

# Analysis of EU proposals for disembarkation mechanisms

## Executive summary and introduction

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Over the last few months, in the wake of the growing success of populist political parties across Europe, migration has remained high on the political agenda and **attempts to close the European Union (EU)'s borders to migrants are on the rise**. Italy has refused to let rescue vessels carrying migrants seeking refuge to dock in its ports. Elsewhere, Germany's ruling coalition has experienced considerable internal political turmoil over migrant and refugee reception, while the Austrian government, mandated to lead the current EU presidency, has pledged to prioritise border control and security.<sup>1</sup> At the European level, following in the footsteps of the EU-Turkey Deal of 2016, EU institutions and Member States (MS) have **intensified technical cooperation with third countries**, such as Libya, so that migrants departing from the southern shores of the Mediterranean are returned to Libya.

Ironically, these discussions take place at a time when **migrants' arrivals to the EU have dropped sharply**.<sup>2</sup> In contrast, and largely as a result of the above, **deaths in the Central Mediterranean Sea have dramatically increased**. According to the International Organization for Migration (IOM), 1 839 persons are believed to have died or gone missing between January and end Mid-October 2018.<sup>3</sup> An Italian research institute estimated that in September, one in five people who attempted the journey from Libya to Italy died or went missing.<sup>4</sup> The expanded Search and Rescue (SAR) operations carried out by poorly trained Libyan coast guards, combined with the legal and practical obstruction of NGOs' SAR activities led to several preventable shipwrecks and deaths.<sup>5</sup> Thus, **less people arrive to Italy and Europe but more people die at sea or are brought back to detention and inhumane treatment in Libya** thanks to EU and Italian support to Libyan coast guards.<sup>6</sup>

Against this background, on June 28-29 2018, members of the European Council gathered in Brussels to discuss migration. Instead of resolving the sticking points of the reform of the Common European Asylum System (CEAS), MS proposed **two new instruments that could further limit the entry of migrants and refugees in the EU: "disembarkation platforms"** (potentially outside of the EU), and **"controlled**

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<sup>1</sup> [https://www.politico.eu/article/austria-sebastian-kurz-close-the-eus-external-borders-not-its-internal-frontiers-migration-dublin-asylum/?utm\\_source=POLITICO.EU&utm\\_campaign=2433165dbe-EMAIL\\_CAMPAIGN\\_2018\\_06\\_29\\_04\\_43&utm\\_medium=email&utm\\_term=0\\_10959edeb5-2433165dbe-190017929](https://www.politico.eu/article/austria-sebastian-kurz-close-the-eus-external-borders-not-its-internal-frontiers-migration-dublin-asylum/?utm_source=POLITICO.EU&utm_campaign=2433165dbe-EMAIL_CAMPAIGN_2018_06_29_04_43&utm_medium=email&utm_term=0_10959edeb5-2433165dbe-190017929)

<sup>2</sup> 18 500 people arrived to Italy by sea between January and July 2018, which represents a 81% decrease in comparison to the same period last year: [https://data2.unhcr.org/en/documents/download/65373#\\_ga=2.190232619.121063791.1538407879-1020837579.1527848362](https://data2.unhcr.org/en/documents/download/65373#_ga=2.190232619.121063791.1538407879-1020837579.1527848362) Jan-Jul 2018

<sup>3</sup> <https://missingmigrants.iom.int/region/mediterranean?=&Apply>, figures from the 16th of October 2018

<sup>4</sup> <https://www.ispionline.it/it/pubblicazione/sbarchi-italia-il-costo-delle-politiche-di-deterrenza-21326>,

<sup>5</sup> <https://www.reuters.com/article/us-europe-migrants-italy/italys-closure-to-rescue-ships-drives-up-sea-deaths-think-tank-idUSKCN1MB353>. While the number of persons who died in the Mediterranean Sea was higher in 2017 than in 2018, in 2018 the ratio between persons who left Libya and persons who had died increased

<sup>6</sup> <https://www.amnesty.org/download/Documents/EUR3089062018ENGLISH.pdf>

<sup>7</sup> <https://www.hrw.org/news/2018/07/25/eu/italy/libya-disputes-over-rescues-put-lives-risk>. According to UNHCR, more than 8000 migrants, including refugees are detained in detention centres run by Libyan authorities: UNHCR position on returns to Libya (Update II), September 2018, §19: <http://www.refworld.org/docid/5b8d02314.html>

