

STRENGTHENING THE COMMON EUROPEAN ASYLUM SYSTEM

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Introduction

More than a crisis of security and border management, the problem lies in a lack of legal routes, poor reception conditions and increasingly coercive migration management practices throughout the EU.

A coordinated EU asylum policy cannot be effective unless people's backgrounds, ideas, skills and family connections are taken into account.

The Euromed Survey was undertaken in 2016 and covers a wide range of issues that affect policy in the EU. In this analysis of the data, we look only at the issues related to the Common European Asylum System (CEAS). The arrival of over 1 million asylum seekers in 2015 surprised a number of member states, caused a brief crisis in the Schengen area regarding the abolition of border controls on persons moving among the states, and resulted in a range of proposals from the Commission on adjusting the CEAS to meet perceived new pressures. Also from the arrival of substantial numbers of Syrians mainly coming from Turkey, the EU entered into a controversial deal with Turkey designed to reduce arrivals and enhance returns.

The Euromed Survey findings are in line with our own research (Ansems de Vries, Carrera & Guild, 2016), which suggests that, more than a crisis of security and border management, the problem lies in a lack of legal routes, poor reception conditions and increasingly coercive migration management practices throughout the EU. As indicated by the Survey, there is a clear need for the convergence of asylum policies among EU member states but this cannot be effectively implemented without consideration of issues such as safe and legal routes, humanitarian visas and sufficient reception conditions across the EU. In addition, we suggest the need to take seriously asylum seeker's agency: people seeking protection are often also keen to work and have specific ideas about where they would like to go and stay. A coordinated EU asylum policy cannot be effective unless people's backgrounds, ideas, skills and family connections are taken into account.

European Agenda on Migration

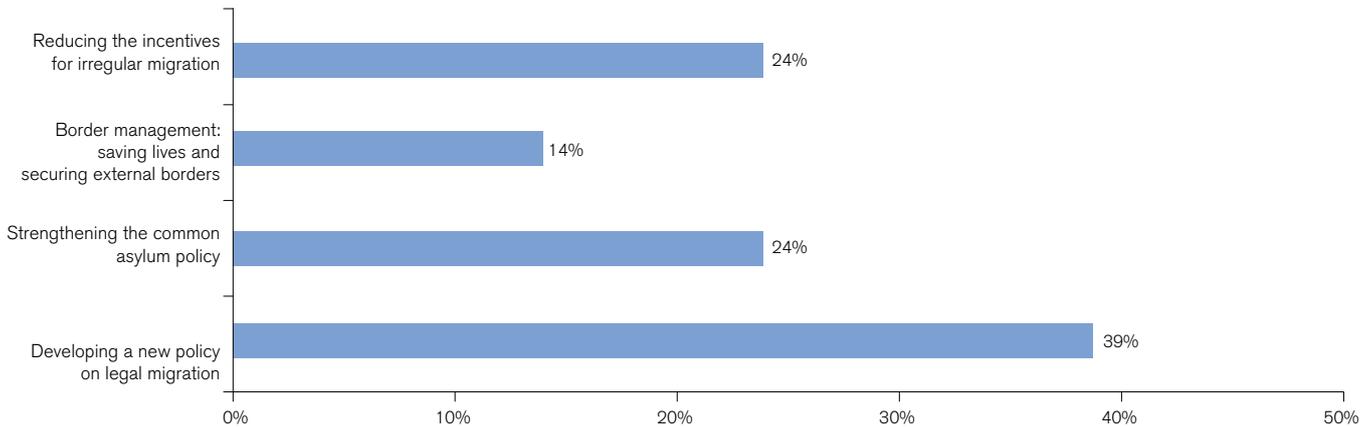
Question 12 asked respondents to rank a number of proposals according to what they considered the highest priority with respect to the EU Agenda on Migration (EAM). Although the answers were not specifically asylum-related, in the media and policy realms there has been much confusion of issues regarding asylum, border controls, immigration and security to such an extent that it remains complicated to extract one from the other. By a fairly substantial margin, the respondents considered that new policies on legal migration are the most important priority (39%). This is an interesting finding, not least as it appears to recognise the economic reality that the EU will need substantial levels of migration to maintain population levels in an EU where the average fertility rate in 2014 was 1.58 live births per woman, a rate well below replacement and which has been fairly constant for the past 20 years.

