



Call for Papers "Geopolitics & Values: what is the real power of the EU?"

**THE INFLUENCE OF COVID-19 ON THE EUROPEAN ASYLUM AND MIGRATION
POLICY**

Making health a priority while ensuring respect for fundamental rights.

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EXECUTIVE SUMMARY

This article studies the impact of the restrictive measures related to the Covid-19 pandemic outbreak, on the European asylum and migration policy. It focuses on some of the difficulties encountered by international protection applicants to exercise their right to asylum, and on the influence that Covid-19 might have had on their living standards. Based on that, the objective of the research is to study whether the New Pact on Migration and Asylum proposed by the European Commission in September 2020, considers those obstacles, and offers solutions to ensure the respect of fundamental rights while preventing threats to public health. The article ends up with recommendations for further integration of the fundamental rights and public health perspective in the European and Asylum policymaking.

Short bio

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Table of acronyms

| | |
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| CPT | Council of Europe Committee for the Prevention of Torture |
| EASO | European Asylum Support Office |
| ECDC | European Centre for Disease Prevention and Control |
| ECRE | European Council on Refugees and Exiles |
| EU | European Union |
| EU+ | EU Member States, Norway and Switzerland |
| FRA | European Union Agency for Fundamental Rights |
| Frontex | European Border and Coast Guard Agency |
| MSF | Médecins sans frontières/Doctors without borders |
| OHCHR | United Nations Office of the High Commissioner of Human rights |
| OECD | Organisation for Economic Co-operation and Development |
| UNHCR | United Nations High Commissioner for Refugees |
| WHO | World Health Organisation |



The year 2020 is marked by the outbreak of the Covid-19 pandemic. As the cases around the globe increased, especially in the northern hemisphere, governments adopted emergency laws and restrictive measures (EASO, 2020a). Those measures initially affected freedom of movement as lockdowns and border closures came into force. The European Union has been particularly affected by the situation and was considered to be the epicentre of the pandemic during the spring of 2020 (WHO, 2020a). Italy has been the first Member State to adopt emergency measures, initially at a local level (Giuffrida & Tondo, 2020) before putting the whole country under a national lockdown at the beginning of March 2020 (Tondo, 2020). Italy was promptly followed by the other EU Member States, which adopted emergency measures to contain the spread of the virus and re-established strict border controls or closures (Hirsch, 2020). Member States mostly took those decisions unilaterally, leaving little room to the European Commission for coordination (Montaldo, 2020).

While the reintroduction of border controls or closures are considered legitimate for public health reasons under the Schengen border code (Regulation (EU) 2016/399), and the restriction of freedom of movements is allowed under the Charter of Fundamental Rights (Charter of Fundamental Rights of the European Union, 2012) and the European Convention of Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms, 1950) in case of emergency situations, these limitations inevitably affected the right to asylum in the EU (Rasche, 2020). The crisis also exacerbated already existing shortcomings in the current Common European Asylum System, and the national asylum systems (Carlucci, 2020). As the EU Member States and other countries around the world have been facing a second wave of the Covid-19 pandemic since September 2020, it seems that those nominally exceptional measures risk to become our new normal and demonstrate the necessity to put public health issues at the centre of policy decision-making.

Regarding health, EU Member States are among the higher ranked for social protection according to OECD (OECD, 2020). As theorized by the scholar Joseph Nye, the soft-power of a State is determined by its ability to reach its means through attraction, and particularly through the attractiveness of the State's culture, political values, and foreign policies (Nye, 2004). Nye considers immigration to be a resource that reinforces the soft power of a State, since it proves that people want to come to the country and are appealed by its way of life. The EU is considered to have a strong soft power according to Nye's criteria. In fact, the Union is a self-proclaimed leader in terms of the protection of fundamental rights and democracy, both in the region through its constitutional core values, and abroad with an active foreign policy regarding the promotion of its values. Considering the number of arrivals, the EU continues to represent both a shelter and a land of opportunities for migrants from all around the world, despite its lack of appropriate response to the 2015 migration crisis, which undermined its record in terms of moral standards, and challenged its soft power (Kugyel, 2017).

Since 2015, the EU asylum and migration policy has been widely discussed, and the Commission's proposal to reform it in 2016 never reached an agreement in the Council. The Von Der Leyen's Commission presented its new proposal in the form of a New Pact on Migration and Asylum in September 2020. To what extent does this new proposal take into account the learnings from the Covid-19 global pandemic? How can we ensure that asylum seekers' and migrants' fundamental rights are respected while implementing public health measures?

This paper will answer those questions first by examining the situation of the right to asylum under the current global pandemic and emergency situations, then by analyzing the Commission's



proposal through fundamental rights and public health perspectives, and finally by drawing certain recommendations to best integrate them.