**centres”** (on EU soil).<sup>7</sup> On the one hand, the **“regional disembarkation arrangement”**,<sup>8</sup> as it was termed in the European Commission (EC) subsequent formulation, would serve the objective of providing a space where vessels can quickly disembark people rescued at sea, in line with international law. Those spaces would likely be set up in a Northern African country. The **“controlled centres”**,<sup>9</sup> on the other hand, to be set up in a volunteering EU MS, would supposedly provide a centralised reception infrastructure where EU border authorities and agencies can quickly distinguish between migrants in need of protection and those to be promptly returned (voluntarily or by force).

Caritas Europa is concerned that these proposals, if implemented, will lead to **further externalisation of European asylum and migration policies to third countries and to a weakening of EU’s international protection and human rights obligations**. EU and MS’s attempts to outsource asylum responsibilities to poorer countries become all the more inexcusable when placed in a global context. The number of **people being forced to flee their home** due to persecution, conflict, violence, or human rights violations has now reached an all-time high of **68,5 million** worldwide, while **developing countries host 85% of the refugees**.<sup>10</sup> We fear that at **a time when protection needs are at their highest, the EU and MS are turning a blind eye to refugees’ needs and human rights** in order to prevent migrants from arriving to the EU and to increase returns at all costs.

## **Proposed controlled centres and regional disembarkation arrangements**

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In July, shortly after the June European Council, the EC laid out its vision for more transparent and efficient disembarkation arrangements on both sides of the Mediterranean Sea by publishing two documents on a **“regional disembarkation arrangement”** (involving both EU and non-EU countries) and on **“controlled centres”**<sup>11</sup> (within the EU).

The **“regional disembarkation arrangement”**<sup>12</sup> would serve the objective of making it possible for vessels to quickly disembark people rescued at sea in a place of safety, in line with international law. All Mediterranean States, both EU and non-EU countries, are to be encouraged to establish Maritime Rescue Coordination Centres (MRCCs) and enhance cooperation on SAR and disembarkation procedures. At the end of June, **an EC document envisioned three potential interrelated scenarios for disembarkation places**: 1) a regional disembarkation mechanism (within the EU) for migrants rescued within EU or international waters by EU state’s flag vessels; 2) a regional disembarkation mechanism (in a third country) for migrants rescued within international or third country waters by EU State’s flag vessels or third country vessels; 3) external processing (outside of the EU) of all asylum applications regardless of place of rescue (even for migrants rescued in EU waters). In the same document, the EC ruled out the third option as illegal when applied to migrants rescued within EU waters.<sup>13</sup> However, migrants’ boats could still be rescued in international waters by EU States’ flag vessels and returned to a third country – provided the country agrees, is safe and respects the non-refoulement

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<sup>7</sup> See Council conclusions at <http://www.consilium.europa.eu/en/press/press-releases/2018/06/29/20180628-euco-conclusions-final/pdf>

<sup>8</sup> [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180724\\_non-paper-regional-disembarkation-arrangements\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180724_non-paper-regional-disembarkation-arrangements_en.pdf)

<sup>9</sup> [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180724\\_non-paper-controlled-centres-eu-member-states\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180724_non-paper-controlled-centres-eu-member-states_en.pdf)

<sup>10</sup> UNHCR global trends 2017, <http://www.unhcr.org/5b27be547.pdf>

<sup>11</sup> The EU published two non-papers and several factsheets, see [http://europa.eu/rapid/press-release\\_IP-18-4629\\_en.htm](http://europa.eu/rapid/press-release_IP-18-4629_en.htm)

<sup>12</sup> [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180724\\_non-paper-regional-disembarkation-arrangements\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180724_non-paper-regional-disembarkation-arrangements_en.pdf)

