could further increase mortality rates. [Leaked reports](#) obtained by Politico demonstrate that member states are fully aware that their policies are contributing to this trend. The decision reached by member states therefore reinforces the idea that European countries have come to consider it acceptable “to let people die at sea as a deterrence for migration”, as stated by [Médecins Sans Frontières](#).

POLITICAL DEVELOPMENTS



EU-African cooperation on migration

Asylum Immigration Detention

The EU and its member states are intensifying their cooperation with African countries on migration control, which, as NGOs fear, may come at the [expense](#) of migrants’ rights. In the context of Libya, a leaked [Council Presidency note](#) drafted in February detailed how EU support for the Libyan Coast Guard has significantly contributed to reducing migrant arrivals via the Central Mediterranean route. It continues to call for targeted assistance for North African countries “on a much larger scale and over a longer period”, taking into account the “progress achieved in Libya”. The note does not mention the worrying situation of more than [5,000 migrants](#) in [detention centres](#) in Libya, which remains [extremely concerning](#) (see Special Focus).

In parallel, Spain and Morocco reached a new [agreement](#) in February to intensify their cooperation on migration, allowing Spanish sea rescue services to take back some migrants to Moroccan ports. The agreement applies to migrants who are [intercepted](#) during missions assisting the Moroccan coast guard in Morocco’s territorial waters, and where a Moroccan harbour is the nearest port of safety. The strengthened role of the Moroccan Coast Guard goes hand in hand with the EU’s approval, in late 2018, of [EUR 140 million](#) for Moroccan border management activities. It also comes as a reaction to a [shift](#) in migration routes to the Western Mediterranean. Meanwhile, however, civil society organisations have stressed that migrants are held under [deplorable conditions](#) in detention centres and are unable to assert their [human rights](#). In addition, [migration experts](#) have questioned whether

cooperation between the EU and Morocco will actually be effective in reducing the number of migrants on this route.

In addition, cooperation between European and African countries on the topic of migration was also the central theme of the first [summit](#) between the EU and League of Arab States (LAS), which took place on 24-25 February in Egypt. The meeting and its subsequent [Sharm El-Sheikh declaration](#) included a [focus](#) on tackling so-called “irregular migration”, smuggling and trafficking networks, and cooperation on border control. The summit was hailed as a new step in EU-Arab relations by the [European Council](#) and the [European Parliament](#) at a time of intensified talks on migration between the EU and North African countries. Commentators have assessed the summit as part of a [recalibration](#) of EU [foreign policy](#) towards [prioritising](#) migration management in its [relations](#) with non-EU countries. The summit was overshadowed by a leaked African Union (AU) [position paper](#), calling on African coastal states to refrain from cooperating with the EU on the so-called “disembarkation platforms”. The [concept](#) was first introduced by the [Council](#) in June 2018 as a way to [disembark](#) rescued migrants outside the EU. The proposal has already been heavily [scrutinised](#) and criticised by [civil society](#) for its [unfeasibility](#) and likely [incompatibility](#) with human right safeguards. Several [African states](#) also rejected the idea during the AU summit in July 2018. The leaked position paper reiterates these earlier concerns and reportedly raises concerns that the platforms would establish “de facto detention centres” in Africa.

The third anniversary of the EU-Turkey Deal

Asylum

Children and Youth

Three years after its conclusion, the [EU-Turkey Statement](#) continues to be a topic of debate. The agreement, struck in March 2016, was meant to [curb migration movements](#) into Greece and the wider Schengen area. Its main premise lies in returning all so-called “irregular migrants” from the Greek islands back to Turkey and, for every Syrian returned to Turkey, resettling another Syrian to an EU member state. Over the years, this one-to-one mechanism has been heavily criticised, both for factually [preventing access](#) to asylum as well as for its [ineffectiveness](#), as both the [return](#) and [resettlement](#) numbers of refugees remain low.

