

# Policy Update May 2020

Olivia Sundberg Diez, Alberto Neidhardt, Marie De Somer,  
Helena Hahn, European Policy Centre



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## Operation Irimi      Migration and asylum during COVID-19      Conditions in Greece

This Policy Update examines the many implications of the COVID-19 outbreak for migration, mobility and [asylum](#) in Europe. The Special Focus highlights the obstacles that have ensued to the right to asylum, including restrictions on access to [EU territory](#) and [asylum procedures](#). It further discusses the increased [health risks](#) faced by asylum seekers and other migrants due to their precarious living conditions, as well as the renewed focus on the contributions of [migrant workers](#).

The humanitarian situation in Greece has worsened following [tensions](#) at the [border](#) with Turkey and the spread of [COVID-19](#). These conditions and the policies aimed at addressing them are discussed in the Political Updates section. Further sections discuss the impact of the COVID-19 pandemic on internal mobility within the EU, and on migrants' integration and education prospects in Europe.

A further section considers the latest developments around the European Commission's upcoming New Pact on Migration and Asylum. The [Pact](#) was expected this spring but has been [delayed](#) due to the pandemic. Nevertheless, leaked [position papers](#) of member states provide some insight into the direction of the discussions to come.

This Update also discusses the launch of [Operation Irimi](#) in the Central Mediterranean. Concerns have been expressed about its lack of an explicit [search and rescue](#) (SAR) mandate and its mission to support the Libyan Coast Guard (LCG). The Case Law section looks into the [Court of Justice's](#) ruling condemning Hungary, Poland and the Czech Republic for failing to fulfil their relocation obligations.

In the Closer Look section, the [Greek Forum of Refugees](#) highlights its work to empower refugees and migrants throughout the COVID-19 pandemic.

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## SPECIAL FOCUS



## Impact of COVID-19 on migrants across Europe

Asylum Immigration Detention Mobile EU citizens Inclusion

The COVID-19 pandemic has had profound impacts on migration and asylum in Europe. The World Health Organization declared Europe the [epicentre](#) of the pandemic on 13 March. By 17 March, all European countries had at least one confirmed case. Since then, EU member states have responded with significant restrictions on mobility, as discussed further in the Political Developments section. This Special Focus looks at the widespread implications that the pandemic and subsequent policy responses have had for asylum seekers and other migrants in Europe. It begins by highlighting new obstacles for the right to asylum across the EU. A second part considers the health and other risks posed by many migrants' precarious living conditions, including in camps, reception centres and detention. In a final section, this Special Focus discusses the renewed attention and regularisation prospects for migrant workers.

Firstly, the ability for people to [enter](#) the EU and seek [asylum](#) was compromised as the COVID-19 pandemic unfolded. Following a proposal by [Commission President](#) von der Leyen to introduce a temporary restriction on non-essential travel to the EU, the [European Council](#) ratified the closure of the external borders on [17 March](#). The Commission later invited states to extend the ban beyond the initial 30 days, first until [15 May](#), and then until [15 June](#). The

Commission issued [guidelines](#) to member states on how to implement the entry ban, stressing that persons in need of international protection should be exempted and the principle of non-refoulement upheld. [UNHCR](#), the EU [Agency for Fundamental Rights](#) (FRA) and several [experts](#) echoed these calls. [UNHCR](#) further stressed that measures like health screenings, testing and quarantining could address health risks without denying entry to asylum seekers. Preventing entry violates international law while potentially contributing to the spread of the disease by sending asylum seekers into 'orbit', in search of a safe state.

These standards were not always reflected in practice. While over [20 countries](#) in Europe implemented exemptions from entry bans for asylum seekers, others refused their entry and conducted pushbacks. On 1 March, [Hungary](#) suspended access to border transit areas for asylum seekers indefinitely, citing public health reasons. [Austria](#)'s Interior Ministry issued a decree stating that asylum seekers would be denied entry unless they could present a health certificate, prompting concern from [NGOs](#) and [legal experts](#). On 20 March, [Cyprus](#) prevented a boat holding [175 Syrians](#) from entering the country. They finally landed on the Turkish territory of the island. Despite testing negative for COVID-19, they spent weeks in [detention](#) before being forcibly returned to [Turkey](#).

Further concerns relate to [SAR](#) operations in the [Mediterranean](#). In early April, [Malta](#) and [Italy](#) declared their ports unsafe for migrants for the duration of the coronavirus emergency and refused to rescue people at sea. Several [ships](#) that had rescued people – including the [Alan Kurdi](#), the [Aita Mari](#), and the [Marina](#) cargo vessel – were stranded for [several days](#) at sea while Malta and Italy refused entry. The migrants on board those three ships were eventually transferred to [Italian passenger ships](#) for a two-week quarantine period and are expected to be relocated to other member states. Italy subsequently impounded the [Alan Kurdi](#) and [Aita Mari](#) ships. Malta similarly transferred another [160](#) people rescued by its Armed Forces to two [ferries docked](#) outside Maltese territorial waters, waiting for other [countries](#) to commit to relocating them. [Human Rights Watch](#), [MSF](#), local [civil society organisations](#) and [politicians](#) all warned that the COVID-19 pandemic does not justify evading responsibilities under international law. [IOM](#), [UNHCR](#) and the Council of Europe ([CoE](#))'s Human Rights Commissioner stressed that a blanket denial of entry is disproportionate and called on states to ensure [safe disembarkation](#). The [European Commission](#), however, declined to comment on the legality of Italy and Malta's port closures.