In addition, it suggests the importance of the development of safe and legal routes into the EU, as also indicated by the respondents' answers to other questions: the low popularity of strengthening border controls (14%) and the need for humanitarian visas, as further discussed

below. Part of the problem lies in the impossibility of entering the EU regularly: “illegality” is produced by policies such as increasingly pervasive and forceful border management, a strict visa regime and carrier sanctions. Thus, the best way to diminish irregular migration is to create legal migration routes that meet everyone’s needs: legal options for third country nationals seeking to access the EU territory and labour market. There is thus substantial synergy between the priorities of new policies on legal migration and reducing incentives for irregular migration: the two cannot be addressed separately.

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Graph 1: Ranking European Agenda on Migration (EAM) proposals according to what should be prioritised. (First European Agenda on Migration proposal to be prioritised in %)



Source: Compiled by the IEMed based on the results of the 7th Euromed Survey/Question 12

A related measure to reduce irregular migration concerns an awareness of people’s agency and circumstances, for instance by ensuring that families are able to live together. The EU’s directive on family reunification, adopted in 2003, has thrown up a whole series of questions and issues about family reunification policy in the member states. The Court of Justice has by and large provided helpful and sensible solutions to ensure that families are not divided. However, the increase in subsidiary protection permits to asylum seekers in Germany and elsewhere (where the previous year the majority of people from the same countries of origin were recognised as refugees) means that family reunification possibilities have been diminished. This is because refugees get favourable and immediate family reunification while beneficiaries of international protection can be made subject to waiting periods and conditions that diminish the possibility of family reunification. When people have close family members living in danger in for instance Syria, they may well be driven to bringing their family members irregularly to their host member states if family reunification cannot be achieved in a regular manner. This is both a humanitarian issue and a driver of irregular migration.

