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External EU Hotspots

Why the cat keeps coming back

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The idea to set up EU hotspots in North Africa keeps coming up as European leaders seek enhanced control of mixed migration in the Mediterranean. Like the cat in Harry Miller's comical song, external processing of asylum claims just won't stay away. How realistic is it for the EU to establish external hotspots? This blog post outlines political, legal and practical issues related to the hotspots idea.

1 The recurring temptation of external hotspots

On 28 August 2017, French president Emmanuel Macron gathered the leaders of Germany, Italy, Spain and the European External Action Service (EEAS) to discuss migration in the Sahel region with the Heads of State of Chad and Niger and the Libyan Government of National Accord. For European leaders, the main objective was to intensify existing efforts to control migration towards Libya's Southern borders and thus reduce perilous crossings on the Central Mediterranean Route. The resulting [common declaration](#) foresees, among several co-operation initiatives, "**protection missions**" in those three countries, aimed both at fighting human trafficking and setting up resettlement channels in cooperation with the UN High Commissioner for Refugees (UNHCR). President Macron [presented](#) this result as the concretisation of a controversial [announcement](#) he had made in July: his intention to set up 'hotspots' in Libya. In fact, the envisaged protection missions in Niger and Chad are far from constituting "EU hotspots". Chad and Niger only accepted the establishment or repurposing of centres in which UNHCR-recognised refugees could apply for resettlement. As Chancellor Merkel [noted](#), "Hotspots is probably not the best term to designate the centres".

The **only [existing EU hotspots](#) to date were set up within the EU**, in Greece and Italy. They were created to concentrate the management of new arrivals on EU soil, filter out asylum applicants, process their asylum claims faster and identify candidates for relocation to other EU countries. Designed as camps, they were manned by local asylum authorities assisted by personnel and resources from EU partners.

While external EU hotspots do not (yet) exist, establishing **overseas asylum and migration screening facilities** has been a **recurring policy proposal** since the mid-1980s. Former British Prime Minister Tony Blair and German Home Affairs Minister Otto Schily for instance tabled such proposals in the early 2000s. The idea returned to the political agenda in the aftermath of the "migration summer" of 2015, which led many European leaders to push for an externalisation of asylum processing and migration management. Sebastian Kurz, Austria's Foreign Minister running for Chancellorship in the October 2017 election, is [advocating](#) that the EU should **follow the Australian example**. Since the early 2000s, Australia has been sending asylum-seekers reaching its waters to detention centres in Nauru and Papua New Guinea where it conducts asylum procedures extraterritorially. Since 2012, recognised refugees are then either accommodated on these islands or in few cases resettled in third countries, i.e. [Cambodia](#) or the [US](#). The Australian model, which abuses the asymmetry of power with small, dependant islands, gives rise to [considerable legal issues](#) and has been [condemned](#) for extensive human rights violations. Despite this criticism, Austria is [planning on pursuing EU external hotspots](#) as a priority in its presidency of the EU upcoming in July 2018.

Why external EU hotspots? In the eyes of their advocates, they would have **three decisive advantages**:

- 1. Making the perilous Mediterranean route redundant:** the core of the idea is that asylum-seekers could apply for protection in the hotspots instead of having to embark a dangerous crossing. Recognised refugees would then be resettled under safe conditions. In theory, this would destroy the business model of smugglers.
- 2. Solving domestic migration management problems:** outsourcing the processing of asylum claims to regional hotspots would mean that the perceived pressure on European social systems and societies would diminish. The repatriation of failed applicants (or in EU jargon ‘return’), which stagnates below 40%, would no longer be as big an issue
- 3. Allowing migration policy to become proactive and orderly instead of reactive and crisis-led:** reducing spontaneous arrivals would make it possible for the EU to agree on a proactive asylum and migration policy, with well-managed migratory channels – resettlement of recognised refugees or beneficiaries of subsidiary protection as well as legal pathways through family reunification, work or study visa.

Starting from the questionable assumption that this solution would truly benefit refugees and raise the level of acceptance in European societies, a range of political, legal, and practical questions still remain.

