

ReSOMA

RESEARCH SOCIAL
PLATFORM ON MIGRATION
AND ASYLUM

ASK THE EXPERT
POLICY BRIEF

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MIGRATION

Issue analysis & policy considerations





The **Ask the expert policy briefs** are **highly informative tools** proposed in the framework of the ReSOMA project that aim at **facilitating knowledge sharing** and **social capital development**. By reacting to current events and developments that shape the European migration and integration debate during the duration of the project, these policy briefs will provide timely, evidence-based input to public debates as they unfold and feed in the overall process of identifying the unmet needs and defining policy trends.

An overall of 6 policy briefs (2 each for migration, asylum and integration) per year will be sourced and drafted by lead experts from project partners with additional assistance by leading European think-tanks. In addition, the project will access leading expertise for the topic at hand through collaboration with research networks and other EU-funded research projects.

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Setting the policy agenda

The crackdown on migration-support NGOs

The issue

To prevent and combat migrant smuggling is one of the EU priorities within common migration policy. Recently so called Facilitators Package was implemented which includes Directive 2002/90/EC according to which each EU MS is required to implement legislation introducing criminal sanctions against the facilitation of irregular entry, transit and residence, and Framework Decision 2002/946/JHA which reinforced the penal framework by setting out minimum rules for sanctions. Under the implemented law, any person who intentionally assists unauthorized entry, transit, or residence of a non-UE national in the EU, is to be sanctioned unless they are doing so for humanitarian reasons. Despite the fact that EU law allows not to criminalise the facilitation of irregular entry when it is conducted on humanitarian grounds, the Facilitators Package was criticised for its optional character, lack of clarity, coherence with international law and legal certainty. The Facilitation Directive does not provide a definition of the 'humanitarian assistance' concept, leaving considerable discretion to MS. In this context, the danger of criminalisation of humanitarian assistance provided by civil society organisations working with irregular migrants at the MS territory and at the external borders occurred. The tension between the criminalisation of people smuggling and those providing humanitarian assistance is concerned as a by-product of the Facilitators Package be-

cause it enables MS to provide criminal sanctions for a broad range of behaviours including people smuggling on the one side and humanitarian assistance on the other (Carrera et al. 2016). Moreover, this issue is connected to much broader debate related to process of migrants' smuggling and criminalization of migration (Triandafyllidou 2018).

The study commissioned by the European Parliament highlights the tension between criminalizing people smuggling migrants and not those who provide humanitarian assistance to migrants in distress (Carrera et al. 2016:11, see also Allsopp 2016, Provera 2015). The study also finds variation in the way in which the Facilitators package is implemented at the national level. Such a variation bears effect on irregular migrants and those who assist them. Namely, civil society organisations fear sanctions and experience intimidation in their work with irregular migrants. Moreover, as a result of the discretionary implementation of the Facilitators Package in the national legislation and variety of interpretation by MS, there is a limitation to access to AMIF funding sources to projects providing humanitarian assistance to irregular migrants. As a consequence, serious part of support provided to irregular migrants by social partners remains unreported and unmonitored, which should be recognized as a negative indirect effect of existing EU law.



This issue is especially important in case of MS at the common EU external border that have faced increased arrivals at various times, such as Italy, Spain, Greece or Hungary. The lifeguards, ship owners, fishermen and NGO workers could be charged with human smuggling after intervening to save peoples' lives at sea or offer help at the border zone. There are accusations of politicians and media that NGOs conducting lifesaving search and

rescue operations (SAR) on the high seas and providing reception shelters across Europe indirectly encourage human smugglers and at the same time influence the migration crisis at the Mediterranean Sea. All of this lead to undermine the work of civil society actors and growing distrust between national authorities, NGOs partners and public opinion in the area of dealing with irregular migration.

Policy considerations

Practical guidance to support EU Member States to implement the Facilitators Package in a fundamental rights compliant manner should be considered (where punishment for humanitarian assistance at entry and the provision of non-profit humanitarian assistance should be explicitly excluded) (Carrera et al. 2016; FRA 2014).

More EU funds for social partners (cities and civil society organisations) should be available for humanitarian work with irregular migrants in the context of increasingly mixed migration flows, especially for such activities as emergency assistance for shelter and food, and education for the children of undocumented migrants (Carrera et al. 2016).



Responding to the policy agenda

Migration-related conditionality in EU external funding

The issue

In response to increasing number of migrants and asylum seekers arriving on the territory of the EU, several legal and political tools were adopted, addressed in particular to EU neighbourhood and African countries. Among others, EU Trust Funds (EUTF, for Central African Republic, Syria and recently Emergency Trust Fund for Africa), New Partnership Framework on Migration (2016), and EU Facility for Refugees in Turkey (2016) were launched. The aim is to address the root causes of irregular migration and displaced persons, promoting legal channels of migration, fighting against human trafficking and smuggling, facilitating return and re-integration of irregular migrants. These instruments introduce an approach based on conditionality regarding cooperation with third countries in the field of migration. In practice it means that the EU partnerships with the third countries and transfer of EU aid and development funds rely on conditionalities linked to migration control and cooperation in the field of returns and readmission (Lavenex, Panizzon 2013).