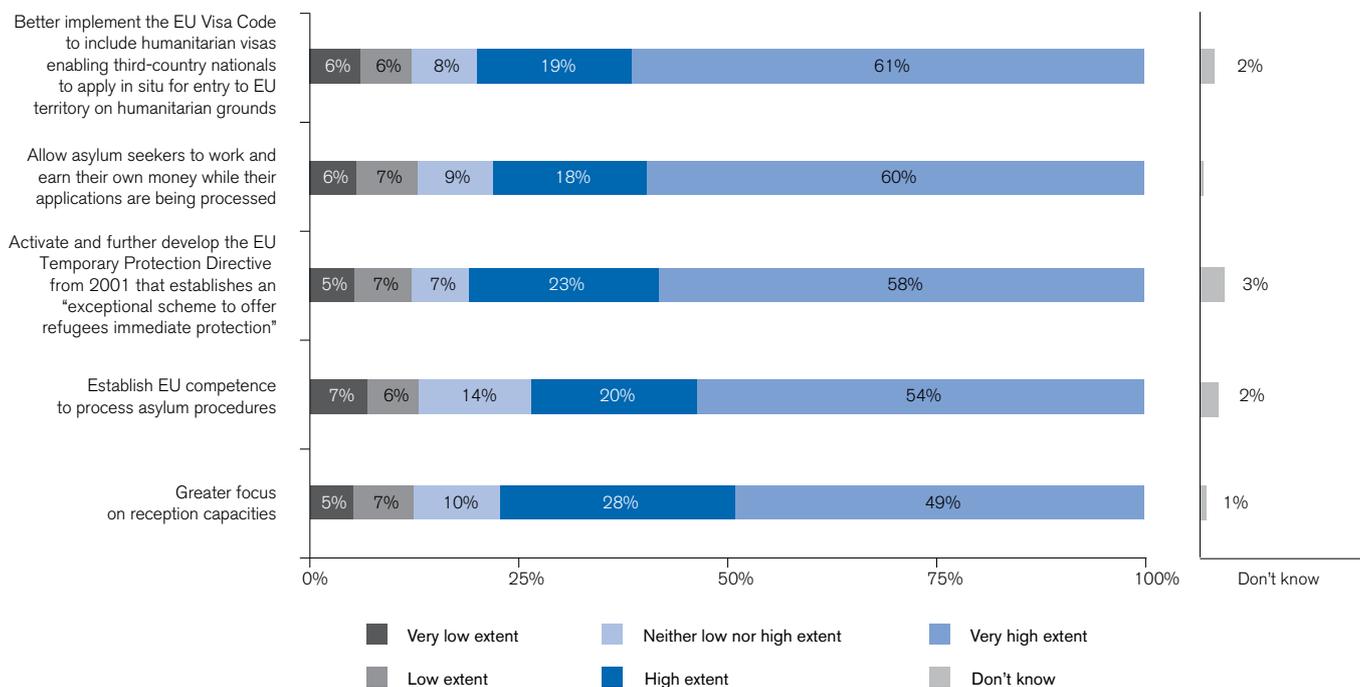
Improving Asylum Procedures

The importance of creating legal routes is also reflected in respondents’ answer to question 14, which asks what elements of the CEAS would improve asylum procedures in the EU. A large majority (61%) responded that humanitarian visas are the most important element (see Graph 2). This is a clear indication that the irregular arrivals in 2015 (often crossing in leaky little boats at high risk of death and injury) are considered a blot on the EU’s reputation and need to be addressed rapidly and properly with safe alternatives of access for asylum seekers to the EU. Many countries around the world have humanitarian visa systems, often in conjunction with the UN High Commissioner for Refugees (for instance, Brazil and Argentina). The purpose of humanitarian visas is to allow people fleeing persecution and crisis to get visas quickly on the basis of humanitarian need so that they can present their asylum applications

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in the destination country in conditions of dignity. However, humanitarian visas lose their effectiveness as a response to irregular flight if they are made subject to long and bureaucratic procedures – a tendency clearly present in many EU member states. Humanitarian visas must be available quickly and more or less on demand to people who are clearly in need, such as Syrians fleeing Aleppo or other crisis situations.

Graph 2: To what extent do the following elements offer an adequate response to improve asylum procedures?



Source: Compiled by the IEMed based on the results of the 7th Euromed Survey/Question 14

Allowing asylum seekers to work would constitute an acknowledgement that their precarious situation and need for protection does not take away their agency.

Respondents' second priority (60%) is permitting asylum seekers to work on arrival. This is a very sensible proposal as it enhances immediate integration and enables people to become self-sufficient and contribute to the host society and economy rather than depending on state resources. This is also valuable for the perception of asylum seekers in the host country. More generally, allowing asylum seekers to work would constitute an acknowledgement that their precarious situation and need for protection does not take away their agency. It thus challenges the strict distinction between migrants and asylum seekers/refugees as those who would like to work versus those who need protection.

Although considered of lower priority by respondents (49%), we think a greater focus on reception would be an important step in improving asylum procedures. The EU adopted a legal measure on temporary protection in 2001 but has never used it. The measure permits the Council to open a scheme for people in need of international protection on the basis of the situation in their country of origin. It does not deal with the issue of first admission/arrival into the EU or a member state but requires states to provide a wide range of facilities to those in need. This is something that has been lacking in the current crisis: what the 2015 arrival of asylum seekers demonstrated to the EU – and the world – is that the crisis was one of reception, which has yet to be resolved in a number of member states. Availability of reception conditions, and willingness of member states to make these facilities available, has been at the heart of the issue. The images of asylum seekers including minors living in mud and rain on the streets of EU cities and in makeshift shelters in places such as Calais, with nowhere to go and with contact with state authorities mainly limited to coercion and violence including teargas, water cannons, rubber bullets and the destruction of living spaces – have been widely

disseminated around the world to the EU's shame. What is needed is a change in attitudes towards reception of asylum seekers and a change in some member states' attitudes that their responsibilities are limited to pushing asylum seekers across their borders into other member states, or trying to prevent such intra-EU movement. This will be a long but necessary process to achieve a CEAS which is equitable and fair to asylum seekers, fulfilling member states' obligations under the UN Convention relating to the Status of Refugees.