<sup>13</sup> The EC specifies that “Sending back an asylum seeker to a third country without processing their asylum claim constitutes refoulement and is not permitted under EU and international law”: [https://ec.europa.eu/commission/sites/beta-political/files/migration-disembarkation-june2018\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/migration-disembarkation-june2018_en.pdf)

principle – or be rescued in third country waters or international waters by third country vessels and returned to a third country. While not explicitly stated, the EC envisages **persuading several Mediterranean third countries, North African states in particular, to become disembarkation hubs** for any vessels carrying or rescuing migrants in international or third country waters. In those cases, rescued migrants would be placed in **reception centres under the supervision of UNHCR and IOM**. There they would be screened to establish the existence of individual protection needs, in which case resettlement or local settlement options would be offered. Migrants who are found not to have protection needs would be returned (preferably voluntarily) to their country of origin. Standards laid down in a recent UNHCR/IOM concept note<sup>14</sup> would be observed in those centres. To avoid creating what the EC sees as migration pull factors, resettlement opportunities should be limited.<sup>15</sup> The EC suggests **offering tailor-made and targeted incentives packages to third countries to get their buy-in**, proposing for instance border management and SAR capacity building as well as financial, practical and operational support and resettlement and other protection pathways.

The **“controlled centres”**<sup>16</sup> are intended to provide a centralised reception and processing infrastructure for migrants entering the EU by sea. They would be set up in a volunteering EU MS, where **swift disembarkation and process procedures** would occur to quickly distinguish between migrants in need of protection and those who would need to be promptly returned (voluntarily or by force). **Registration, fingerprinting, security screening, reception and individual assessment of each migrant’s case should be done in 4-8 weeks maximum**, in collaboration with EU agencies such as the European Asylum Support Office (EASO), Frontex, UNHCR and Europol. The EC pledged to offer operational and financial support to volunteering MS through the Asylum, Migration and Integration Fund (AMIF) and the Internal Security Fund (ISF). In addition, a financial carrot of 6,000 € per person relocated from a disembarkation centre to another MS (plus 500 € for the transfer costs) would be offered. A pilot phase involving 500 migrants could be set up shortly. Sensitive negotiations are ongoing to identify a MS willing to volunteer to host such centres. Spain, which has recently become the main entry point to Europe, is now widely seen as an ideal host candidate and under great pressure to “volunteer”.

## Caritas Europa’s observations and concerns

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### Towards offshore processing centres?

Some stakeholders such as UNHCR have proven eager to save lives at sea and design a fairer, more transparent and sustainable regional disembarkation mechanism. However, **several EU policy makers rather intent on shifting their responsibilities to third countries and externalising EU migration and asylum policies at all costs**.

These attempts are inspired by previous experiences elsewhere. For example, **United States administrations have experimented with external processing and committed pushbacks** since the 1980s and 1990s, in particular with Haitian and Cubans who were brought back to Guantanamo. However, the most infamous offshore processing experience is **Australia’s “Pacific solution”** which, since 2001 has prohibited migrants

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<sup>14</sup> <http://www.unhcr.org/5b35e60f4>

<sup>15</sup> Excerpt from EC non-paper on regional disembarkation arrangements, pg.1, “To avoid creating pull-factors, it should be ensured and clearly communicated that resettlement possibilities will not be available to all disembarked persons in need of international protection. Resettlement should remain only one of the possible solutions for such cases, and not limited to Europe, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180724\\_non-paper-regional-disembarkation-arrangements\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180724_non-paper-regional-disembarkation-arrangements_en.pdf)

<sup>16</sup> [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180724\\_non-paper-controlled-centres-eu-member-states\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180724_non-paper-controlled-centres-eu-member-states_en.pdf)

arriving by sea to lodge asylum applications in the country. Boats intercepted at sea are pushed back to the Pacific islands of Nauru and Papua New Guinea where migrants are detained and processed by Australian immigration officials (resettlement to Australia is not provided to those recognised as refugees, as a deterrent to embark on this route). This model has been condemned numerous times for blatantly infringing human rights and providing undignified reception conditions.<sup>17</sup> It is regrettable that such criticism has not prevented several EU ministers from advocating for the EU to apply the Australian model.