The outcomes of this article are based on the study of institutional documents and NGOs reports, and interviews with a European Commission official and with the former head of the Legal Centre Samos – ASF France, Beatrice Chioccioli. The European Border and Coast Guard Agency (Frontex) also answered some questions to have a better understanding of the situations of returns.

The right to asylum during Covid-19.

The situation of migrants and asylum seekers has been the subject of several reports by NGOs and institutions (European Parliament, 2020). The outcomes of those reports emphasize the vulnerability of this public, which puts them at a higher risk before the virus (Refugees International, 2020), due to the factors such as the density of the population in the refugee camps, the lack of, or difficulty of access to healthcare and the lack of access to reliable information due to the language barrier, misinformation, etc.

The first months of 2020 saw an increase in the asylum applications in the EU Member States, Norway and Switzerland (EU+) compared to the two previous years (EASO, 2020b). The outbreak of Covid-19 had a dramatic effect on the number of asylum applications in the EU+: while in February 2020 more than 60.000 applications were made, around 34.000 persons applied for asylum in March of the same year, thus dropping to the lowest numbers from the beginning of 2014 (EASO, 2020c), and around 7.000 in April 2020. The asylum applications started to increase again in June 2020, but they still are way under the level that they reached before Covid-19.

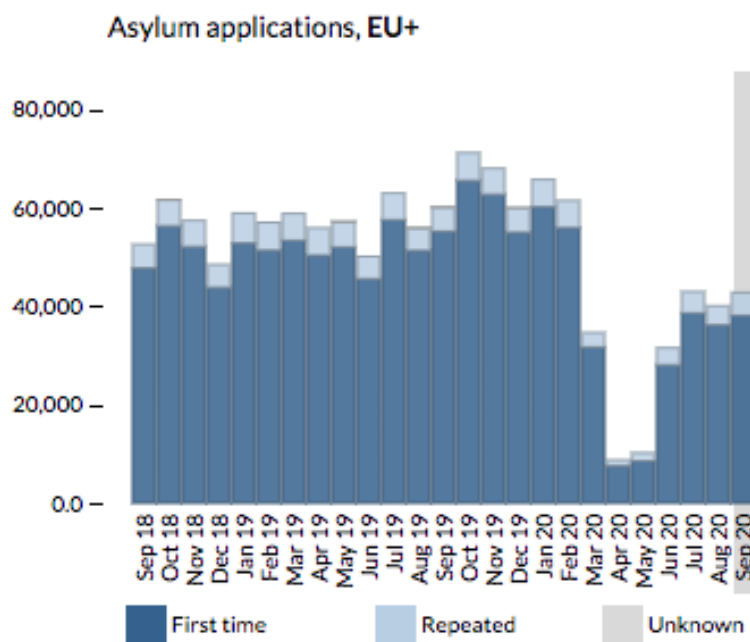


Figure 1. Latest asylum trends (EASO, 2020d)



There are several reasons for this sudden drop in the asylum applications, the main one being the closure of both the internal and external borders of the EU. On 16 March 2020, the European Commission proposed a restriction on non-essential travels from outside the EU which was adopted (European Commission, 2020a). Member States are allowed to close their borders under the Schengen Border Code, especially if it is to prevent a threat to public health (Regulation (EU) 2016/399). This closure cannot however preclude a person from seeking international protection, under the principle of non-refoulement (UNHCR, 2020). The Commission guidance on this temporary restriction reminded this principle, and the obligation of the Member States to respect the right to asylum as stated under Article 18 of the Charter of Fundamental Rights. Nevertheless, the almost total suspension of the commercial flights led to a sudden drop in asylum applications, as one of the few legal pathways to reach Europe suddenly became unavailable. Almost no asylum applications from Latin Americans were registered after the entry into force of the ban, while they represented an important share of the asylum application in January and February 2020 (EASO, 2020b).

Another obstacle to the exercise of the right to asylum in the EU has been the unilateral management of the asylum systems of the Member States. As the threat to public health became more important, the Member States took a series of measures, prioritizing their national interest and those of their citizens, with few considerations to the fundamental rights of migrants and asylum-seekers on the account of public-health measures (Carlucci, 2020). Several cases of push-backs, a practice in violation to fundamental rights, that was already denounced prior to the pandemic, have been reported at the external borders of the EU, and justified by the Member States as public health measures: Cyprus pushed back a boat with Syrian migrants (ECRE, 2020a) and Malta and Italy declared their ports as unsafe and denied the disembarkation of migrants from NGO boats (Statewatch, 2020). Austria on the other hand issued a decree authorizing the rejection of asylum applicants who could not present a medical certificate (ECRE, 2020a). A major obstacle to access asylum applications was the disruption of the administrative and legal process to register and process asylum applications, as public offices closed and social distancing measures were slowly put into place. Several Member States officially suspended their access to asylum procedures, including Belgium, France, Greece, Hungary, the Netherlands, Poland, Slovenia and Spain, while in some other States the restricting measures made it difficult to access, such as in Italy (ECRE, 2020b). The registration of asylum applications resumed in June 2020 (EASO, 2020c).