Moreover, Malta was accused of coordinating multiple [pushbacks](#) to Libya from its SAR zone in [March](#) and [April](#), and of actively [sabotaging](#) migrant vessels. The most controversial case concerned the return of [56 people](#) to Libya after six days at sea, during which [12 migrants](#) died or went missing. As emerged in the following weeks, Maltese [authorities](#) had coordinated the [pushback](#) and commissioned private [fishing boats](#) to return people to Libya. These developments took place as the humanitarian [crisis](#) worsened in [Libya](#), with [detained migrants](#) especially at risk of COVID-19 outbreaks, as discussed further in later sections.

Meanwhile, asylum seekers already in the EU faced numerous obstacles to accessing [asylum](#) in several countries, including, in some cases, the full suspension of asylum procedures. On 16 April, the Commission issued [guidance](#) on the implementation of EU rules on asylum, returns and resettlement. It stressed that the registration and processing of asylum applications should continue; interviews should be held virtually where possible and omitted if necessary.

Implementation of this guidance varied. Several [states](#) maintained the (pre)registration of asylum seekers, such as Austria, Germany, Ireland and Sweden. However, [questions](#) were raised regarding how accessible these registration processes were in practice. [Some](#) countries implemented online asylum procedures and conducted interviews virtually or behind glass panels. Nevertheless, in others, it became temporarily impossible to apply for asylum, such as [Greece](#), [Hungary](#), [Spain](#), [Belgium](#) and [the Netherlands](#). [Experts](#) warned that the inability to access the asylum procedure left individuals exceedingly vulnerable and restricted their access to basic services at a time when they were most needed. [NGOs](#) in [Belgium](#), where asylum seekers could no longer access reception centres and no emergency

shelter was provided, warned that leaving people on the street was counterproductive to public health and social distancing requirements. [Analysts](#) also noted that these obstacles and delays would swell already substantial asylum backlogs across Europe, where more than 800,000 applications were pending before the start of the pandemic.

Secondly, [international organisations](#) and [NGOs](#) raised the alarm that the precarious living conditions of asylum seekers placed them disproportionately at risk of the virus. Crowded reception centres where social distancing is impossible remain the norm across Europe. [Experts](#) highlighted that states' failure to develop preventive measures, such as maintaining a buffer reception capacity, has left their asylum systems ill-prepared to handle COVID-19. The most concerning situation in this context is in Greece, where notoriously overcrowded refugee [camps](#) have long raised [fears](#) of COVID-19 outbreaks. As discussed in the Political Developments section below, such a spread could have [devastating](#) consequences. Similarly, in France, [NGOs](#) warned that asylum seekers in Calais, Dunkirk and the outskirts of [Paris](#) are particularly [at risk](#). Fearing an upcoming [clearing](#) of the camps, many have attempted to cross the [English Channel](#) into the [UK](#). Transfers to closed facilities [began](#) in April, as two asylum seekers tested [positive](#) for COVID-19. In [Italy](#), calls were made to improve protections for thousands of [migrants](#) in informal camps, [particularly](#) in [Ventimiglia](#). Asylum seekers who are [excluded](#) from reception centres under the country's [Security Decree](#), which reserves access to such centres for refugees and minors only, face similar risks.

Across Europe, numerous [facilities](#) had to be quarantined following positive cases of COVID-19, including in [Portugal](#), [Austria](#), [Germany](#), [Greece](#) and [Malta](#). In multiple cases, the lockdown measures and poor conditions were met with [protests](#) and [hunger strikes](#). Furthermore, [migrants](#) in locked-down [centres](#) warned that [protection](#) was insufficient, and those who tested positive were not being isolated. In Spain, over 1,650 migrants were kept in a reception centre in [Melilla](#) that was at 214% capacity. Despite a [hunger strike](#) in a second centre in Ceuta, the government rejected calls from [UNHCR](#) and [several NGOs](#) to urgently transfer all migrants from centres in these two enclaves to the mainland.

Migrants in detention are especially [vulnerable](#). The risk of COVID-19 infecting people in detention is heightened by the congested space of detention facilities, limited hygiene and physical distancing measures, detainees' often already compromised pre-existing health, and the [constant flow](#) of staff and new arrivals. Furthermore, in many cases, keeping people in confinement may not be permissible, as pre-return detention is only lawful in EU law as long as there is a realistic prospect of return. Given the border closures and restrictions on air travel, returns from Europe to third countries as well as under the Dublin Regulation have essentially [halted](#), with [some exceptions](#). On these grounds, [NGOs](#), [national ombudsmen](#), and [lawyers' associations](#) across [Europe](#) called for the [release](#) of people from immigration [detention](#) wherever possible and a moratorium on its future use. [UN agencies](#) and the [Council of Europe](#) echoed this recommendation. However, the [European Commission's guidance](#) from 16 April took a more restrictive view. It stated that return procedures "should continue as far as possible". It also called for continued detention to be evaluated case by case, as temporary travel restrictions do not necessarily mean that there is no reasonable prospect of removal.

Several [countries](#) have released migrants from detention, including [Belgium](#), [the Netherlands](#) and the [UK](#), although many remain in confinement. [Spain](#) was among the first countries to begin releasing detainees and, by early May, successfully vacated all its migrant detention centres. In other countries, such as [France](#) and [Italy](#), there were only slow, [small-scale](#) reductions in the detained population. UN agencies, [academics](#) and human rights advocates urged states to take this [opportunity](#) to [pivot away](#) from the practice of immigration detention beyond COVID-19 and towards [engagement-based alternatives](#).