At European level, the most concrete attempt to externalise asylum processing was proposed by **Tony Blair's government** in 2003 with his **“new vision for refugees”**.<sup>18</sup> This document argued that every migrant arriving to the EU's soil or intercepted at sea should be brought back to an internationally controlled **“regional protection area”**, identified as safe under the “safe third country concept”, where their case would be processed. The UK proposal was discussed at EU level and defended by Denmark and the Netherlands before being rejected at the 2003 Thessaloniki Summit.<sup>19</sup> At the time, the EC expressed doubts about the legal and practical feasibility of the UK proposal<sup>20</sup> so the concept never materialised in practice. As a matter of fact, **a comprehensive study commissioned by the EC in 2002** on the feasibility of processing asylum claims outside the EU against the background of the CEAS had already identified **serious moral, political, humanitarian and legal obstacles to the establishment of external processing centres**.<sup>21</sup> In addition, setting up those mechanisms would also entail huge practical and financial challenges.<sup>22</sup> Fifteen years later, this analysis and conclusion still stand. Since then, while fully fledged offshore processing centres have not been created **several elements of externalisation of EU's asylum and migration policies have been little by little discussed and introduced**. The Valletta Summit (2015) with African countries, the EU-Turkey statement (2016) and the Partnership framework (2016), all aimed at increasing cooperation on migration management and return with key countries of origin and transit by providing a series of incentives (e.g. development aid, trade advantages, visa liberalisation), illustrate that tendency.

Against this background, **we are concerned that the regional disembarkation arrangements being discussed are used by some EU MS to publicly advocate for the implementation of offshore processing centres in third countries**, even if those would infringe international and EU refugee law.<sup>23</sup> Some governments go as far as legitimising push backs, pleading to avoid the European Convention of Human Rights (ECHR) and to close EU territory to spontaneous asylum applicants.

### **What sort of asylum procedures after disembarkation in third countries?**

The ambiguity surrounding the concept of “regional disembarkation mechanism” raises several concerns. In particular, we fear that **this concept could resemble de facto offshore processing centres** in case most boats rescued at sea, in international or third country waters, are disembarked in a third country, as one scenario elaborated by the EC suggests.<sup>24</sup>

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<sup>17</sup> <http://jmhs.cmsny.org/index.php/jmhs/article/view/68>

<sup>18</sup> [http://archiv.proasyl.de/texte/europe/union/2003/UK\\_NewVision.pdf](http://archiv.proasyl.de/texte/europe/union/2003/UK_NewVision.pdf)

<sup>19</sup> Pg 6-7 <https://www.rsc.ox.ac.uk/files/files-1/wp36-politics-extraterritorial-processing-2006.pdf>

<sup>20</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52003DC0315&from=en>

<sup>21</sup> [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/pdf/asylumstudy\\_dchr\\_2002\\_en\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/pdf/asylumstudy_dchr_2002_en_en.pdf)

<sup>22</sup> HRW assesses that Australian taxpayers are spending something on the order of €240,000 per person per year on offshore facilities: <https://euobserver.com/opinion/136602>

<sup>23</sup> <https://www.hrw.org/legacy/backgrounder/refugees/uk/newvision.pdf>

<sup>24</sup> [https://ec.europa.eu/commission/sites/beta-political/files/migration-disembarkation-june2018\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/migration-disembarkation-june2018_en.pdf)

**How would those post-disembarkation mechanisms look concretely on the ground?** How to find a Mediterranean third country that is safe and has adequate asylum legislation and procedures in place? How could the EU states and agencies supporting financially, practically and operationally those centres ensure that they are in line with international standards and safeguards, when they already struggle to make hotspots in Italy and Greece humane and dignified places? We also have several concerns regarding the UNHCR/IOM concept note covering the various steps of the process (from disembarkation to return): biometric registration data could be misused, migrants could be detained or their freedom of movement restricted during the registration and screening phase, and specific needs and vulnerabilities of migrants would be hard to be catered for.

Many questions arise equally on the **legal implication for the EU and its MS** as regards their collaboration in the setting up of such centres. Depending on the level of involvement and support provided and the “effective control” they enjoy at these centres, the jurisdiction of the ECHR, the EU Charter of Fundamental Rights and EU asylum acquis could apply extraterritorially, making the EU and its MS legally liable for what occurs in those centres. The EU Qualification Directive covering asylum and protection application may, for example, apply extraterritorially, thus triggering the implementation of the EU Charter.<sup>25</sup> The right to asylum enshrined in article 18 of the Charter must also be respected by the EU and its MS with due respect for the rules of the Geneva Convention.<sup>26</sup>

We are concerned that negotiations are currently ongoing behind closed doors to find a way to establish such centres in a third country while avoiding as far as possible EU and Member States’ legal responsibilities. In other words, **we are worried that MS are trying to entirely shift their asylum and international responsibilities to third countries by providing them with financial and operational support, all the more avoiding legal responsibilities in case things go wrong.**