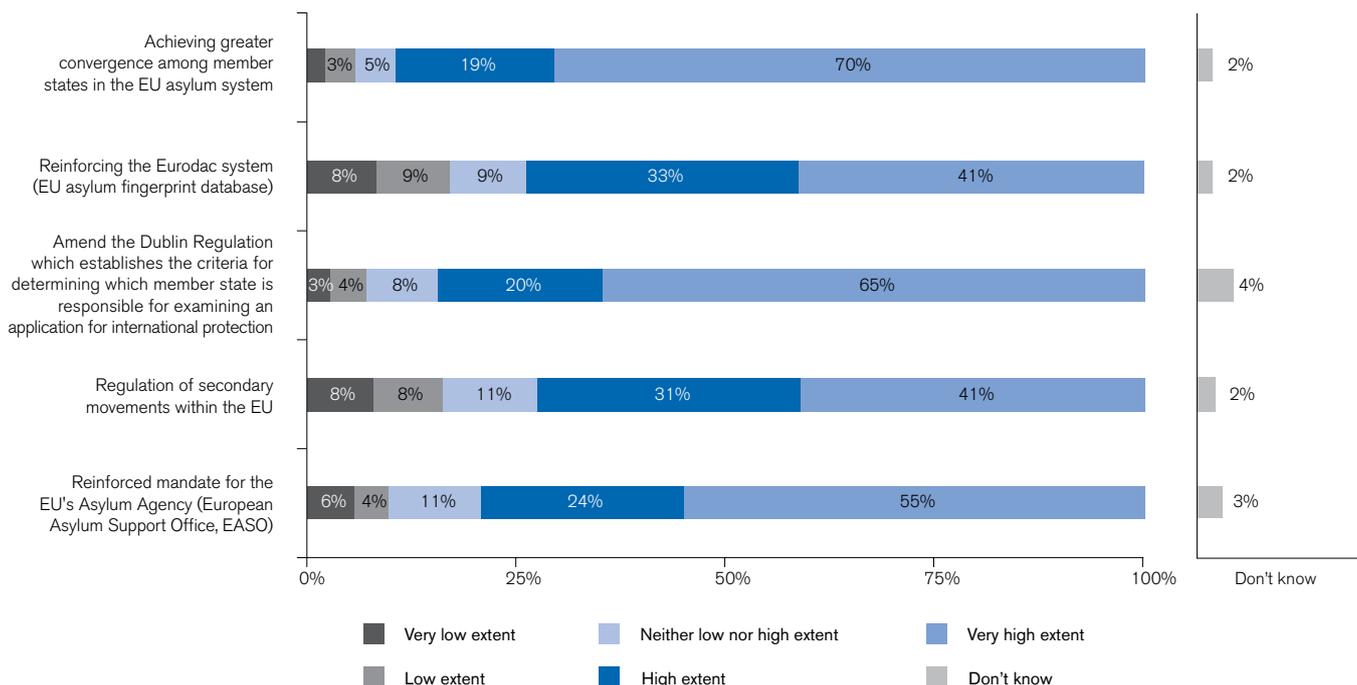
Reforming the Common European Asylum System

Question 15 asks respondents to prioritise changes to the CEAS. The highest priority (70%) was given to achieving greater convergence in the asylum system (see Graph 3). This is a clear indication of just how unsettling the variations among member states of, for instance, recognition rates for asylum seekers from the same countries of origin is. The EUROSTAT data shows that there has been little convergence in recognition rates among the member states over the ten years which the CEAS has been in effect. Differences in recognition rates vary to an order of 70% – meaning that an asylum seeker who makes his or her application in one country may have more than a 70% greater chance of being granted protection than if he or she makes the application in another country. This is also a factor underlying secondary movements (asylum seekers' movements from their first country of arrival in the EU to another member state in search of better chances of protection) and for the failure of the Dublin system.