The Statement has also led to a [containment policy](#) of keeping migrants in so-called “hotspots” on the [Greek islands](#). In March, a [group of 25 NGOs](#) criticised “the endless cycle of overcrowding, substandard living conditions and extremely poor access to services” in the hotspots and urged the Greek government to suspend the restriction of movement on the islands. The organisations also called on European leaders to agree on fair and sustainable arrangements to share the responsibility for asylum seekers arriving in Europe, particularly as Greece experiences an increase in both [asylum applications](#) and [sea arrivals](#). Similarly, [Médecins Sans Frontières](#) (MSF) condemned a grave lack of access to basic health services on the islands, in particular for vulnerable children, women, elderly people and those with chronic health conditions. [Amnesty International](#) also urged member states to transfer people from the Greek islands to the mainland and to other EU countries. According to a leaked report, the European Commission has also voiced [extensive criticism](#) of reception conditions. The chairman of the Commission’s Steering Committee for the implementation of the Statement, [Simon Mordue](#), reportedly called the camp on Samos “a shame for Europe”.

Speaking at a European Policy Centre event in March, ECRE also underlined that the Statement created a [power imbalance](#) and dependence of the EU on Turkey. In March, the [European Parliament](#) voted to suspend accession talks with Turkey to become an EU

member state on the basis of the deteriorating human rights situation in the country, a move that was condemned by the [Turkish government](#). Following the latest meeting of the EU-Turkey Association Council, however, the [European Council](#) underlined its interest in good relations with Turkey as a candidate country and the importance of the EU-Turkey Statement in “bringing irregular migration to a halt”. Yet, [commentators](#) have criticised Turkey’s use of force in preventing migrants from crossing the border to Greece.

The removal of citizenship of suspected terrorists

Mobile EU citizens

Public debate in EU member states has recently turned to the [question](#) of how to deal with citizens that have left Europe to join the Islamic State (IS). Member states are faced with difficult decisions on whether or not to take back citizens of theirs who reached Syria and Iraq to join the terrorist group, raising a number of legal, ethical and practical challenges linked to security and fundamental rights. Moreover, [international pressure](#) is mounting to repatriate such individuals. However, member states consider revoking the citizenship of these persons, raising questions as to the implications for the rights conferred by EU citizenship, including freedom of movement.

Citizenship policies are generally speaking a national competence of EU member states and the deprivation of citizenship falls within the scope of their state sovereignty. Accordingly, Europeans can lose their nationality in a [variety](#) of ways, including for committing acts of disloyalty or treason. In the current context, EU countries are increasingly making use of the possibility to [revoke](#) the citizenship of those who engage in [terrorist activities](#) abroad, thereby preventing their [return](#) to the state territory. A number of member states such as [Germany](#), the [Netherlands](#), [France](#), have been exploring this possibility.

However, international treaties limit state discretion to some extent. Notably, the [European Convention](#) on Human Rights stipulates that individuals cannot be deprived of their right to enter the territory of their state of their nationality. Deprivation of nationality may also concern other rights enshrined in the same Convention, as revoking nationality may lead to torture, inhuman or degrading treatment. Moreover, the 1961 UN [Convention](#) on the Reduction of Statelessness, to which [19 EU member states](#) have acceded, forbids signatories from depriving persons of their nationality if this would make them stateless. In addition, since the acquisition and loss of nationality of an EU member state has implications for [European citizenship](#), EU institutions have also been more closely involved in this matter in recent years. Importantly, the Court of Justice of the EU (CJEU) [ruled](#) that no one is to be deprived arbitrarily of his nationality and that a member state’s decision to withdraw the nationality of one of its citizens must observe the principle of proportionality. Special attention must be paid to the gravity of the offence committed.