We also fear that **not enough safe protection pathways to Europe** would be provided should such a centre be implemented. While we welcome the 50 000 resettlement pledges made by EU countries to be implemented by 2019, current efforts are not enough to meet the resettlement needs. The example of the ongoing difficulties with the Emergency transit mechanism in Niger for people evacuated from Libyan prisons – with UNHCR struggling to convince enough MS to resettle people from Niger – reinforces that fear.<sup>27</sup> **A lack of legal protection pathways to Europe would mean more people with protection needs having to use “local solutions” in third countries that are not necessarily legally and operationally equipped to receive a big number of refugees.**

We are also greatly concerned about the **return of migrants who are not found to have protection needs.** Third countries would encounter similar practical and administrative difficulties to return people to their countries of origin similar to the challenges the EU faces. This situation may keep **unreturnable migrants living in limbo in sub-standard situations** and further complicate potentially fragile socio-economic or political situations in the third country concerned. This could reinforce tensions, discrimination and racism against Western African migrants, already widespread in several Maghreb countries.

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<sup>25</sup> Pg.10, <https://www.ecre.org/wp-content/uploads/2018/08/Policy-Papers-04.pdf>

<sup>26</sup> [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)

<sup>27</sup> According to UNHCR 1,858 people have been evacuated from Libya to Niger since November 2017 and only 203 of them have been effectively resettled. This situation creates a bottleneck effect in Niger, that decided to refuse the evacuation of more people to its territory, <https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR%20Libya%20Flash%20Update%2024%20August%202018.pdf>

## Outsourcing EU's responsibilities to third countries?

EU policy makers have not yet been able to find a third country willing to host a disembarkation centre. **Close cooperation with Libyan coast guards** has been ongoing for a while, leading to a sharp increase of migrants being “rescued” by Libyan coast guards and returned directly to detention centres. Nonetheless, an EU official publicly confirmed at the end of July<sup>28</sup> that **Libya could not be considered a safe disembarkation place** for migrants rescued by EU MS flagged vessels. This declaration was made in response to an incident involving the first case of a boat returned to Libya by an Italian vessel since Italy stopped push backs in the Central Mediterranean Sea as a result of the 2012 Hirsi judgement<sup>29</sup> that ruled that returning migrants to Libya infringed the non-refoulement principle. Also **UNHCR considers that Libya is neither a safe third country nor a place of safety for the purpose of disembarkation following rescue at sea.**<sup>30</sup> We strongly insist that as long as the political context in Libya does not improve, **EU MS and EU flagged boats should never consider Libya a safe place for disembarkation.** In addition, we deeply regret that migrants are being returned to Libya by Libyan coast guards who are trained and equipped by the EU and Italy.

In the meantime, the **EU and its MS are pressuring Northern African countries to find a potential candidate to host disembarkation mechanism and to enhance collaboration on border control.** **Tunisia** was on everyone’s lips as a potential candidate but the government has repeatedly and boldly refused to “do Europe’s job”. After an informal EU summit in Salzburg in September, **Egypt** has emerged as the EU’s new “ally” to enhance dialogue on migration control.<sup>31</sup>

However, **Northern African** countries do not have functioning asylum systems in place yet, despite UNHCR support to develop protection spaces. **Capacity building efforts to set up asylum systems in third countries should have at its core refugees’ needs and the expansion of protection spaces in the long run.** As warned by UNHCR, the increased use of the safe third country principle and the outsourcing of EU’s asylum responsibility to third countries are likely to discourage the latter from developing a functioning asylum system, since that would make them more likely to receive EU’s asylum seekers. A **domino effect of shifting responsibilities among countries could reduce protection places globally**, contrary to States’ engagement under the New York Declaration for refugees and migrants towards “more equitable sharing of the burden and responsibility for hosting and supporting the world’s refugees”.<sup>32</sup>