While the pandemic had a negative impact on the asylum procedures, the border closures and travel restrictions also disrupted resettlements and relocations, intra-EU transfers for the Dublin regulation application, family reunification procedures and returns to the countries of origin. Concerning the application of the Dublin regulation, the suspension of the transfers of the person applying for international protection to the Member State responsible for their asylum application, led to a shifting of responsibility from the Member States that requested the transfer under the Dublin regulation (EASO, 2020a). The legal disposition does not allow for a derogation in case the transfer to the responsible Member State is not carried out within the time limit (European Commission, 2020b). The suspension of transfer thus led to a shift of responsibility for the asylum application in more than 1000 cases between February and April 2020, for at least six Member States (EASO, 2020a). As for the return operations, Frontex reported a decrease of 48% of its return-related activities in the first half of 2020, mainly because of the lack of commercial flights.



Another major obstacle encountered by the Agency in carrying out the operations, was the mandatory quarantine requested by some destination countries (Frontex, 2020).

Furthermore, physical distancing including lockdowns and hygienic measures have been the primary recommendation to avoid the spread of the virus. Nevertheless, such measures have not been easy to put in place in overcrowded reception and detention centres, also because of the lack of information and the language barrier, thus sometimes resulting in cases of infections, such as in Italy and Germany (FRA, 2020).

In March 2020, the Council of Europe Committee for the Prevention of Torture released a statement of principles for the treatment of persons deprived of liberty in the context of the Covid-19 pandemic. Among them, the Committee emphasized the need to resort alternatives to deprivation of liberty and the necessity to provide access to healthcare (CPT, 2020). Some of the Member States adopted positive measures towards migrants by releasing them from detention centres given the impossibility to undertake their returns (FRA, 2020). However, in a lot of cases, the Covid-19 pandemic and the measures to contain the spread in reception and detention centres worsened already poor living conditions. Some Member States closed their detention facilities to visitors and suspended NGOs visits (FRA, 2020), or created ad-hoc quarantine facilities. Italy started to use ships as quarantine facilities for newly-arrived migrants. The main threat posed by the sanitary isolation premises is the lack of legal safeguards, coupled with the risk that they become long-term structures: migrants under isolation cannot have access to their basic rights, including the right to apply for international protection (Santoro, Delle Cese & Petrucco, 2020).



Samos Legal Center – ASF France, 2020.

The situation in the hotspots in Greece, in Moria and Samos, was already alarming in terms of fundamental rights (Mijatović, 2019) before the Covid-19 pandemic outbreak and widely denounced by NGOs (MSF, 2019), and institutions (FRA, 2020). In October 2019, the Council of Europe Commissioner for Human Rights called for an evacuation of asylum seekers from the



Aegean Islands to the mainland, in order to improve their living conditions in the reception facilities (Mijatović, 2019). The sanitary situation is critical: no doctors or psychologists, no water or hand-sanitizer, no sanitary facilities or showers for the overpopulated centres, no washing machine. Moreover, an important share of vulnerable migrants is among the population of the centres, as the Greek administration restricted the legal pathways to leave the centres and reach the mainland. The premises to isolate the newly arrived in the hotspot do not comply with the social and physical distancing measures, as they were rapidly crowded, mixing men, women and children, with no real medical screening and no possibility for NGOs to visit and monitor the situation (Chioccioli, 2020). In addition to that, the restrictions and containment measures reduced the access to health and social care available, since the international volunteers who provided most of the assistance could not reach the islands or shifted to remote work (Chioccioli, 2020). The priority for Greek hotspots is to declutter the camps to reduce the overcrowding, which is only possible through an effective solidarity among the Member States. While Germany and Luxembourg accepted to relocate unaccompanied minors from the camps (ECRE, 2020c), this is not sufficient and there is a necessity to evacuate the camps to provide adequate living conditions to migrants and asylum seekers, especially the most vulnerable ones.

The support of the EU in the field of asylum and migration.

In response to the situation and the consequences on the asylum field, the European Commission issued a communication on 16 April 2020, on the ‘implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement’ (European Commission, 2020b). This document drafted in collaboration with the European Asylum Support Office and Frontex aims at alleviating the difficulties faced by the Member States in the field of asylum taking into account the principle of non-refoulement and non-discrimination and the obligations of the Member States and the EU under international law. The guidance illustrates its recommendations by sharing best practices from the Member States, and by finding flexibility measures in the existing European acquis on asylum, resettlements and returns. Those elements of flexibility listed in the guidance were meant to show to the Member States that they could guarantee the access to international protection, even in times of crisis, especially with the use of digital tools to ensure the access to the procedure.