Thirdly, the COVID-19 pandemic has also shed light on EU economies' [reliance](#) on both European and non-EU [migrant workers](#), including in but [not limited](#) to the [crucial sectors](#) of agriculture, domestic work and healthcare. These areas are facing substantial labour

shortages: COVID-19 placed [healthcare systems](#) under strain, while related travel restrictions hampered the movement of hundreds of thousands of seasonal agricultural [workers](#). Against this background, [calls](#) to [regularise](#) the status of [migrants](#) already in the EU and enable them to work safely have grown, as well as to facilitate the [recruitment](#) of workers from [abroad](#). Several governments have already taken measures to that effect. For a start, [Spain](#), [France](#) and some [German regions](#) have fast-tracked the recognition of refugees' or migrants' medical qualifications to allow them to contribute to the COVID-19 response.

In response to labour shortages in agriculture, the [UK](#) and [Germany](#), among others, organised charter flights for workers from [Eastern Europe](#). [Analysts](#) raised alarm, however, that these workers were not granted sufficient protection against both [COVID-19](#) and exploitative working [conditions](#). In addition, several states expanded asylum seekers' access to the labour market, allowing them to either work in general, as in [Belgium](#), or only in agriculture and for a short period, as in [Germany](#) or [Cyprus](#). Spain and Italy are especially in need of agricultural workers. Both were urged to grant [work permits](#) and [resident status](#) to undocumented migrants to plug urgent [labour gaps](#) and avoid social [marginalisation](#). Commentators stressed that many migrants working in key sectors, especially agriculture, do so [irregularly](#) and with insufficient [rights protections](#). Short of these measures, [Spain](#) passed a decree allowing certain groups of migrants to join the agricultural workforce.

The Italian government took more expansive [measures](#). On 13 May, following [tensions](#) within the ruling coalition, it approved a €55 billion [stimulus package](#) that included the temporary [regularisation](#) of people with expired permits who work in agriculture or domestic work. The new permits could potentially reach as many as [200.000 people](#). They will be valid for six months and may be extended for those with a work contract. The decision was celebrated by migrant rights [groups](#). Nevertheless, some warned that regularisation measures needed to be opened to a [larger part](#) of the undocumented [migrant population](#) and coupled with [longer term protections](#). [Several](#) other [states](#) have taken steps to ensure that migrants within their territory have adequate healthcare access throughout the pandemic, for example, by automatically extending [residence permits](#) during this period. [Portugal](#), among the first to pass such measures, announced on 28 March that it would temporarily grant [residence rights](#) to all migrants and asylum seekers who have residency applications [underway](#). The decision was widely praised by [IOM](#), the [European Commission](#) and [civil society voices](#).

## POLITICAL DEVELOPMENTS



# COVID-19 and border tensions in Greece

Asylum Children and Youth Immigration Detention

Conditions for asylum seekers in Greece have continued to worsen in the context of the escalating tensions at the Greece-Turkey border and the COVID-19 pandemic. In March 2020, four years after the inception of the [EU-Turkey Statement](#), cooperation under the agreement

came into question as Turkey announced that it would cease patrolling its border with Europe. As outlined in the March [Policy Update](#), [1,200 people](#) reached the Aegean Islands, and [13,000 people](#) arrived at Turkey's land border with Greece in the following days. However, the vast majority were prevented from entering, and the number of migrants in [border areas](#) fell throughout March. The situation [de-escalated](#) through EU and German [diplomacy](#) with [Turkey](#), and the latter's decision to close the border on [18 March](#) due to COVID-19. However, [tensions](#) remain [high](#), displaying the [unstable](#) nature of the agreement with Turkey and raising questions over the [future form](#) of cooperation. [Several analysts](#) called for a [substantial revision](#) of the EU-Turkey Statement. Others called for the EU's logic of [devolving](#) responsibility for [migration management](#) to third countries to be [abandoned](#) entirely.

The developments at the border have also led to renewed concerns over Greece's compliance with EU law. Greece faced [heated criticism](#) for its use of [violence](#), [teargas](#) and [pushbacks](#) against migrant crossings, as well as its [decision](#) to [suspend](#) the right to asylum for one month, in [violation](#) of [international law](#). [Refugee Support Aegean](#) condemned the arbitrary detention of migrants arriving in this period in abhorrent conditions, despite the growing risks of a COVID-19 outbreak and the indefinite suspension of returns to Turkey. In May, [forensic evidence](#) suggested that Greek border guards had used live ammunition against people attempting to cross in March, killing one person. Over 100 Members of the [European Parliament](#) (MEPs) called on the European Commission to investigate. The [Commission](#) has drafted a legal assessment of Greece's decision to suspend asylum, but is yet to release it. The EU responded with strong operational support for Greece, including in-kind assistance from member states through the [EU Civil Protection Mechanism](#), and a [€700 million](#) support package. This aims to enable, among others, a [new](#) assisted voluntary return [scheme](#), which would grant €2,000 to migrants on the Greek islands who choose to return voluntarily.