Negotiation and cooperation with Northern African countries has recently intensified with regard to **border control, capacity building of security forces and coast guards, and return and readmission.** The 2017 **EC action plan for Central Mediterranean** called for better coordination of SAR activities with and among North African partners (Tunisia, Egypt and Libya) and encouraged them to formally notify their SAR areas and establish MRCCs.<sup>33</sup> On July 6, the EC approved additional €90.5 million under the **EU Trust Fund for Africa** to strengthen border management and protection of migrants in North Africa. This includes €55 million for the Maghreb region aiming at capacity building and providing and maintaining equipment for Morocco and Tunisia “to save lives at sea, improve maritime border management and fight against smugglers”.<sup>34</sup> The Regional Development and Protection Programme to improve asylum and migration policies in North Africa

<sup>28</sup> <https://euobserver.com/migration/142504>

<sup>29</sup> <http://www.asylumlawdatabase.eu/en/content/ecthr-hirsi-jamaa-and-others-v-italy-gc-application-no-2776509>

<sup>30</sup> UNHCR position on returns to Libya (Update II), September 2018, §41-42: <http://www.refworld.org/docid/5b8d02314.html>

<sup>31</sup> <http://www.consilium.europa.eu/en/press/press-releases/2018/09/20/remarks-by-president-donald-tusk-after-the-salzburg-informal-summit/>

<sup>32</sup> UN, General Assembly, New York Declaration for Refugees and Migrants, A/RES/71/1, 3 October 2016, par. 68.

<sup>33</sup> Pg. 2 [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170704\\_action\\_plan\\_on\\_the\\_central\\_mediterranean\\_route\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170704_action_plan_on_the_central_mediterranean_route_en.pdf)

<sup>34</sup> [http://europa.eu/rapid/press-release\\_IP-18-4366\\_en.htm](http://europa.eu/rapid/press-release_IP-18-4366_en.htm)

is also provided under the EU Trust Fund for Africa.<sup>35</sup>

We are concerned that **cooperation with Northern African countries turns a blind eye to migrants' needs and human rights in order to prevent migrants from arriving to the EU and to increase return at all costs.** Authoritarian regimes or controversial state practices risk being legitimised in the name of fulfilling EU's security approach to migration. Such an approach would run counter to article 21 of the treaty on European Union stating that EU's external actions and partnerships with third countries should be guided by EU's founding principles of human rights, democracy and rule of law.<sup>36</sup> In addition, enhanced cooperation with third countries not respecting human rights, risks making EU officials complicit of infringing the non-refoulement principle, especially in cases of migrants being returned to unsafe places.<sup>37</sup> A lawsuit has been filed in the ECHR incriminating Italy in its cooperation with Libyan coast guards.<sup>38</sup>

Besides, **the focus on security stands in the way of a more balanced and sustainable cooperation on migration. Concretely, it prevents the establishment of a real-partnership that takes into consideration the interests of partner countries** (e.g. visa liberalisation, labour migration quotas). Northern African countries are fully aware they should be using all the bargaining power they have in regard to EU's migration agenda to increase the EU's financial and political support, including in unrelated areas. Morocco, a strategic partner, is, for instance, alleged to have "let" more migrants reach Spain in order to increase its political leverage in closed door negotiations with the EU in order to obtain concessions on the thorny question of Western Sahara.<sup>39</sup> Since the summer, Morocco forcibly displaced more than 5,000 migrants towards the south of the country, responding to EU's pressure to crack down on irregular migration.<sup>40</sup>

### **The Common European Asylum System (CEAS) and solidarity overshadowed**

In a political context fraught with tensions, the reform of the CEAS has so far remained a challenge. In this context, **we are worried that further externalising asylum policies is seen by many politicians as an alternative to improving the EU's asylum system and as a way to put an end to spontaneous arrival of asylum seekers to the EU.** Some politicians would rather first 'seal' EU borders before further discussing the ongoing reform of the CEAS, which explains the low priority given to the CEAS reform in the June 2018 Council conclusion. Likewise, the Austrian Presidency of the EU does not view the CEAS reform – but external border control – as a priority of its presidency and is dangerously conflating migration and security issues.<sup>41</sup>

Such an approach is deeply concerning for Caritas Europa that advocates for a person-centred approach. **Intra-EU solidarity and responsibility sharing is sorely lacking in the current EU asylum system** and explains many of the difficulties encountered in the aftermath of 2015, including the current discussions on disembarkation in EU countries. The Dublin regulation that makes front line Member States *de facto* responsible

<sup>35</sup> <https://italy.iom.int/en/regional-development-and-protection-programme-north-africa-rdpp-na>