Against this background, one case that raised particular attention is that of Shamima Begum, who left the UK at the age of 15 to join IS and has sought to return to the UK. Prior to that, the [Home Secretary](#) revoked her British citizenship on grounds of [public security](#) on the assumption that she would not end up stateless due to her Bangladeshi second nationality. The [Bangladeshi](#) government, however, denied that Ms Begum is a Bangladeshi citizen. Before revoking her citizenship, the UK did not formally indict Ms Begum for any crime. Her case therefore raises questions as to whether the UK respected the principle of proportionality, as specified by the CJEU. Taking into account her current statelessness, it also raises questions as to the UK’s adherence to the 1961 UN Convention. Ms Begum’s family have started [court challenges](#) against the decision to revoke her citizenship. The case is widely discussed by [commentators](#) who argue that the [security rationale](#) behind Begum’s

loss of citizenship is exercised at the expense of her [access to justice](#) and a fair trial. Legal experts have also posited that, while Begum might have a [legal case](#) for Bangladeshi nationality, she is [de facto stateless](#). Others are concerned that her case could further accelerate the development of a [two-tier system of citizenship](#) which [disfavours](#) individuals on the basis of their [ethnic background](#) or [dual nationality](#).

LEGISLATIVE DEVELOPMENTS



Agreement reached on Frontex reform

Asylum

In April, the [European Parliament](#) approved the [political agreement](#) reached with the [Council](#) to reform and strengthen the [European Border and Coast Guard](#), also known as Frontex. Before entering into force, the text needs to be formally approved by the Council as well. The [agreed measures](#) include a new standing corps, starting with 5,000 operational staff in 2021 and becoming fully operational at 10,000 staff by 2027, which is in line with the [Council's](#) negotiating [position](#). Moreover, it was agreed that Frontex should support return procedures in member states and cooperate more closely with the EU Asylum Agency, EASO, to this end. Frontex will also become more involved in cooperation with third countries beyond the EU's immediate neighbourhood, in particular by concluding status agreements with third countries. These would allow Frontex to deploy border management teams and conduct operations on the territory of third countries. The proposal's initial provision to grant Frontex the power to launch return interventions in third countries was deleted, as proposed by [NGOs](#). The agreement was reached relatively swiftly, taking into account member states' initial [disagreement](#) on the [roll-out](#) and size of the corps, and sovereignty concerns about [centralising decision-making power](#) with the Commission.

[Civil society organisations](#) have expressed their concerns about the agreement and pointed in particular to the growing size of the agency and the lack of human rights safeguards. [Commentators](#) similarly fear that the agreement could lead to a weakening of [protection standards](#), as asylum claims could increasingly be assessed by third countries not bound by EU law. This [strategy](#) of externalisation has also been criticised for placing [responsibility](#) on third countries to contain migration. [ECRE](#) has raised doubts as to whether the new measures envisaged by the agreement will contribute to preventing, identifying and remedying potential human rights violations, especially since NGOs' proposals for revisions have not been fully incorporated into the agreement. Similar concerns were also [raised by](#)

NGOs during the [Frontex Consultative Forum on Fundamental Rights](#) in March. The Forum's [annual report](#) mentions several issues of concern, including in relation to the inadequacy of the serious incident reporting (SIR) mechanism, and the mistreatment and [abuse of migrants](#) at the Greek-Turkish border. Moreover, instances of [collective expulsion](#) from Croatia to Serbia and Bosnia Herzegovina were highlighted alongside the sub-standard conditions in [reception centres](#) in those countries. The annual report also draws attention to the fact that the fundamental rights office of Frontex is understaffed and that its independence is at risk, jeopardising the agency's fundamental rights obligations.

Coordination of social security systems

Mobile EU citizens

The coordination of national social security systems is a target area of the EU's [employment, social affairs and inclusion](#) policies. Since 2016, [negotiations](#) have been ongoing with a view to reforming the [Modernised Coordination Rules](#). These rules came into force in 2010 and are aimed at ensuring equal access to social security for mobile EU citizens across the Union as well as a fair sharing of the costs between member states. The main objective of the current revisions is to further streamline coordination between the member states whilst simultaneously combating social security fraud. In March, the European Parliament, the Council and the European Commission reached a [provisional agreement](#), including a standardised overview of long-term care benefits, as well as entitlement and identification criteria. Moreover, the agreement encompassed new rules determining a company's place of establishment in relation to [posted workers](#). Lastly, it introduced changes concerning the export and payout of unemployment benefits. However, and despite this consensus reached during the trilogues, the provisional agreement was rejected by [Coreper](#) ten days later due to a [disagreement](#) between the member states. This makes it unlikely that the file will be completed before the end of the Romanian Council Presidency in June. In a last attempt to save the progress that has been made in the previous months the Parliament voted to put the file back on the [plenary agenda](#) of 17-18 April. However, this decision was later revoked by a [vote](#) in Parliament requested by the ECR group. Therefore the first reading on this piece of legislation will now be handed over to the next Parliament.