The need to ensure the continuity of the procedures comes first, while ‘fully ensuring the protection of people’s health and fundamental rights’ (European Commission, 2020b), since the beginning of the procedure then opens the right to the reception conditions. The document underlines that the national administrations need to continue the registration of the applications and to process them, to ensure access to healthcare. The Commission emphasizes the need to apply public health measures (i.e. medical screening, social distancing, quarantine and isolation) to all third-country nationals regardless of their legal status.

According to a European Commission official interviewed for the purpose of the research, the follow-up on the guidance was made by EASO technical experts, who guided the Member States in implementing it and issued specific guidance for the conduct of personal interviews remotely for the asylum procedure. The agency published four reports to follow-up on the implementation of the measures, and the asylum trends during the Covid-19 pandemic which differed significantly from the initial forecasts.



While EASO monitored the implementation of the asylum procedures and the asylum trends, the European Centre for Disease Prevention and Control published guidance on 'Infection prevention and control of Covid-19 in migrant and refugee reception and detention centres' (ECDC, 2020). The guidance evidences the fact that the conditions of living in reception and detention centres may increase the spreading of the virus due to overcrowding. Overall, ECDC advised on implementing physical and social distancing measures, but to 'decongest and evacuate residents' if no such measures can be applied. The agency does not advise on quarantining entire camps, and even warns about the potential stigma that such measures could put on migrants and asylum seekers (ECDC, 2020). The public health measures applied to the reception centers varied from one Member States to the other, while some opted for strict quarantines and lockdowns in the centers, other prioritized decluttering, and opening new structures (ECRE, 2020b).

The Fundamental Rights Agency conducted a monitoring of the impact of the Covid-19 containment on fundamental rights, through specific Covid-19 bulletins, and dedicated a specific bulletin to the way Covid-19 measures affected the rights of migrants (FRA, 2020). Those bulletins report several violations in the Member States regarding the above-mentioned topics (asylum procedures, reception, detention, return), but also about child protection, hate speech and violent crimes, and allegations of refoulement by some Member States. According to an EU official, given the pressure and burden caused by the health emergency, the Commission prioritized communication over sanctioning, to resolve measures in violation of EU law adopted by the Member States. It remains to be seen whether the Member States will be held accountable for fundamental rights violations during the pandemic, once the health emergency is over.

The New Pact on Migration and Asylum.

The proposal of the European Commission for a reform of the European asylum acquis was presented on 23 September 2020, as the New Pact on Migration and Asylum (European Commission, 2020c). This proposal is the result of long negotiations which started after the failure of the Common European Asylum System reform in 2016. The Commission nevertheless does not entirely set aside the negotiations for the 2016 CEAS reform but tries to build on them. The New Pact is composed of five regulations: the Asylum and Migration Management Regulation, the Screening Regulation, the amended proposal for the Asylum Procedures Regulation, the amended proposal for the 'Eurodac' Regulation, and the Crisis Instrument Regulation. One of the central elements of the Pact, is the rapid identification of the persons in need of international protection, or those in need of "effective returns", to rapidly apply the appropriate procedure.

Even if the negotiations for this policy proposal had started after the failure of the 2016 Common European Asylum System reform, they have been interrupted by the Covid-19 pandemic outbreak, and some of the texts benefited from an update to integrate the learnings of this experience.

One of the controversial aspects of this new proposal is the long-awaited abolishment of the Dublin III regulation, whose reform proposal from 2016 sparked debates, as it was the element of disagreement between the Member States in 2016 (Asylum in Europe, 2017a). The Dublin regulation is thus proposed to be replaced by the Asylum and Migration Management Regulation. This new regulation, similarly to the Dublin Regulation, sets out the criteria for determining the responsible Member State for examining an asylum application (European Commission, 2020d). One of the main differences with the existing legislation, is that the Commission's proposal creates



a specific procedure for the persons rescued from search and rescue operations at sea. The solidarity mechanisms directly apply to them so that this responsibility doesn't always apply to the Member States with a sea border (i.e. Italy, Greece, Malta, Spain).

While the 2016 Dublin Regulation amended proposal focused on relocation to ensure responsibility sharing, this text aims at enforcing responsibility sharing and solidarity among the Member States in the context of migration and asylum, both through relocation and 'return sponsorship' (European Commission, 2020d). The regulation establishes the procedure to make a transfer either to the Member State responsible for the international protection application or to the Member State who committed to organising the return operation. The latter might complicate an already intricate procedure and might be even more challenging to put into practice than the existing Dublin regulation (ECRE, 2020d).

The objective is that the asylum and migration field is handled by the EU as a whole and is not borne by individual Member States (European Commission, 2020c). The solidarity mechanisms shall be triggered when a Member State is under migratory pressure, or following disembarkations of search and rescue operations.