<sup>36</sup> Article 21.1 Lisbon treaty on EU: "The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law: [https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF)

<sup>37</sup> <http://fra.europa.eu/en/publication/2016/scope-principle-non-refoulement-contemporary-border-management-evolving-areas-law>

<sup>38</sup> <https://www.theguardian.com/world/2018/may/08/italy-deal-with-libya-pull-back-migrants-faces-legal-challenge-human-rights-violations>

<sup>39</sup> <http://www.euronews.com/2018/08/07/did-morocco-let-more-migrants-make-dangerous-spain-crossing-to-get-a-good-deal-with-eu>

<sup>40</sup> <https://www.dw.com/en/morocco-migrants-arrested-bused-away-from-coast-report/a-45055355>,

<https://www.reuters.com/article/us-europe-migrants-morocco/morocco-plays-cat-and-mouse-with-africans-headed-to-europe-idUSKCN1LZoMD>

<sup>41</sup> <http://www.statewatch.org/news/2018/jul/EU-austria-Infomal-Meeting-%20COSI.pdf>

for the processing of most asylum applications is deeply unfair and needs a complete overhaul.<sup>42</sup> Time is ticking to finalise the CEAS negotiation before the European Parliament elections in May 2019. **Politicians should be under no illusion that external arrangements will exempt them from increasing solidarity and responsibility within the EU and towards third countries.** As explained above, the potential implementation of such a mechanism in a third country should not stop EU's asylum reform and would rather require EU MS to significantly step up resettlement and efforts for other legal pathways.

### **“Controlled centres” or a hotspot v. 2.0?**

Plans to establish so-called “controlled centres” to disembark rescued migrants quickly in Europe also raise some troubling questions. Based on the EC's description, such centres seem to be very similar to the current hotspot. The term “controlled” alludes to the **risk that people could be indefinitely detained**, in breach of article 31 of the Geneva Convention that forbids punitive treatment for asylum seekers entering a territory irregularly and in breach of international law. The flawed procedures and deplorable conditions in the existing hotspots in Italy and Greece, which have led to refugees' psychological problems, violence, self-harm or suicide,<sup>43</sup> raise the fear that **controlled centres could effectively replicate that suffering.**

We are concerned that the emphasis of this plan lays out **quick procedures to differentiate refugees from other migrants and to foster fast returns.** While it is legitimate to seek more efficient procedures, this aim should not be pursued to the detriment of fair and transparent procedures, in line with EU's asylum acquis and standards. For example, it is unreasonable to expect that eight weeks would be a sufficient time to carry out the whole asylum procedure, including appeal, while ensuring the respect of adequate procedural safeguards. EU's aim to increase returns also risks contravening human rights if not carried out with due process. **We urge the EC to take into consideration Caritas Europa's recommendations for humane return policies<sup>44</sup> in its ongoing legislative reform<sup>45</sup> to make return policies more efficient.** Once again, we caution against an increased use of the safe third country principle as a way to delegate EU's asylum responsibilities to third countries.

Finally, “controlled centres” are not a short cut to abandon CEAS reform and to avoid intra-EU solidarity and responsibility sharing. This mechanism still requires some MS to volunteer to host such centres on their territory and will need a robust functioning relocation mechanism to alleviate the pressure on hosting countries.

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<sup>42</sup> <https://www.caritas.eu/news/asylum-the-eu-must-pull-itself-together>

<sup>43</sup> <https://www.ecre.org/wp-content/uploads/2016/12/HOTSPOTS-Report-5.12.2016..pdf>,  
[https://drc.ngo/media/4051855/fundamental-rights\\_web.pdf](https://drc.ngo/media/4051855/fundamental-rights_web.pdf)

<sup>44</sup> [http://www.caritas.eu/sites/default/files/180209\\_ce\\_position\\_paper\\_return.pdf](http://www.caritas.eu/sites/default/files/180209_ce_position_paper_return.pdf)

<sup>45</sup> In September 2018, the EC announced several proposals to reform the EU return directive, the EU agency for asylum and the European Border and Coast Guard, [http://europa.eu/rapid/press-release\\_IP-18-5712\\_en.htm](http://europa.eu/rapid/press-release_IP-18-5712_en.htm)