As noted by [different commentators](#), disagreement between member states on the coordination of unemployment benefits proved to be the sticking point during the negotiation process. First, the provisional agreement included a longer time period (six months), during which unemployment benefits could be exported from the country of former employment to another member state. Second, it assigned the responsibility for paying unemployment benefits of both residing as well as frontier workers to the country of former employment, rather than the country of residence. On the one hand, countries such as [the Netherlands](#) and [Belgium](#) oppose the new rule package, fearing that the unemployment benefit measures would lead them to bear a significant additional cost for workers formerly employed in their country. On the other hand, countries such as France and [Romania](#) support the new rules package, as they host a substantial number of frontier workers that reside in their territories without being employed there. The new provisions would take away a financial burden for these countries. [Unedic](#), the French agency responsible for unemployment benefits, estimated that it would gain about €550 million to €610 million extra in savings.

At EU level, the provisionally agreed package originally met with positive reactions. [SOLIDAR](#) in particular valued the new measures concerning improved access to health care, regardless of an individual's employment status. MEP [Jean Lambert](#) lauded the new provision maintaining family benefits for dispersed families. The subsequent delay in

adopting the reforms, accordingly, resulted in general disappointment. EP rapporteur for the file [Guillaume Balas](#) of the S&D group expressed his frustration and urged member states “to assume their responsibilities towards the 500 million European citizens”. The European Trade Union Congress ([ETUC](#)) argued that member states had failed to protect the interest of their own citizens.

Legal Migration Fitness Check

Inclusion

At the end of March, the [Commission](#) adopted the Fitness Check on Legal Migration, with the aim of evaluating existing EU legislation in this field. The Fitness Check had started in 2016 and was supported by [consultations](#) with both the public and key stakeholders in member states, the European institutions and [non-governmental organisations](#) and [networks](#). It covers seven pieces of EU legislation on legal migration, including the Family Reunification Directive, the Long-Term Residents Directive and the EU Blue Card Directive. The [Fitness Check](#) found that, while national systems for legal migration were brought into line to some extent, a degree of incoherence between legal migration directives prevails and is exacerbated by different national implementation choices. Moreover, it presented mixed results in terms of the effectiveness of the legal migration acquis. The fitness check also made note of a generally positive impact on the level of rights of third country nationals and on the protection of family life. However, the integration of third country nationals and the prevention of labour exploitation were found to be lacking. The Commission is now holding further consultations and welcomes feedback from civil society organisations.

SELECTED ECJ CASE LAW & LEGAL ACTIONS



Asylum

Mobile EU citizens

Children and Youth

Case [C-163/17](#) Jawo and Joined Cases [C-297/17](#), [C-318/17](#) Ibrahim, [C-319/17](#) Sharqawi and Others and [C-438/17](#) Magamadov, 19 March 2019

The Jawo case concerned the expulsion of an asylum seeker under the Dublin Regulation. After lodging an application for asylum in Italy, Mr Jawo submitted another application in Germany. He appealed the decision to return him to Italy, the state normally responsible for his application, claiming that living conditions there would lead to a violation of his human rights. In this context, the CJEU was asked to clarify if the expulsion of an asylum seeker to another member state is inadmissible if it exposed him/her to a substantial risk of inhuman or degrading treatment. The case was combined with the joined cases of Ibrahim, Sharqawi