In addition, on 6 March, the [Commission](#) began coordinating the [relocation](#) of unaccompanied and separated children and youth from Greece to other European countries, for which [human rights organisations](#) have long advocated. At least 10 [member states](#) agreed to relocate a total of 1,600 children, yet relocations have been hampered by the [COVID-19](#) pandemic. The [FRA](#), the European Parliament's Civil Liberties, Justice and Home Affairs ([LIBE](#)) Committee, [MSF](#) and other [NGOs](#) all stressed that the risk of COVID-19 spreading in the islands made relocations and evacuations all the more urgent. The first 12 children were relocated to [Luxembourg](#) on 15 April, followed by 47 who arrived in [Germany](#) on 18 April, and 23 in [Switzerland](#) on 16 May. The remaining pledged [relocations](#) have continued to face [significant delays](#). While praising the efforts, [UN agencies](#), [aid groups](#), [NGOs](#) and several [European cities](#) insisted that relocations must be [scaled up](#). [Analysts](#) further stressed that emergency-driven relocations alone would fail to realise solidarity and ensure human health and dignity, calling instead for a permanent [redesign](#) of the Common European Asylum System (CEAS). The evacuation of other vulnerable migrants from the islands to the mainland was also announced but faced similar obstacles. In April, the [Commission](#) stated that 1,000 migrants were being moved from the islands' camps to vacant hotels. In addition, the [Greek government](#) announced that 2,380 vulnerable asylum seekers, including elderly people and those with pre-existing medical conditions, would be transferred from the islands to more suitable accommodation. [Transfers](#) were due to begin on 19 April but became [staggered](#) and [delayed](#) as residents and local authorities opposed the move, sometimes with [violence](#).

In the meantime, the situation in Greece in the face of COVID-19 has become even more [critical](#). Refugee camps across the country were placed on a [lockdown](#) in mid-March that has so far lasted until [late May](#), even as lockdown measures were relaxed for citizens. Throughout April, Greece battled [three different](#) COVID-19 [outbreaks](#) in mainland reception facilities. One of these was in the [Malakasa](#) camp, where asylum seekers arriving in Greece after 1 March had been [transferred](#). [Human Rights Watch](#) warned that not enough was being done to prevent future outbreaks in the camps. Although no COVID-19 cases have been reported inside the islands' larger camps so far, several migrants who had been quarantined

[upon arrival](#) in Lesbos recently tested [positive](#). [Fear](#), [unrest](#) and protests have continued to escalate. In the Vial camp in [Chios](#), a 47-year old asylum seeker died after testing negative for COVID-19. Many residents believed that she died of COVID-19, however, leading to protests and a fire that destroyed much of the facility. [Fires](#) in Samos also left 200 people homeless.

Finally, access to asylum continues to be compromised in Greece. The suspension of asylum applications during March following tensions at the border elapsed at the end of the month. It was replaced by a [general freeze](#) of [activities](#) of the Greek Asylum Service until [15 May](#) due to COVID-19. In addition, the Greek government proposed a [bill](#) in April to amend the recent International Protection Act, which was discussed in previous [Policy Updates](#). The new law was approved by the parliament on [8 May](#), meeting criticism by [UNHCR](#) as well as [local](#) and [international](#) NGOs. Its [measures](#) include limiting appeals and legal aid, and rejecting asylum applicants who lived in a third country for two months without persecution.

## Operation Irini launched without SAR mandate

Asylum Immigration Detention

On 31 March, the European Council [launched](#) the new EU naval mission [Irini](#), replacing Operation Sophia. The mission has the [primary objective](#) of stabilising Libya by halting [arms trafficking](#). To this end, it will surveil the waters off the east coast of Libya with [naval vessels](#) and aerial support. The shared view among [analysts](#) is that the mission appears to be ill-equipped to achieve its aim of bringing stability to the country. [Commentators](#) and [NGOs](#) also voiced strong concerns about the lack of a SAR mandate for Operation Irini, as well as the support it will provide to the LCG. These concerns are examined in turn below.

Instead of promoting peace in Libya, [experts](#) warned that the mission may destabilise the region further, exposing displaced persons to greater risk. The enforcement of the [arms embargo](#) by sea will make it difficult for the UN-recognised government in Libya to maintain its military capacity. The lack of corresponding controls against arms trafficking by land in the territories controlled by opposition forces may hamper efforts to bring about a [ceasefire](#).

The [Danish Refugee Council](#) and other [NGOs](#) have been especially critical of the operation's mandate which, they state, was "carefully designed not to save lives." Due to persistent objections raised by [Italy](#), [Austria and Hungary](#), the mandate of Operation Irini does not officially include the rescue of people at sea. These [states](#) fear that the presence of EU naval vessels could create '[pull factors](#)', encouraging more people to cross the Mediterranean. To secure the three states' support for the mission, the [Council agreement](#) explicitly provides that Operation Irini is to be renewed every four months unless it is found that the deployment of maritime assets "produces a pull effect on migration". However, the notion of [pull factors](#) remains contested. It is not clear what could count as evidence of a pull effect, and whether participating in rescue missions would suffice to justify suspending the mission.

At the launch of Operation Irini, [Josep Borrell](#), High Representative of the Union for Foreign Affairs, declared that the mission's "ships are not patrolling the sea looking for people to be rescued". However, he specified that, should the need arise, the mission will comply with international law and fulfil rescue obligations. [Details](#) about the relocations which would follow have not been disclosed, reflecting the [long-standing failure](#) to put in place a predictable responsibility-sharing mechanism. To help reach an agreement, [Greece](#) reportedly offered its ports as a disembarking point from which rescued migrants would be relocated [voluntarily](#) among other member states. This seems to be at odds with the critical reception situation in the country. In addition, on 8 May, [Malta](#) threatened to veto "spending procedures for disembarkation of migrants". This [move](#) appears to be a reaction to the [lack of relocations](#) of rescued migrants from [Malta](#) to other European countries. In a subsequent press conference, [Borrell](#) downplayed the [tensions](#).