2 Political obstacles: reluctant partners

How likely are African partners to host external EU hotspots?

Hotspots would be set up on the territory of partners located strategically along migration routes. However, key transit countries have very limited interest in becoming **catch basins**. As Chad’s President Idris Déby [stressed](#) at the mini-summit in Paris: “there won’t be posts opened that call upon all the migrants from across the continent to come to our borders”. Last year, efforts by Germany to [convince Tunisia and Egypt](#), countries mildly affected by migration routes, to host hotspots were unsuccessful for that reason. Major transit countries already face sizable challenges in policing their borders and accommodating the bulk of the world’s displaced persons – currently, [84%](#) of refugees are hosted in the developing world. Welcoming additional refugee camps in strategic areas could be a destabilising factor. In addition, cooperating with migration control may go against the national interest: for countries in the Global South, **remittances and investments from migrant communities** in the West constitute a major source of foreign currency: the African continent received [\\$63bn worth of remittances in 2015](#) (approx. €53bn), accounting for up to 20% of the national GDP in some countries.

What can the EU offer that would incite African partners to host external hotspots?

As demonstrated by the [Declaration](#) adopted in Paris, a wealth of instruments can be mobilised in migration cooperation, including development aid, security cooperation, visa liberalisation and increased resettlement. This requires a **significant coordinated effort from the Europeans**. While the migration diplomacy of the EU is growing in prominence, it still displays structural flaws [as analysed in detail](#) by Nicole Koenig. In particular, EU member states have been **slow to contribute their share to the EU Trust Fund for Africa** – an instrument set up in 2015 to handle the root causes of migration and displacement. [By 11 September 2017](#), only €228m have been pledged and €155m transferred out of the planned €1,8bn.

How likely is a scaled-up EU resettlement programme?

Besides proper financial incentives, the Europeans still have to convince partners that they can and will hold their side of the bargain in terms of resettling the refugees recognised in the hotspots. So far, EU countries have **resettled negligible numbers of refugees**, both individually and through the EU resettlement programme. In 2016, only [18,175 persons](#) were resettled in the region of Europe, i.e. 10% of global numbers. At the same time almost 1,2m people were estimated to need a place by UNHCR that year. Yesterday, the Commission [recommended](#) “the resettlement of at least 50,000 persons [by October 2019] and will make available €500 million”. Pledges should be made by the end of October 2017. However, there are serious grounds to doubt that EU countries will agree on scaling up resettlement, considered the ongoing row on refugee relocation quotas. Due to limited pledges by the member states and hiccups in identifying candidates for relocation, [less than 28,000 persons](#) out of 160,000 were relocated from Greece and Italy between May 2015 and September 2017. Hungary, Slovakia and Poland are even [facing infringement proceedings](#) for refusing to comply with their allocated quota. The CJEU [rejected](#) their plea against the scheme in early September. Though they might support external EU hotspots, these governments are unlikely to agree to resettle more refugees.

Overall, African partners thus have little incentives to host hotspots and limited reasons to trust the EU’s ability to fulfil their pledges in terms of financial assistance and resettlement. But even if the political will was there to set up external EU hotspots, difficult legal issues still arise.

3 External hotspots raise multiple legal issues

Who could grant asylum abroad?

Though Article 78(2) of the TFEU foresees the creation of “a uniform status of asylum [and subsidiary protection] valid throughout the Union”, there is no perspective that this will become

reality any time soon. Granting asylum remains the competence of each individual member state. This leaves three possible options for external EU hotspots:

- 1. A UNHCR-based system:** asylum status determination (ASD) in the external hotspots would be delegated to the UNHCR and the EU would take responsibility for recognised refugees through resettlement. UNHCR is currently in charge of ASD in 50 countries and manages resettlement globally. This system could be used in the hotspots, but the UN organisation is chronically underfunded and procedures can take years. Therefore, the EU would have to ensure sufficient funding for UNHCR, pledge significant numbers of resettlement places ([1.2 million refugees](#) will need it in 2018), and streamline the vetting process of resettlement candidates, in order to make this model an attractive alternative to the Mediterranean route.
- 2. A quota system:** After preliminary screening by an EU Asylum Agency, admissible applicants would be allocated to member states. This would require two things: First, the mandate and resources of the European Asylum Support Office (EASO) must be extended to asylum processing and resettlement management. So far, EASO only provides training, advice and coordination. Second, member states must agree on quotas for much larger numbers of asylum claims than those currently disputed. The question remains whether the asylum procedures would be conducted in the hotspots or in Europe and, if in the hotspots, by whom (EU Agency or national authorities).
- 3. A voluntary system:** under an EU programme providing an overall structure on reception and resettlement, one or several member states would volunteer to take responsibility for every asylum claim in each hotspot, like President Macron seemed to propose to do in Libya in July. This option would allow to bypass internal division among the member states but would require participating states to take on a serious commitment, without expecting solidarity.

What standards would have to be upheld in external hotspots?

Even abroad, member states would remain bound to respect their domestic law, as well as their commitments under EU law and the European Convention of Human Rights, in terms of **standards of reception and procedures**, including **proper judicial remedies**. This sets a very high bar that can never be secured in war-torn countries such as Libya, but that [has not even been met in hotspots on EU soil](#). The example from internal EU hotspots displays a poor record in terms of legal compliance. Hotspots started as [detention centres](#) in breach of EU law. Instead of conducting asylum procedures, they have been used mainly for fingerprinting and security screening. Asylum applicants are then oriented towards the notoriously deficient Greek and Italian systems, in support of which member states have been [slow](#) to mobilise the case-workers, interpreters and legal personal required under the EU scheme.

In addition to problems linked to their internal functioning, hotspots must not, but are likely to be connected to **tougher border control policies**. Indeed, to be effective, external EU hotspots must become more attractive than illegalised border crossing. This can be done through positive incentives: high chances for resettlement, short procedures and good living conditions

in and/or around the hotspots. However, considered current practice in cooperation schemes with [Turkey](#) and [Libya](#), negative incentives are likely play a bigger role, **leading to potential breaches of the Geneva Convention or human rights law**, such as unlawful refoulement or discrimination based on nationality

Could the EU member states be held accountable for violations in the hotspots?

Unlike Australia, they [remain liable](#) to the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECHR). So far, the ECHR supports the extraterritorial validity of obligations such as non-refoulement where the state has jurisdiction. However, it is much harder for NGOs to accompany asylum-seekers abroad and for the justice systems to check government policies on foreign soil. The Australian example, which displays profound neglect and human rights abuses, demonstrates the danger of such a geographical disconnect between the country responsible for the fate of persons seeking protection, and these persons themselves.

4 In short: no unity, no credibility, no hotspots.

There can be no proper European external hotspots without a unified EU asylum status and procedure, both of which are politically out of reach. Any intermediate hotspots model would at least require a solution to the ongoing refugee quota dispute, and European legal standards would have to be upheld extraterritorially. To set them up, the EU would either have to cooperate with a strengthened UNHCR, or to find a working arrangement involving a broadened mandate for EASO. Under a voluntary system, the EU's role would be limited to coordination.

In addition, hotspots would require credible commitments to reluctant partners. Generous pledges in terms of resettlement and development aid would be necessary, as well as measures to avoid overburdening host countries. For external EU hotspots to actually be used by refugees, they would have to offer good chances to get to Europe. Critically, the effectiveness of hotspots in ending irregular migration also depends on complementary policies for people who would not get a protection status. Setting up external EU hotspots would thus require a deep rethinking of EU member states' migration policy mix, including the opening of various legal routes.

The Commission got the message: in its [review of the European Agenda for Migration](#) published yesterday, it advocates for more legal pathways – including 50,000 resettlement places over the next two years – but not hotspots. As shown, any external hotspots model entails considerable unresolved issues. The risk that Europe would use them to undercut its refugee protection and human rights standards is very high. Considering substantial political, legal and practical obstacles, external EU hotspots are unlikely to materialise in the short-term. If they do, it would be a collective responsibility for all Europeans to keep a close eye on them.