Another element proposed in this Pact is the regulation 'addressing situations of crisis and force majeure in the field of migration and asylum' (European Commission, 2020e). This text is the result of the refugee crisis of 2015 and the Covid-19 pandemic. The pandemic was an opportunity to pause the negotiations and look into the existing instrument, and create an ad-hoc tool to better face such a situation of force majeure in the future (Commission source, 2020). The regulation provides the Member States with legal tools to adapt to crisis situations. Those tools allow for flexibility regarding the application of the Asylum and Migration Management regulation, especially when it comes to the deadlines (i.e. for registration, transfers).

The screening regulation was also an opportunity to integrate the learning of the Covid-19 pandemic in the European migration and asylum policy. This proposal introduces a 'screening of third-country nationals at the external borders', to prevent 'threat to Member States' internal security, public policy, public health and international relations' (European Commission, 2020f). The scope of the procedure applies to third-country nationals apprehended while irregularly crossing EU's external borders; following the disembarkation of Search and Rescue operations; or to third-country nationals applying for international protection at external borders and not fulfilling the entry conditions according to the Schengen Border Code. The final objective of the screening is to channel the third-country national to the appropriate procedure: the application for international protection, relocation in another EU Member State, or a return operation. The screening consists of a health and vulnerability check, an identity check, a security check, and the registration of biometric data. While identity and security checks are already compulsory (Dumbrava, 2020), a mandatory health check is a new feature - result of the Covid-19 pandemic outbreak -, even though the Schengen Border Code (Regulation (EU) 2016/399) already allowed border guards to carry out border checks on third-country nationals on a non-systematic base, to make sure that they would not represent a threat to the public health of a Member State. The medical check introduced by the screening regulation is systematic, and it shall identify third-country nationals in need of immediate healthcare, requiring isolation due to potential threat to public health, and persons with special reception need to provide them with immediate assistance. The procedure should be carried out within three to five days according to whether it is applied at the external borders or within the EU's territory.



The screening regulation devotes an article to the monitoring of fundamental rights during the screening, but also with an aim to ensure that ‘allegations of non-respect for fundamental rights in relation to the screening, including in relation to access to the asylum procedure and non-compliance with the principle of non-refoulement are dealt with immediately’ (European Commission, 2020f). This monitoring is necessary in the framework of this proposal. In fact, the risk with this screening procedure, and especially regarding the identification of the appropriate procedure, is that it might be misused by Member States as an accelerated asylum procedure, without the legal guarantees of a regular one. This will be done through an independent monitoring mechanism established by the Member States with the support of the Fundamental Rights Agency. This fundamental rights monitoring is a sign of progress, as there had been allegations of abuses, and of use of detention to enforce fingerprinting in the hotspots (Papadopoulou, 2017). When it comes to the health check, the regulation does not provide details on the extensiveness of such screening, which leaves room for interpretation. Besides, medical procedures can be invasive and need to be carried out with the consent of the person, it is thus necessary to monitor and deal with possible violations as soon as possible.

Recommendations for an EU asylum and migration policy addressing public health measures and respect for fundamental rights.

The Covid-19 pandemic is a turning point in our relationships towards health measures, and how to fully integrate them in our lives. It is in fact likely that masks and social distancing measures will to a certain extent remain a part of our daily routines. Likewise, public health measures will probably become more central in our policy-making process. The measures initially implemented by the Member States, and other countries around the world, primarily impacted the freedom of movement, and hence migratory movement. Public health measures need to become central in the Asylum and Migration policies too and not be limited to the restriction of freedom of movement and border controls. In this context, it is more than ever of utmost importance that States respect international and European obligations.

- **Ensuring access to international protection application in times of crisis.**

Public health measures resulting in the suspension of commercial flights to Europe should not prevent people from applying for international protection in Europe. The drop in international protection application registered by EASO from March 2020 is very worrying. The debate surrounding the adoption of an amendment about humanitarian visas was abandoned because of the lack of agreement among the institutions (European Parliament, 2019). Nevertheless, this shows the need to provide third-country nationals with legal pathways and humanitarian visas to reach Europe and to start asylum procedures, even in times of crisis.

- **Harmonization of the Reception conditions directive.**

One of the most important measures to prevent public health implications is to provide adequate living conditions. The reception conditions of the migrants are laid out in the Reception Condition Directive (Directive 2013/33/EU), and they need to be in line with the Charter of Fundamental Rights. Member States are thus obliged to protect the physical and mental health of the international protection applicants. Yet, the reception conditions are very uneven from one Member States to the other, but also within a Member State, depending on the specific procedure the applicant is going through. A huge number of asylum seekers are still homeless and do not



benefit from the reception conditions they are owed to (Asylum in Europe, 2017b). This lack of material and reception conditions make them more vulnerable and prone to health issues. An harmonization of the standards and fair compliance by the Member States with the Reception condition directive is necessary.