Due to this restricted mandate, it remains to be seen whether ships operating as part of Operation Irini will end up effectively taking part in SAR missions. It is noteworthy that Irini's predecessor, [Operation Sophia](#), also lacked an [explicit mandate](#) to carry out rescue operations. It was officially launched to dismantle smuggling and trafficking networks. However, the previous mission covered the whole Central Mediterranean route, and its naval assets participated in rescue operations in compliance with international law. Operation Sophia [reportedly](#) saved nearly 50,000 people trying to cross the Mediterranean until its naval missions were discontinued due to [tensions](#) among member states over disembarkation and relocation. In contrast with Operation Sophia, Irini has a narrower geographical mandate. It will only operate near the easternmost part of the Libyan coast. [Commentators](#) pointed out that this, too, aims to prevent Irini ships from taking part in rescue operations, since migrant vessels tend to depart from around the western coast.

Although the mission's mandate does not cover SAR, [Operation Irini](#) will support the LCG with "capacity building and training". This has raised [concerns](#) that EU operational support will be used to intercept and take migrants back to Libya, thus increasing risks of [refoulement](#). [Most migrants](#) returned to Libya continue to be placed in [detention centres](#), where they face systematic abuse and increasing [dangers](#) due to the worsening [civil war](#) and [COVID-19](#). [MEPs](#), [experts and activists](#) agree that Libya is not safe for migrants, and that [nobody](#) should be returned there. At the LIBE Committee meeting of 27 April, the [European Commission](#) concurred that Libya is not a place of safety. Against this background, [MEPs](#) demanded that the EU stop training the LCG. [Amnesty International](#) and [legal experts](#) jointly called for the EU to cease [financial support](#) to and [cooperation](#) with the LCG. At the same time, [UNHCR](#) urged the Commission to act to reduce the loss of life at sea by increasing SAR capacity and promoting a predictable disembarkation and redistribution mechanism.

## Schengen and COVID-19

Mobile EU citizens | Asylum

As the COVID-19 pandemic hit Europe, no less than 18 Schengen states reintroduced internal [border controls](#). This happened in a highly [uncoordinated](#) manner. Amongst others, and testifying to the lack of a unified, EU-based approach, different member states referred to different [legal bases](#) to reintroduce controls, leading to a patchwork interpretation of the [Schengen Borders Code](#). As checks were reinstated, vast [queues](#) at borders were observed, hindering the transport of (essential) goods and preventing EU citizens from reaching their homes, or state of residence. In response, the Commission issued a first set of [guidelines](#) on 16 March. In these guidelines, it urged member states to facilitate the entry and transit of EU citizens returning home, and enable the swift transit of goods - particularly essential medical supplies - for instance, by establishing '[green lanes](#)'. In addition, it advanced a [communication](#) that invites member states to temporarily restrict all 'non-essential travel' to the EU. Two weeks later, further [guidelines](#) followed with more detail on how to implement this external travel ban. Both documents exempt several persons from the travel ban's scope. These include EU citizens and their family members, as well as "persons in need of international protection". Nevertheless, [difficulties](#) for asylum seekers to access the territory were registered in several member states, as detailed in the Special Focus.

The internal border controls and related external travel ban have been the subject of strong criticism and debates. For a start, questions have been raised on [whether](#) or [not](#) they are in line with EU law. Similarly, the controls have been the source of debates around whether or not they are a sensible measure to reduce the spread of the virus. [Commentators](#) have, for instance, questioned whether these controls add value if the spread is mostly localised. [Others](#) have highlighted that, particularly in the mitigation phase, these controls are logical



extensions of domestic decisions to limit movement. More generally, what these controls [entail](#) for the future of the EU's [valued](#) free movement area has also been a source of debate.

In that latter respect, and as the number of infected patients has started decreasing in some EU states, uncertainty reigns over whether member states will be able to pull together and coordinate the lifting of internal border checks; or whether, instead, the disorder that marked the controls' reintroduction will be repeated. In its latest [communication](#) on the lifting of internal controls the Commission proposed that, in a first phase, travel restrictions would need to be eased in a coordinated manner between those European areas that present a "comparable epidemiological situation". For this purpose, the European Centre for Disease Prevention and Control will maintain a [map](#) with information on the level of COVID-19 transmissions for different European regions. A key principle advanced by the Commission is that the lifting of controls should take place in a non-discriminatory manner. This means, first, that where free movement restrictions are lifted between regions, this should apply to all EU citizens and residents of the states in question without discrimination on the basis of nationality. Second, there also cannot be any discrimination between regions. Once controls are lifted between certain regions, intra-European travel should also be re-established with all other parts of the Union that present similar epidemiological situations. The creation of limited free-movement [clusters](#) or 'travel bubbles' – such as between [Latvia, Lithuania and Estonia](#) – already appears to be raising [difficulties](#) in this respect.

## Update on the New Pact

### Asylum

The COVID-19 outbreak has forced the [Commission](#) to postpone the publication of the [New Pact](#) on Migration and Asylum, which was expected for the [first quarter](#) of 2020. As documented in this Update, the pandemic also exposed structural weaknesses in European asylum and migration policy. [Experts](#) have called on the Commission to use this delay to draft an ambitious and progressive [reform agenda](#) that is capable of addressing current and future challenges. In the course of an informal videoconference with European interior ministers on 28 April, Home Affairs Commissioner [Ylva Johansson](#) commented that "we are more or less finished with the proposals" to be included in the Pact. However, it is not yet clear when the Pact will be unveiled. The Commission may aim to present it before [Germany](#) takes over the [rotating presidency](#) of the Council of the EU on 1 July, since [reforming](#) the [CEAS](#) constitutes an essential part of the German [programme](#).