and Others, and Magamadov, where the admissibility of a removal was questioned by beneficiaries of subsidiary protection on the same grounds. In its ruling, the Court stressed the importance of the principle of mutual trust which requires member states to presume that all other members comply with their human rights obligations. However, it also added that, in a situation where member states experience systemic deficiencies, there may be a risk that asylum seekers and beneficiaries of international protection are treated in a manner which is incompatible with their human rights. This finding, which is generally consistent with the Court's landmark [N.S. ruling](#), is especially relevant given recent [reports](#) revealing that Dublin returnees continue to be at serious risk of material destitution. In Jawo, however, and different from the earlier N.S. ruling, the CJEU also specified that such deficiencies would only amount to inhuman or degrading treatment when they are particularly severe, for instance where the person concerned finds himself in a situation of extreme material poverty that does not allow him to meet his most basic needs. Given this high bar, [commentators](#) have warned that the judgment could clear the way for states to send back refugees to EU countries with poor living conditions. The CJEU nevertheless emphasised that, if a decision to transfer is challenged, national courts are obliged to examine in detail the circumstances of the case to establish whether the person concerned might not end up being subjected to degrading treatment. The [same obligation](#) also applies, as in the cases of Ibrahim and Others, and Magamadov, to those who already benefit from protection and subsequently file an asylum application in a second member state.

Case [C-221/17](#) Tjebbes and Others v Minister van Buitenlandse Zaken, 12 March 2019

Tjebbes concerned the situation of four Dutch nationals who also possessed the nationality of a non-EU country. In line with Dutch citizenship rules, they were faced with the loss of their Dutch nationality after having resided outside of the Netherlands and the EU for a period of 10 years or more. In this context, questions were raised before the EU Court of Justice on whether the Dutch citizenship rules at issue were compatible with EU Treaty provisions on EU citizenship, given that the loss of Dutch nationality entailed a concurrent loss of EU citizenship. The Court considered that the Dutch criterion of an uninterrupted period of 10 years outside the EU as a ground for losing citizenship was in principle legitimate, and therefore not precluded under EU law. However, those rules would be incompatible with EU law if they would not permit, for each person concerned, an individual examination of the consequences of that loss. The Court highlighted several elements to be considered in the context of such examinations. First, due regard was to be had for the consequences of such a loss on the development of a person's family and professional life. In this context, the rights guaranteed by the EU [Charter of Fundamental Rights](#) were of relevance, particularly the right to family life and the best interests of the child. Furthermore, ensuing limitations on the exercise to free movement rights as well as the impossibility of enjoying consular protection under Article 20(2) TFEU would need to be taken into account as well. This judgment follows up on earlier CJEU case law on the interaction between national citizenship law and Treaty provisions on EU citizenship, particularly the 2010 [Rottmann](#) ruling. Tjebbes generally expands on Rottmann by [re-confirming](#) that national discretion to regulate the loss of nationality is [limited](#) by minimum standards and requirements attaching to EU citizenship.

Case [C-129/18](#) SM v Entry Clearance Officer, UK Visa Section, 26 March 2019

This case concerned an application for entry clearance for a child, SM, placed in Algeria under the Islamic kafala which, broadly speaking, constitutes a guardianship system. The application was made by two spouses of French nationality resident in the United Kingdom. The Entry Clearance Officer rejected the application on the ground that the kafala cannot be recognised as adoption. After several unsuccessful appeals, the case reached the UK

Supreme Court. In its reference to the CJEU, the British apex court asked whether a child who is under a kafala guardianship arrangement with an EU citizen classifies as 'direct descendant' for the purpose of the '[Citizens' Rights Directive](#)'. If so, the child would enjoy an automatic right of entry and residence in the UK. The CJEU found that the kafala system does not create a parent-child relationship and that the child did not, therefore, qualify as a direct descendant. Unlike adoption, a child under kafala does not become the guardian's heir. Algerian law itself does not equate kafala to adoption, the latter being prohibited in [Islamic law](#). Nevertheless, the CJEU did hold that a child under a legal guardianship system such as the kafala falls under the definition of 'other family members' referred to in the Directive. As such, member states must give a child placed under kafala access to facilitated entry and residence, subject to a balanced and reasonable assessment of the circumstances of the case. Where the bond between the child and the guardian(s) is genuine, the Court maintained, respect for family life and the protection of a child's best interests demand that the right of entry and residence is granted.