Indeed, revising the criteria of the Dublin Regulation, which allocates member states' responsibility for asylum seekers, is the respondents' second highest priority in the Survey (65%). At the moment, the most used criterion is that relating to the first member state through which the asylum seeker entered the EU. Although other criteria such as a first degree family member already recognised as a refugee in a member state come higher on the Dublin list, in fact it is the country of first entry which is the most commonly used. However, this means that member states with substantial borders with third states and sea borders are responsible for substantially greater numbers than other member states – in practice; this has especially affected Italy and Greece. Among the problems that make this Dublin criterion less than effective, and linking back to the issues discussed above, are the lack of reception facilities in Greece and Italy (which continue notwithstanding intensive investment of EU funds over 20 years); the fact that asylum seekers do not want to stay in those states (which might be related to the cold shoulder reception they may have received there); and the ineffectiveness of various coercive measures to force asylum seekers to stay in their allocated member state.

Within the EU an asylum seeker who makes his or her application in one country may have more than a 70% greater chance of being granted protection than if he or she makes the application in another country.

Graph 3: To what extent do the following elements offer an adequate response to improve asylum procedures?



Source: Compiled by the IEMed based on the results of the 7th Euromed Survey/Question 15

Strengthening the CEAS must involve a number of shifts in both thinking and practice, which go beyond the issue of asylum narrowly conceived.

Whilst there is general agreement that the asylum system needs to be fair to asylum seekers and member states, there is little agreement on what such a fair system would look like. A shift in thinking is needed to seeing asylum seekers and refugees as subjects with agency – with particular histories, skills, experiences and family connections – rather than objects that can simply be moved around or kept in place. In practice, this means that more attention must be paid to where an asylum seeker wants to go as usually they have good reasons for their choices and in the end they will get to the place where they want to be. This links back to the issue of secondary movement. As free movement of persons is one of the hallmarks of the EU, it is not surprising that everyone uses this right, including refugees and asylum seekers, yet it tends to be regarded as unwelcome by states that seek to lower the numbers of arriving asylum seekers. It is indicative that regulating secondary movements was given the lowest priority by Survey respondents, together with reinforcing the EURODAC system (both 41%).

The convergence of asylum policies among EU member states and the development of a fairer asylum system for all cannot be effectively implemented without the creation of safe and legal routes, humanitarian visas and better reception conditions across the EU.

In short, strengthening the CEAS must involve a number of shifts in both thinking and practice, which go beyond the issue of asylum narrowly conceived – it requires a more integrated response to the current crisis. Firstly, it requires an understanding of the issue not as a crisis of security and border management but one of a lack of legal routes, poor reception conditions and increasingly coercive migration management practices. The convergence of asylum policies among EU member states and the development of a fairer asylum system for all cannot be effectively implemented without the creation of safe and legal routes to counter the problem of irregular and dangerous journeys, humanitarian visas that are available quickly to those in need and better reception conditions across the EU, both for those in official reception facilities (including hotspots) and for those who are on the street or in make-shift camps. In addition, it requires that we take people's agency seriously: despite their precarious condition, asylum seekers and refugees are subjects with their own histories, ideas, skills, family connections, etc. They are often keen to work and should be given the opportunity to do so, and they have specific ideas about where they would like to go and stay, which must be taken into account for a strengthened common European asylum system to be fair and effective.

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Bibliography

ANSEMS DE VRIES, L., CARRERA, S., & GUILD, E. (2016, September). Documenting the Migration Crisis in the Mediterranean. *CEPS Paper in Liberty and Security in Europe*, No. 94. Retrieved from <https://www.ceps.eu/publications/documenting-migration-crisis-mediterranean-spaces-transit-migration-management-and>.