There are several important critical points to the conditionality approach as such, as well as to EU re-distributive policies based on it made by some scholars and experts (e.g. Koch 2015; Kölling 2017). Human rights violations and corruption were pointed out as important negative

outcomes of conditioning approach. The effectiveness of conditionality in EU external funding requires a proper balance between clear definition of the terms of conditionality and certain flexibility; if conditions are too strict and narrow, this could become responsible for a low ratio of funds spent, if they are too wide – it could negatively impact the efficiency. Moreover, there is an allegation of lack of 'democratic' basis, that political decisions on external funding based on conditionality neglect the fundamental elements and treaty objectives of economic and social cohesion policy, as well as promotion of development cooperation and human rights principles (included, among others, in Lisbon Treaty). Other concerns are related to EUTF's focus on quick-fix projects with the main aim to stem migratory flows to Europe while effective policy dealing with forced and irregular migration requires a long term and sustainable approach, and the fact that the geographic location of funded projects is based on the identification of places of origin of irregular migration to the EU rather than on analyses of the concrete needs of development aid (CONCORD 2018, Hauck et al. 2015). Thus, the important question arises about the long-term consequences of the new EU approach for development, human rights and security of the partner countries, and stability in the whole African re-



gion. "The focus on short-term EU interests might jeopardize long term interests for African partners" (ECRE 2017b). The results of research done by Oxfam (2017:4) show that majority of EUTF funds was spent on migration management, and only 3% of the budget was allocated to developing safe and regular routes of migration what

Policy considerations

To monitor of the EUTF instrument especially in context of its effects on migration flows, human rights and protection space to respond to allegations on inadequate transparency of decision making processes and accountability measures (CONCORD 2018, EP 2016).

To increase funding for promotion regular channels for migration and mobility from

is contrary to commitments under the Valletta Action Plan. The concerns over EUTF transparency, accountability, and effectiveness were also raised by the European Parliament in the evaluation report on EUTF (EP 2016) and European Court of Auditors (2016).

and between European and African countries in line with the Valletta Action Plan and European Agenda on Migration.

To increase involvement of community-based organizations and more open and participative consultation processes during the selection of the projects (Hauck et al. 2015).



Responding to the policy agenda

Return rates

The issue

Every year around half a million of foreign nationals are ordered to leave the territory of the EU because they have entered or they are staying there irregularly. According to Eurostat, in 2014 only 34% of return decisions were effectively implemented what raise the question about the efficiency of return procedures. The comprehensive legal and institutional framework was developed within the EU to deal with the return processes including the Return Directive (2008) which introduced common standards relating to return of irregular migrants. The dedicated EU Action Plan on Return (September 2015) was introduced to increase the return rate, its aim is to implement more effective return procedures and more operational returns by the EU and MS to remove legal and practical obstacles in return proceedings. It is ambitious set of measures such as promoting best practice on voluntary returns and concept of uniform EU Travel Document to develop more coordinated approach in the area of return and to ensure the return rates increase. Additionally, the recently updated Return Handbook (2017) providing guidelines to national authorities, best practices and recommendations for carrying out return in an effective and human way as well as Commission recommendation on making returns more effective (EC 2017) have to be mentioned here. The role of the EU Agency FRONTEX is also significant by providing assistance for joint return operations and removal of

irregular migrants from the EU territory. The readmission agreements are perceived as one of the most important instruments in this area (signed with countries of origin and transit countries, e.g. EC 2014; Panizon 2014). However, readmission policy is also severely criticised since readmission agreements are considered as a tool that does not sufficiently consider the interests of partner countries and the proper protection of human rights (Alpes et.al. 2017, Billet 2010, Carrera 2016, Coleman 2009). The issue of longer detention of third-country nationals as a tool to achieve higher return rates is a highly discussed issue (FRA 2010).

There are several reasons for the low rate of returns. The evaluation of the return procedures showed several important shortcomings, among others, the lack or limited cooperation between the EU with some third countries in identifying and readmitting their nationals, insufficient coordination among all the services and authorities involved in the return process at the each MS and the EU level, long-drawn appeal process, inadequate information about voluntary return options among migrants (EC 2017). One of the most important challenges is related to the third-country nationals who cannot be removed from the territory of the Member States (non-returnable). The situation of unreturnable migrants is one of those areas that is still mainly within national competence and is only marginally



addressed by EU law (Cantor et al.2017). The NGO partners pointed out several faults related to respecting the rights of the returnees and implementation of return procedures in line with fundamental

and human rights, including arbitrariness of detention, the detention of children and their families and human rights violations in the context of removal procedures (ECRE 2017a, PICUM 2015).

Policy considerations

The need to further converge of national return procedures through common understanding of the term unreturnability, standardising the return process, rules on detention and return decisions issued in Member States across the EU along already existing standards on return and expulsions set by the EU legal framework (ECRE 2017a).

To establish clear rules on the legal status of vulnerable persons, such as elderly persons, children, victims of trafficking, un-

accompanied minors should be treated with special attention according to their needs and should also be protected against forced removal (Caritas 2018).

More sufficient and long-term evaluation of return and reintegration programmes should be completed to better understanding of the various factors influencing sustainability of returns.



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is a project funded under the Horizon 2020 Programme that aims at creating a platform for regular collaboration and exchange between Europe's well-developed networks of migration researchers, stakeholders and practitioners to foster evidence-based policymaking. Being a Coordination and Support Action (CSA), ReSOMA is meant to communicate directly with policy makers by providing ready-to-use evidence on policy, policy perceptions and policy options on migration, asylum and integration gathered among researchers, stakeholders and practitioners.

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