Given the risk that a blocking minority may [once again](#) make the adoption of long-awaited reforms impossible, the Commission is unlikely to impose divisive top-down solutions under one '[reform package](#)'. As examined in the previous [EPIM Update](#), the New Pact will instead likely take the form of a [communication](#) outlining an initial roadmap of key policies and measures, accompanied by some concrete reform proposals, including on responsibility-sharing. Before this delay, the Commission was expected to put forward a system of '[mandatory flexible solidarity](#)' to address the shortcomings of the [Dublin system](#). However, in a [joint letter](#) on 9 April, Italy, France, Germany and Spain called on the Commission to introduce a [binding redistribution mechanism](#) for asylum seekers following predetermined allocations. Some states may opt for alternative forms of solidarity instead of relocations, the letter specifies, but this "must remain an exception" and "only for motivated reason". A [non-paper](#) by Cyprus, Greece, Italy and Spain leaked in April also insists on "a mandatory system providing for a fair and rapid distribution of asylum seekers". Crucially, this document specifies that the distribution must take place under all circumstances, "even without an ongoing crisis". [Eastern European states](#) remain opposed to [mandatory relocations](#). It remains to be seen how the Pact will try to avoid another standstill.

The Pact may roll out political initiatives in other areas, including [Schengen](#). The abovementioned [joint letter](#) urges the Commission to take actions to address 'secondary

movements' while preserving the borderless area. The [leaked non-paper](#), in turn, states that "the issue of secondary movement is more complex than what appears". It also argues explicitly against linking Dublin and Schengen.

The New Pact may also cover control-oriented policies, including return and readmission. Noteworthy in this respect is a leaked [discussion paper](#) by the Croatian Presidency of the Council of 27 April that raised the possibility of EU measures concerning so-called "non-removable" irregular migrants. The paper indicates that common EU rules granting them a right to work are being considered.

Interesting discussions around the New Pact also took place in the European Parliament. On 12 May, in view of the upcoming New Pact proposal, the Greens group released a [new paper](#) calling for a fair CEAS that protects the right to seek asylum, instead of punitive measures against irregular cross-border movements. By contrast, the European People's Party published a [paper](#) on 30 April calling for increasing returns and the use of all available tools, including conditionality, to increase third countries' cooperation on readmission.

[Civil society](#) and [experts](#) have repeatedly warned against this approach. [NGOs](#) have invited the Commission to promote a [balanced agenda](#) which covers all pillars of EU asylum and migration policy and accounts for the [increased dangers](#) posed by COVID-19 for vulnerable migrants already in the EU. In the same vein, the CoE's Commissioner for Human Rights, [Dunja Mijatović](#), emphasised the need to ensure access to protection for those trying to reach the EU, while the [LIBE Committee](#) urged the Commission to boost [legal and safe](#) pathways.

## Integration and education during COVID-19

### Children and Youth Inclusion

The COVID-19 pandemic and related lockdown have also affected the integration of migrants across the EU. National governments, local authorities and NGOs have been struggling to support migrants and refugees' [inclusion](#) without in-person meetings. Integration services have been interrupted in [most European countries](#). Some – such as Denmark, Sweden and the Netherlands – have also taken steps to extend [deadlines](#) or relax rules requiring participation in integration courses, to ensure that new arrivals are not penalised for being unable to take part. Efforts have also been made to shift integration [programmes](#) and [initiatives](#) to online formats. However, this has raised concerns over digital inequalities and access for disadvantaged groups, particularly as concerns [education](#).

Migrant [children](#) across Europe, who are especially at risk of facing [obstacles](#) regarding access to education, have been especially affected by school closures. While technology has the [potential](#) to bridge education gaps, for example, by providing translation support, the shift to online learning may disadvantage [vulnerable](#) children. This includes those who lack connectivity or [digital tools](#), are [newly arrived](#), are not [fluent](#) in the local language, or whose [parents](#) lack fluency and cannot teach or assist them. The [Center for Global Development](#) reported that globally only 15 countries were offering radio or television lessons in more than one language. [Children](#) living in [camps](#) or informal settlements in, for example, [Greece](#) or [Bulgaria](#), where educational and group activities have been suspended, are especially impacted. Prolonged periods of school closures could also increase the [dropout rates](#) for migrant children once [schools](#) reopen. In this context, [NGOs](#) and [international organisations](#) have mobilised to continue providing education throughout the pandemic. There have been [widespread calls](#) to employ individualised education plans for non-native students, develop digital literacy lessons for students and parents alike, mobilise funding for [digital resources](#) for families, and foster online communities through peer mentoring. Finally, states have been urged to continue supporting at-risk migrant children who may depend on [free school lunches](#), whose parents may be facing income losses, and who are [not enrolled](#) in school.