Nevertheless, the Covid-19 pandemic outbreak taught us how difficult it can be to implement social and physical distancing. Their application only implies making more room to freely move and live in. While those requirements are considered to be exceptional, they should be available in regular times, and could prevent situations of overcrowding. Integrating social and physical distancing in the reception centres on a normal basis would not only improve the sanitary conditions in case of a health crisis, but also offer more intimacy to the applicants, and thus improving their living conditions and human dignity.

- **Universal access to health care regardless to the legal status.**

Article 35 of the Charter of Fundamental Rights guarantees access to preventive healthcare and medical treatment for everyone. Access to healthcare is also strongly linked with respect for human dignity. This service should be free and easy regardless of the legal status of the person (OHCHR, 2020). However, many obstacles can prevent the irregular migrants to seek healthcare: the fear of being deported if the person goes to the hospital, the language barrier, administrative obstacles, or social isolation and lack of information (Asylum in Europe, 2017b). After the Covid-19 pandemic experience, Member States need to make sure that everyone can have access to healthcare without fearing consequences.

- **A new monitoring role for the European Centre and Disease Prevention and Control.**

Overall, the Covid-19 pandemic outbreak suffered from the lack of competence of the European Union in the field of public health policy, to coordinate the Member States' measures and protect the European citizens. In her State of the Union speech, President of the European Commission Ursula Von Der Leyen announced that there would be a discussion about health competence in the near future (Von Der Leyen, 2020). In November 2020, the European Commission published its proposal for a European Health Union (European Commission, 2020g). This package consists in a proposal to extend the mandate of the European Medicine Agency (European Commission, 2020h) and of the European Centre for Disease Prevention and Control (European Commission, 2020i), and a proposal for a Regulation on serious cross-border threats to health (European Commission, 2020j). This new proposal is aimed at building a stronger European response capacity in case of potential future outbreaks. The creation of an integrated European Health Union is a very good sign and will allow a swifter response to a public health emergency. Nevertheless, it would be beneficial to expand even more the mandate of the ECDC, to have a public health perspective on the EU policies. Similarly to the Fundamental Rights Agency, the ECDC could issue recommendations on EU policies and proposals and monitor situations where there might be a threat to public health, outside of a potential epidemic outbreak. Monitoring by an external independent institution would allow to identify a lack of doctors, medical equipment, or medicine, to provide a coordinated quick response. Any kind of reception and detention facilities can become dangerous towards its inhabitants when they are overcrowded and lack hygiene and sanitary equipment. Solidarity, in addition to the very much needed relocation of vulnerable persons, could also be, in the field of migration and asylum, sending a team of doctors from another Member State or medical equipment.



- **A public health approach to forced returns operations.**

Last but not least, there is the need to develop a public health approach in the return policy, especially since the new Pact on Migration and Asylum extensively focuses on this aspect. The suspension of commercial flights and restrictions from countries of origin led to a nearly total suspension of the return procedures. If some Member States managed to carry out some forced returns during the pandemic (FRA, 2020), this was advised against by the United Nations Network on Migration (IOM, 2020). Transfers in times of pandemic are endangering the lives of the concerned stakeholders, whether the migrants, the officials, or the health and social workers. While the Covid-19 pandemic caused a unique situation to manage for the European Union, diseases and epidemics are nothing new. During the Ebola outbreak, UNHCR recommended to take into consideration the developments in the Ebola-affected countries and of the migrant' individual situation before undertaking any return operations (UNHCR, 2014). In fact, during the Ebola outbreak, several European Courts ruled against forced returns of individuals in Ebola-affected countries (UNHCR, 2014). It is also important to consider that forced returns rarely lead to reintegration into the society of the country of origin, but most often to a marginalization of the migrant, thus making them more vulnerable to social and health issues (Kleist, Bob-Milliar, 2013).

