

Policy Position

The EU's migration and asylum policy

Still under construction

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#MigrationEU

#Asylum

#NewPact

After a long delay, the European Commission on Wednesday last week presented its proposals for the reform of the Common European Asylum System. Originally announced for April, the reform plans have become all the more urgent in the light of the fire at the Moria refugee camp. Commission Vice-President Schinas has described the proposals as a house with three floors: agreements with countries of origin, a more rigorous border and return policy, and a solidarity mechanism among member states. But the cement between the national building blocks remains brittle. The Commission's plans also do little to prevent miserable camps like the one on Lesbos from springing up on its front lawn in the long term.

Moria - just like the other refugee camps on the Greek islands - is a result of the EU-Turkey agreement, and thus stands for a European migration policy which, since 2015, has been designed to prevent immigration. The hope behind this is that EU member states will be more willing to participate in a relocation mechanism for asylum seekers if arrival numbers remain low.

However, this assumption has repeatedly proved to be mistaken. Already during the emergency mechanism (2015 to 2017) for the relocation of asylum seekers from the hotspots in Italy and Greece, only Ireland, Malta, Finland and Luxembourg had met their allocated quota. Hungary, Slovakia and Poland even brought this mechanism before the European Court of Justice, albeit unsuccessfully. Furthermore, no other countries have joined the 2019 Memorandum of Understanding signed by Germany, France, Italy and Malta on the distribution of migrants rescued in the Mediterranean. Most recently, the sluggish relocation of 1,600 unaccompanied minors from Moria to a total of 11 EU countries has only shown how unwilling they are to accept refugees.

These examples show that, despite an overall decline in arrivals, relocation commitments are becoming increasingly flexible, and the admission criteria of the member states more selective. The new reform proposals continue this trend. Two cornerstones of the Commission's proposal make this particularly clear: the pre-screening of asylum applications at the EU's external borders and the solidarity mechanism.

More than anything else, the concept of pre-screening serves to normalise the assumption that there is only a limited right of asylum at Europe's external borders. If the Commission has its way, all future migrants who enter the EU irregularly or who are rescued in distress at sea will undergo a preliminary examination of their asylum application. In the case of those nationalities who have on average less than a 20% chance of a positive asylum decision in Europe, a decision on the asylum application will then be made at the border within 12 weeks. This border procedure can also be applied to persons entering from a safe third country and would thus affect most migrants coming to Greece from Turkey. If the decision is negative, there is a risk of immediate return.

This is problematic because the recognition rates in a border procedure are almost five times lower than in a regular asylum procedure. Shortened time limits and limited access to legal advice make a fair procedure difficult. Following an announcement by Commission President von der Leyen, a pilot project for the new preliminary asylum examination is nevertheless to be set up in Lesbos. Instead of preventing further overcrowded refugee camps, the Commission is thus making the „Moria model“ a common practice.

The solidarity mechanism described by Commission Vice-President Schinas as „permanent, constant and effective“ does little to address the actual problems of the common European asylum policy. The many euphonious adjectives cannot hide the fact that the proposal allows for one thing above all: maximum flexibility. In times of low arrivals, member states should be able to choose between three options. Either they participate in the relocation of refugees from the country of first entry, such as Greece, Malta and Italy, or they adopt a „return sponsorship“. In the latter case, they would have to support the return of a rejected asylum seeker. If the return is not successful within eight months, the member state would have to take the person in and continue to try to return them. As a third option, technical and operational assistance can be offered to the country of first reception. In the event of a new crisis, there would only be two possible ways of contributing. The only choice then would be between relocation and „return sponsorship“.

In reality, however, most returns do not fail due to a lack of will on the part of EU countries. The lack of cooperation on the part of the countries of origin and legal protection guarantees play a more important role. Here, however, the Commission proposals lack concrete proposals. Even the attempt to win over sceptical EU states to support a relocation mechanism through joint return sponsorships has poor political prospects. The Visegrad states of Hungary, Poland, Slovakia and the Czech Republic have already rejected the proposal. As long as there is no legally binding distribution mechanism on the horizon, the relocation of asylum seekers will degenerate into a purely humanitarian gesture. The necessary relief for the countries of first entry would remain a long way off, and with it their support for the Commission proposal.

Commission President von der Leyen described the fire in Moria during her State of the Union address as a „painful reminder“ that the EU states must finally agree on a common migration policy. But if the „European solution“ which we in Germany have so often called for looks like what the Commission is currently proposing, then it was hardly worth the wait. Preventing this painful reminder from turning into a bleak future is now also in the hands of the German EU Council Presidency. Federal Interior Minister Seehofer must convince his European colleagues that a structured relocation of asylum seekers is necessary to give this European house some semblance of justice and reliability.

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