## Asylum

### **Joined Cases C-715/17 Commission v Poland, C-718/17 Commission v Hungary, and C-719/17 Commission v Czech Republic, 2 April 2020**

On 2 April, in the joint cases brought by the [Commission](#) against Poland, Hungary and the Czech Republic, the CJEU held that the three states failed to fulfil their obligations under EU law by refusing to comply with the temporary relocation mechanism instituted in 2015. Council Decisions [2015/1601](#) and [2015/1523](#) advanced provisional measures to alleviate Greece and Italy from the pressure they faced as a result of increased arrivals of third-country nationals that year. Despite the Commission's repeated calls, the [three states](#) did not indicate the number of asylum seekers they would receive and failed to implement their pledges. Hungary never communicated the number of applicants for international protection to be relocated. Poland declared that it would receive 100 asylum seekers but failed to implement the transfers. Lastly, the Czech Republic only relocated 12 of the 30 applicants it committed to transfer, and subsequently failed to make further pledges. The three states based their defence on Article 72 [TFEU](#), which establishes that the common asylum policy does not free member states from their responsibility to protect national security and public order. For the CJEU, Article 72 accords "[wide discretion](#)" to national authorities to determine if a third country national to be relocated constitutes a danger for the concerned member state. However, the Court rejected the states' argument, holding that national authorities must prove that derogating from their obligations is necessary to protect public order. The Court explained that the competent authorities must carry out a case-by-case investigation, and provide specific evidence that the asylum seeker to be relocated represents an actual or potential danger. In this case, the Court found that the three countries invoked Article 72 for the sole purpose of being exempt from the mechanism and failed to examine individual cases.

This decision was [long-awaited](#) and generated considerable [media attention](#). Commission President [von der Leyen](#) commented that the ruling may provide "guidance for the future." However, it remains to be seen if it will carry enough weight to convince uncooperative states to share greater responsibility in a spirit of solidarity. In response to the decision, [national authorities](#) of the three states insisted that they have [no obligation](#) to respect "[quota decisions](#)". Hungarian Justice Minister [Judit Varga](#) commented that the "compulsory relocation system of migrants is dead" and this "judgement won't change that." [Legal experts](#) also cautioned that the decision did not fully clarify the conditions under which states can lawfully exercise their [wide discretion](#) to protect public order.

### **Case 564/18, LH v Bevándorlási és Menekültügyi Hivatal, 19 March 2020**

This case concerned the dismissal of an application for international protection made by a

Syrian national in the Hungarian transit zone. The application was rejected without examining the merits of the case, for the mere reason that the applicant transited through Serbia before reaching Hungary. Under Hungarian law, an application is considered inadmissible if the applicant has transited through a 'safe country' that offers a sufficient level of protection. If the dismissal is appealed, national law grants eight days to deliver a final decision. In this preliminary ruling procedure, the CJEU was asked whether Hungary had unlawfully introduced a new ground for non-admissibility which is not provided for in EU law. The Court also considered whether the time limit of eight days is in conformity with the right to an effective remedy. The Court noted that, under the Qualification Directive [2013/32](#), member states can only apply the 'safe country' notion if competent authorities are satisfied that the person seeking international protection will not be exposed to any threat, serious harm or the risk of refoulement. All these conditions must be fulfilled. However, Hungarian law does not require an assessment of the risk of refoulement. In addition, the Directive establishes that there must be a pre-existing connection between the applicant and the third country concerned. In relation to this, the Court found that the simple fact of transiting through a country does not suffice to determine the existence of such a connection. With respect to the second question, EU law does not establish a clear time threshold for reviewing an appeal. However, the Court emphasised that the appeal procedure must enable a full examination of the facts and merits of each individual case. It concluded that the Directive is incompatible with national laws that impose a limit of eight days to review a case, if this period does not guarantee the effectiveness of procedural safeguards.

### Other relevant case law

[Joined Cases C-924/19 PPU and C-925/19 PPU, FMS and Others v Országos Idegenrendészeti Főigazgatóság](#), 14 May 2020

Case [C-830/18](#), Landkreis Südliche Weinstraße v PF and Others, 2 April 2020

Case [C-802/18](#), Caisse pour l'avenir des enfants v FV and GW, 2 April 2020

## A CLOSER LOOK FROM...



Photo: REZA ADIB

## The Greek Forum of Refugees

Inclusion

Asylum

By Yonous Muhammadi, Director, [Greek Forum of Refugees](#)

Although Greece is one of the major gateways for those seeking international protection in Europe, EU authorities and local governments never successfully developed a concrete migration policy for Greece. Unfortunately, this has left the country bereft of any strategic

plan for the integration of refugees and migrants. Previous mechanisms to address migration issues in Greece were the result of emergency measures and not designed to be sustainable. Today, after spending vast amounts of European funds and national resources, the country is still on ground zero. Tens of thousands of people continue to live in Greece in desperate and inhumane conditions, while national authorities have no solid plan to deal with this situation.

The [Greek Forum of Refugees](#) (GFR) is a network of refugee and migrant communities, individuals and professionals working to support and advocate for the rights of asylum seekers, refugees and stateless persons. It started as a self-advocacy initiative by a group of asylum seekers in 2007. It aimed to promote the effective inclusion and participation of refugees and migrants in society as an active group with rights and obligations. The GFR became a formal association in 2010, led by a Board of Directors composed of people of refugee and migrant backgrounds. For years, the GFR has participated constructively in discussions with relevant authorities and organisations on a plethora of issues at the national, European and international level. The axis of the GFR's outputs revolves around tackling stereotypes and negative narratives surrounding migrants. It seeks to raise awareness of refugees and migrants' role as contributors and part of the solution, not just beneficiaries of services.