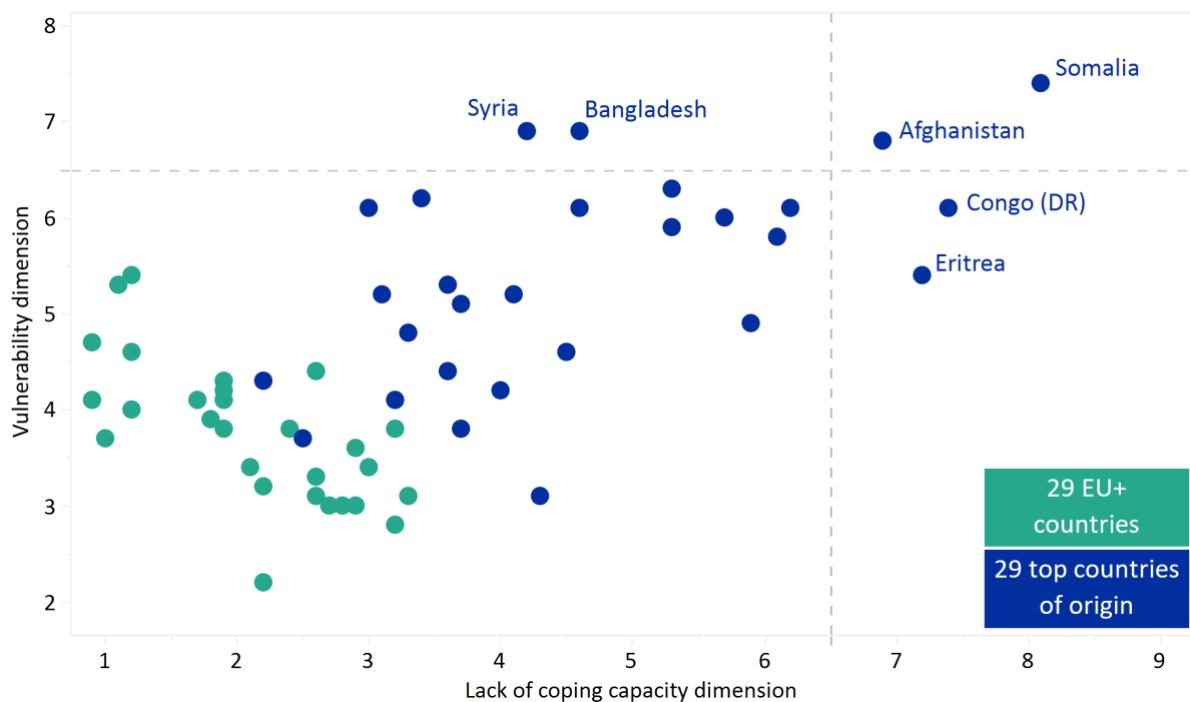


Figure 2. Vulnerability to a pandemic situation and lack of coping capacity for the 29 EU+ countries and the 29 top countries of origin of applicants of international protection in the EU (EASO, 2020b)

In the case of Covid-19, Europe was considered to be the epicentre of the pandemic during the spring of 2020 and is facing a very severe second wave of the pandemic during the autumn (WHO, 2020). According to a research conducted by EASO based on data provided by the INFORM Epidemic Global Index (EASO, 2020b), the 29 top countries of origins of international protection applicants lack coping capacity and are very vulnerable to a potential pandemic (Fig.



2), which means that their health system would be immediately overloaded and that the medical response could not face the situation. Forced returns from Europe during the Covid-19 pandemic are dangerous and pose a threat to the public health of the country of origin. While Frontex declared that the agency was monitoring the situation and may refuse to carry out operations deemed unsafe (Frontex, 2020), is there such a thing as a safe transfer in times of pandemic? An outbreak in a country with low coping capacity and a high vulnerability would not only create a much more severe sanitary crisis, but it would also have a very serious social and economic impact, thus very likely leading to a massive displacement of persons.

For the above-mentioned reasons, it is necessary to consistently apply a public health perspective to the return policy, and each individual return.

The living conditions of migrants and refugees in Europe were already poor before the outbreak of the 2020 pandemic, because of social and economic exclusion, and a lack of consideration of fundamental rights by the Member States. This exceptional situation can be a turning point to shift to a fundamental rights-based approach coupled with a focus on public health measures to the EU's asylum and migration policy, thus improving the situation of displaced persons in the EU.



Annex

Interview with an EU official from the DG HOME Asylum unit (anonymity requested by the interviewee)

Q: What were the Common European Asylum System elements that failed last spring from the Commission point of view?

R: During the pandemic, the first reaction of the Member States was to shut down the borders and the asylum procedures. The Commission issued guidance in April 2020 to the Member States, with the help of EASO to provide flexibility, and identifying tools (i.e. digital access to the procedure, remote interviews...) in the existing asylum acquis in order to ensure access to international protection for third-country nationals.

Two main issues arose at that point: the registration deadline (10 days according to the asylum acquis) did not fit the 14 days quarantine imposed by most Member States at the time, and some Member States felt that there was room for flexibility in terms of Dublin transfers, and that they could pause the deadline for the transfers, but there isn't in the legal framework, which resulted in a large amount of shift of responsibility of asylum applications.

Q: What was the role of the Commission in the implementation of the EU asylum acquis during the pandemic?

R: A number of discussions about asylum were held during the bi-weekly meetings on the issues of the borders, but a lot of the follow-up work was done through EASO who had most of the technical and practical knowledge about the access to international protection. This support was very appreciated by the practitioners at the national level, and the Member States.

Q: How did the pandemic influence the work on the New Pact on Migration and asylum?