Other relevant case law

Case [C-635/17](#) E. v Staatssecretaris van Veiligheid en Justitie, 13 March 2019

Case [C-557/17](#) Staatssecretaris van Veiligheid en Justitie v Y.Z. and Others, 14 March 2019

Case [C-372/18](#) Ministre de l'Action v Mr and Mrs Raymond Dreyer, 14 March 2019

Case [C-444/17](#) Préfet des Pyrénées-Orientales v Abdelaziz Arib, 19 March 2019

Case [C-483/17](#), Neculai Tarola v Minister for Social Protection, 11 April 2019

A CLOSER LOOK FROM...



The #YourVoteOurFuture Campaign

Inclusion Asylum

By Villads Zahle, European Council on Refugees and Exiles ([ECRE](#))

The key challenge for anyone who opposes the current political meltdown on migration and asylum policies is the fact that the European debate is derailed by misconceptions. Its rationale is a self-feeding circle of myths: the number of migrants and refugees arriving in Europe constitute a serious crisis! European populations are extremely worried! Politicians at EU and national level are forced to prevent access! Any measure can be justified... Because we are in a crisis!

By allowing the populist far-right to frame the debate more or less unchallenged, defeatist European politicians have turned a perfectly manageable situation into a full-blown and self-inflicted political crisis that now functions as a self-fulfilling prophecy. The consequences are visible along the Eastern and Southern European borders, on the Mediterranean, in Libya and in Europe, where EU solidarity and cooperation is seriously challenged, where a race to the bottom rages across member states, and deportations to conflict areas are accepted. This is of course not a crisis that can be solved in a single campaign but the European Parliament (EP) elections nonetheless provide a potential for change, and we at ECRE believed that we had to act.

We are doing so on two levels, with two campaigns running simultaneously aimed at two different target audiences: one the one hand, we devised an advocacy campaign with the intention to directly influence the political manifestos of the EP groups and political parties at the national level, mobilising the ECRE membership and assisting them in their respective countries. On the other hand, we launched a public campaign on social media with the hashtag #YourVoteOurFuture featuring three [key messages](#): 1. We are the majority: [public opinion studies](#) across Europe consistently reveal that hostility towards migrants and refugees is a minority phenomenon; 2. We can win: recent [polls](#) suggest that it is possible to mobilise more Europeans to vote and have a parliament pushing for policies that are more in tune with the values of the majority; 3. A win will change policies: the European Parliament has the power to provide change and the history to prove it.

We saw two main challenges related to the distribution and impact of those messages: the dilemma that many on the progressive left are sceptical towards the EU as an institution and therefore less likely to vote. And the paradox that the people of refugee and migrant background, while used as scapegoats and targeted by harsh policies, are rarely heard in the debate. However, the impressive counteractions since the defining year of 2015-16 from 'old' and 'new Europeans' working together at grassroot level had already proved extremely potent. The voices delivering the campaign messages of the #YourVoteOurFuture campaign belong to refugee advocates and refugee-led organisations. The target audience are the progressive Europeans who are already engaged in the work for and with refugees and migrants. It all came together with the support for a workshop prior to the launch of the campaign in early February, when a campaign coordination group was founded with ECRE and campaign partners from the membership and beyond. The campaign [material](#) features individual refugee advocates as well as campaign statements urging Europeans to "Vote for a Europe" that is open, progressive and respectful – the Europe representing a strong and optimistic alternative to the far-right dystopia. A Europe worth voting for!

FACTS & FIGURES

EU member states granted citizenship to over 825.000 individuals in 2017.

Source: Eurostat, March 2019.

UNHCR statistics on arrivals

Asylum

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

- 13,540 sea arrivals have been recorded since the beginning of the year. 647 have arrived in Italy, while 6,313 have arrived in Greece and 6,318 have arrived in Spain;
- So far, an estimated 402 people have been reported dead or missing in 2019;
- In Italy, the majority of refugees come from Tunisia, Algeria and Iraq, while more than half of all refugees arriving in Greece originate from Afghanistan and Iraq. In Spain, the majority of refugees come from Guinea, Morocco and Mali.