## Recommendations to EU Institutions and EU Member States (MS)

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### General recommendations:

- Acknowledge that the EU and its MS have to bear their own part of **responsibility** in the context of **international refugee protection**, in line with international and European refugees and human rights instruments. These responsibilities should never be outsourced to third countries.
- **Protect and improve asylum protection within the EU and globally.** Any support to increase protection places in third countries must be in addition to an improved EU asylum system.
- Preserve the right to **spontaneously apply for asylum in the EU. Resettlement or other safe pathways to Europe must never be instrumentalised** to replace spontaneous asylum applications in effort to close EU borders.
- Devise **long-term, balanced and comprehensive asylum and migration policies** that go beyond border control and return, and are anchored in human rights and apply a person-centred approach, meaning putting the needs of migrants first.
- Increase **safe and legal pathways to Europe for both protection and labour purposes** by, for example, increasing humanitarian visas, community sponsorship, resettlement, family reunification, visa facilitation and labour migration opportunities.
- Finalise the **CEAS reform** and strike a good balance between solidarity and responsibility sharing in the **Dublin regulation**, taking into account migrants' needs and family reunification requests.

### Regarding regional disembarkation mechanism:

- **EU's asylum responsibilities cannot be shifted** to third countries. **Offshore processing centres should never be implemented.**
- In case **disembarkation reception centres** would be set up in a **third country or elsewhere**, they must:
  - Only be established in a **place of safety**. Currently, Libya cannot be considered a place of safety. Given the lack of a functioning asylum system and the human rights challenges in Northern African countries, they too cannot be considered safe disembarkation places.
  - **Provide transparent and fair procedures** that include inter alia an individual interview, the right to be heard and appeal in line with refugee law and international standards.
  - Be in line with **human rights standards** and provide **dignified reception conditions**, catering for the needs of people with vulnerabilities and special needs, including those of children.
  - **Not detain migrants arbitrarily.**
  - Provide numerous **pathways for protection in Europe**, such as resettlement, humanitarian visas, etc.
  - Ensure due and **humane return procedures.**
- EU agencies and EU MS should **increase Search and Rescue (SAR) operations** in view of saving lives at sea.
- Given the crucial role they play in saving lives, **NGO-led SAR operations should be encouraged** instead of being obstructed, demonised and criminalised.
- Vessels rescuing migrants in international waters and off of third countries **must be allowed to disembark in EU ports**, particularly in cases when the security of the rescued persons may be at risk. **EU MS should not close their ports to boats with rescued people on board.**

- **All actors involved at sea** (i.e. commercial and state-led vessels, NGO boats, Frontex operations) should **respect international maritime law**, including the International Convention for the Safety of Life at Sea and the International Convention on Maritime SAR. Good faith cooperation between states and maritime actors should increase during SAR operations to **bring rescued migrants to the closest safe port without delay**. All actors should **never carry out collective expulsions and push backs** and should respect the Geneva Refugee Convention and the principle of **non-refoulement**.
- EU countries should put in place **a fair, transparent and efficient disembarkation mechanism in the EU** in cooperation with UNHCR, where every EU MS takes on its fair share of responsibility.
- **Cooperation on border control and SAR capacity building with third countries** should put **human rights at the core** and respect the principle of non-refoulement. Robust **accountability, monitoring and evaluation systems** should be put in place. In case of infringement of human rights, cooperation must cease.
- **Development aid should never be used** to fund border control and security measures aimed at **stopping irregular migration**. Rather, it should be used to eliminate poverty, in line with article 208 of the Lisbon Treaty.

#### Regarding “controlled centres”:

- **Arbitrary and indefinite detention** of migrants should be prohibited.
- Real **solidarity and responsibility sharing mechanisms, including relocation** should accompany the establishment of those centres.
- Ensure **fair and transparent procedures**, in line with all the guarantees and safeguards under CEAS and international law.
- Ensure that security screenings and **return operation** are carried out in full **respect of procedural safeguards and guarantees** enshrined in EU acquis and international law. **Refrain from diluting those safeguards** in the ongoing reforms of the **return directive**, the **EU Agency for Asylum** and the **European Border and Coast Guard agency**.
- Refrain from using the **safe third country and first country of asylum criteria** and implementing **admissibility procedures** that tend to shift EU’s asylum responsibilities to third countries.