As a grassroots association led by refugees and migrants, the GFR has direct communication with communities in Greek reception centres. During this crucial period of the COVID-19 outbreak, the GFR supports self-advocacy and self-organising initiatives to support the most vulnerable people affected by the lockdown. The situation is multi-dimensional, and certain aspects remain [invisible](#) to the wider society. Many refugees and migrants lost their jobs because of the lockdown. They have no claim to unemployment and social benefits and so can no longer provide for themselves nor their families. Many people are living in overcrowded rented apartments and struggle to afford even basic expenses. As a result, many among them have found or will soon find themselves on the street.

In this context, the GFR was compelled to take immediate action to concretely support all these 'invisible' cases. Through our [crowdfunding campaign](#), we were able to purchase vouchers and food boxes from supermarkets and distribute them to migrants' homes. This enabled us to simultaneously identify and record the problems faced by these communities, including a lack of medicine, prevention measures or information on COVID-19. So far, we have supported 200 families and individuals. This fund also helps us provide regular information regarding COVID-19 and other issues that may impact asylum seekers and refugees. At the same time, we have expanded our advocacy efforts inside the camps to empower refugees and migrants' voices and raise awareness among the public and policymakers about the atrocious conditions they face. The financial support we receive, including from EPIM, will remain essential for our work over the coming months, as the consequences of the lockdown continue to emerge.

## FACTS & FIGURES

EU member states received 21,200 resettled refugees in 2019.

Source: Eurostat, April 2020.

## UNHCR statistics on arrivals

### Asylum

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

- 18,944 sea arrivals have been recorded since the beginning of the year. 7,659 have arrived in Greece, while 5,300 have arrived in Spain and 4,305 have arrived in Italy;

- So far, an estimated 182 people have been reported dead or missing in 2020;
- In Italy, the majority of refugees come from Bangladesh, Côte d'Ivoire and Sudan, while over two thirds of all refugees arriving in Greece originate from Afghanistan and Syria. In Spain, the majority of refugees arriving by sea come from Algeria, Morocco and Mali.

## Relevant reports

Asylum Inclusion Children and Youth

### **Mercator Dialogue on Asylum and Migration: 2020 Assessment Report - European and African perspectives on asylum and migration policy: Seeking common ground**

This [report](#) studies how EU-Africa relations on migration can be strengthened based on common interests. It highlights concerning trends in the EU's approach to joint migration management, including the use of conditionality to increase readmission cooperation, and outlines the perceptions and effects of this approach in West Africa. Finally, it calls for greater European investment into visible, credible and accessible legal migration pathways.

### **Frontex: Risk Analysis for 2020**

This [annual report](#) by Frontex offers an assessment of the main risks relating to migratory flows. It further considers the impact of the recent European Border and Coast Guard Regulation, which expands the agency's mandate and competences in border management.

### **EU Agency for Fundamental Rights: Children in Migration in 2019**

In this [report](#), the FRA explores challenges to the fundamental rights of children in migration, focusing on arrival in the EU, detention and return. Noting that some EU states receive more children than others, it calls for greater responsibility-sharing within Europe.

### **PICUM: A Worker is a Worker: How to Ensure that Undocumented Migrant Workers Can Access Justice**

Undocumented workers face multiple barriers when defending their labour rights without risking immigration enforcement, including through the criminal justice system or labour inspection authorities. This [report](#) offers a set of recommendations to address this, including closing gaps in labour law coverage and promoting safe reporting policies.

### **European Committee of the Regions: Integration of migrants in middle and small cities and in rural areas in Europe**

This [report](#) explores the actions taken by both cities and rural areas to address the needs of migrants and refugees, as well as develop and implement integration programmes.

## EU Funding opportunities

Asylum Inclusion Children and Youth

### **Calls for proposals - EU funding**

- [EAC/S05/2020](#): Sport as a tool for integration and social inclusion of refugees.
  - o Call out on 28.04.2020 – Deadline: 01.06.2020

- [SU-BES01-2018-2019-2020](#): Human factors, and social, societal, and organisational aspects of border and external security.
  - o Call out on 12.03.2020 – Deadline: 27.08.2020
- [EFC-CIV-2020](#): Civil Society Projects.
  - o Call out on 17.12.2019 – Deadline: 01.09.2020
- [ISFP-2019-AG-THB](#): Trafficking in human beings.
  - o Call out on 30.01.2020 - Deadline: 27.08.2020

### Other opportunities

[EPIM](#): Rolling Call for Proposals on Asylum. Submissions will be reviewed every three months starting on 04.05.2020.

[Lifelong Learning Awards](#): Lifelong Learning for Sustainable Societies. Deadline: 31.08.2020.

## EU CALENDAR: UPCOMING EVENTS

### European Council and Council of the European Union



18-19 June

European Council

### European Parliament



17-18 June, 8-9 July,  
14-17 September

EP Plenary



2, 8 & 24-25 June,  
7 & 13-14 July,  
31 August - 1 September

LIBE Committee Meetings

### Other events



28 May

[European Cities on the Front Line: Advancing migrant inclusion in times of COVID-19](#), IOM (Online)



28 May

[National statuses for migrants in need of protection: Ireland and the EU](#), European Migration Network (Online)



4 June

[Migrant Rights and COVID-19](#), European Policy Centre & Egmont Institute (Online)



25 June

[Launch of the EASO Asylum Report 2020](#), European Asylum Support Office (Online)

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 6 March to 25 May 2020. 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 ([o.sundberg@epc.eu](mailto:o.sundberg@epc.eu), [ah.neidhardt@epc.eu](mailto:ah.neidhardt@epc.eu), [h.hahn@epc.eu](mailto:h.hahn@epc.eu), [m.desomer@epc.eu](mailto:m.desomer@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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