Relevant reports

Asylum Inclusion Immigration Detention

Amnesty International: Pushed to the edge

In this [report](#) Amnesty International focuses on human rights violations committed along the Western Balkans route, specifically in Bosnia and Herzegovina, Croatia and Slovenia. Research was carried out between June 2018 and January 2019. At the Croatian-Bosnia and Herzegovinian border both systemic and deliberate push-backs as well as collective expulsions, sometimes accompanied with violence and intimidation, were found to be occurring regularly. The report calls on the EU leadership to take measures to prevent a new humanitarian crisis and on member states to stop collective expulsions.

OECD: Building an EU Talent Pool: A New Approach to Migration Management for Europe

This [report](#) provides the results of OECD research on labour migration policies within the EU. It offers an overview of the strategies used to attract and recruit skilled third country nationals to the EU, as well as the hurdles they face, including frictions and imperfections in the international job matching process.

EPIM: Mainstreamed or overlooked? Migrant inclusion and social cohesion in the European Social Fund

The next long-term EU budget (MFF) includes a proposal to replace the current European Social Fund (ESF). [This study](#) evaluates both issues and good practices related to the current ESF, in order to identify what added value the new European Social Fund plus (ESF+) could potentially hold for migrant inclusion and social cohesion.

EU Funding opportunities

Inclusion Asylum Children and Youth

Calls for proposals - EU funding

- [REC-RCHI-PROF-AG-2019](#): Call for proposals on capacity-building in the area of rights of the child and child-friendly justice
 - o Call out on 15.01.2019 – Deadline: 14.05.2019
- [REC-RDAP-GBV-AG-2019](#): Call for proposals to prevent and combat all forms of violence against children, young people and women
 - o Call out on 15.01.2019 – Deadline: 13.06.2019
- [REC-RDIS-DISC-AG-2019](#): Call for proposals to promote the effective implementation of the principle of non-discrimination

o Call out on 13.12.2018 – Deadline: 20.06.2019

Other opportunities

From Tampere 20 to Tampere 2.0: [Call for Contributions](#); Deadline 10.05.2019

EPIM: [A Future for Migrant Children and Youth in Greece](#); Deadline 13.05.2019

Forced Migration Review: [Call for Contributions](#); Deadline 17.06.2019

EU CALENDAR: UPCOMING EVENTS

European Council and Council of the European Union



9 May

European Council - informal meeting in Sibiu



6-7 June

JHA Council

European Parliament



23-26 May

European Parliament Elections

Other events



2 May

[Implementation of the Global Compact for Safe, Orderly and Regular Migration](#), the European Economic and Social Committee



4-5 May

[European Summit of Refugees and Migrants](#), Global Refugee-Led Network



7 May

[Europe's Turning Point on Migration? Politics, Policy and Predictions Ahead of the 2019 Elections](#), Migration Policy Centre



23-24 May

[Migration between Africa and Europe: Knowledge Production, Attitudes, and Governance](#), Migration Policy Centre



26-28 June

[2019 World Conference on Statelessness and Inclusion](#)



1-12 July

[Summer School on EU Immigration and Asylum Law](#), Odysseus



3-5 July

[NGO consultations](#), UNHCR

This document provides a focused analysis of recent EU level policy-making, legislation and jurisprudence relevant to EPIM's sub-funds on (1) Immigration detention; (2) Reforming the European Asylum System; (3) Children and Youth on the Move; (4) Mobile EU citizens and (5) Building Inclusive European Societies and covers the period from 25 February to 24 April 2019. We kindly ask the readers to keep in mind that the present Policy Update is composed of a selection of documents and does not claim to be exhaustive.

Should you, as representatives from EPIM's Partner Foundations or EPIM-supported organisations, have questions related to the analysis provided in this document or on EU developments in the field of migration and integration in general, you are invited to contact the authors (k.bamberg@epc.eu, ah.neidhardt@epc.eu, m.desomer@epc.eu, i.vanbrouwershaven@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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