R: The preparation of the Pact began at the start of the Von Der Leyen's Commission, but reflections were ongoing since 2016. During the pandemic the Commission took a pause to see whether which tools were needed to deal with this crisis characterized as a situation of force-majeure. Despite all due care, a situation comes out of the blue and Member States were unprepared. Those reflections led to the Crisis regulation. This regulation foresees two situations: an influx of third-country nationals putting pressure on the asylum system, and a situation of force-majeure like this one. The crisis regulation provides flexibility in terms of registration, up to 4 weeks, and regarding the transfers. In case of force-majeure, it also provides flexibility for the implementation of the solidarity procedure, but it also gives a limit to this flexibility: there needs to be an access to the procedure at some point, you can't have an unlimited delay for the access of the procedure. The regulation provides a framework for that. Covid also influenced the screening regulation as there is a compulsory health check introduced. Health was not paid much attention to before.

Q: Could the ECDC have a role in the EU migration policy, regarding monitoring of public health situations, or sanitary measures compliance?

R: ECDC issues guidance on a number of public health topics, but they don't have the operational expertise to see whether something is compliant or not to sanitary measures, and they look at the situation in the Member States, not in a field in particular. But concerning health and the screening



regulation, the Member States would have to assure that there is medical staff on hand, who are well versed in the different guidance of ECDC in terms of public health but in this case, it would be supervised by the Member States. Health is mostly a national competence, the EU is still very weak in terms of public health.

Q: Reception centers have raised concerns, mainly because of the overcrowding. Was this a topic of discussion during the work on the Pact?

R: In the Commission guidance, there is a specific part dedicated to the reception centers and social distancing. Nevertheless, there would be no need to adapt the reception conditions directive to pandemic times, because it nevertheless have to comply with international law obligations and the charter of fundamental rights and this doesn't change whether there is an emergency situation or not. The EU legislation is not best suited to tackle those issues, they are best handled at the national level.

Q: How is the current situation with returns and Dublin transfers?

R: Returns are slowly picking up. Regarding Dublin, over the summer (2020) there was movement, but with the second wave I'm not sure how the situation will be. Nevertheless, the Commission always said that there can't be any discrimination: national borders can't be opened for EU citizens, but not for asylum applicants. The measures have to be proportional and non-discriminatory. The Member States are in touch with each other to organise the transfers.

Q: Will there be a different focus on health in the field of asylum and migration policy?

R: Yes, Member States will want to ensure that persons coming to the Union, applicants or not, will not present a threat to public health, which happened during Covid. But the reverse argument is also valid: a person coming to the EU needs to have access to health care if they have a medical condition. We need to ensure access to healthcare, or isolation and quarantine if needed. This is guaranteed in the screening regulation.

Q: Will there be a focus on health in the EU policies from now on?

R: Von Der Leyen said in her State of the EU speech that there might be further integration in terms of health, in future treaty reforms, in order to deal in the best way with public health issues, but this might be difficult given the different health systems in the Member States and their organization.

Q: Is the Commission looking into sanctioning Member States who didn't respect the EU acquis during the pandemic?

R: Before the pandemic, when Greece decided to close its asylum procedures due to the difficult situation with Turkey (March 2020), we talked to the Greek administration so that they would ensure access to international protection. When we see that there are discriminatory measures, we talk to the Member States. But it is one thing to only call out on Member States who are under enormous pressure with the lockdowns, instead, we remind them of their legal obligations, while finding flexibility in the legal framework, through the guidance with EASO. This flexibility will also help in regular times, not only during this time of emergency.



Bibliography

Asylum in Europe. (2017) *CEAS Reform: State of play of negotiations on the Dublin IV regulations*. Available from: <https://www.asylumineurope.org/news/30-11-2017/ceas-reform-state-play-negotiations-dublin-iv-regulation> [Accessed 30 October 2020]

Asylum in Europe. (2017) *Reception conditions*. Available from: <https://www.asylumineurope.org/comparator/reception> [Accessed 8 November 2020].

Carlucci M. (2020) *Europe, Migration and Covid-19: turning point or consolidation of the status quo?*, International Development Research Network.

Chioccioli Beatrice, former head of the Samos Legal Center, ASF France (2020) phone interview, 27 October.

Charter of Fundamental Rights of the European Union (2012), *Official Journal*, C326, 391-407.

Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection. (2013) *Official Journal*, L180, 96-116.

Dumbrava C. (2020) *Screening of third-country nationals at the EU's external borders*, European Parliamentary Research Service, PE 659.346.

European Asylum Support Office. (2020), *COVID-19 emergency measures in asylum and reception systems*, EASO.

European Asylum Support Office. (2020), *EASO Special Report: Asylum Trends and COVID-19*, EASO, EASO/AKC/SAU/DARS/2020/148.

European Asylum Support Office. (2020), *EASO Special Report: Asylum Trends and COVID-19*, Issue 2.

European Asylum Support Office. (2020), *Latest Asylum Trends, August 2020*. EASO, Available from: <https://www.easo.europa.eu/latest-asylum-trends> [Accessed 22 October 2020].

European Centre for Disease Prevention and Control. (2020) *Guidance on infection prevention and control of COVID-19 in migrant and refugee reception and detention centres in the EU/EEA and the UK*, ECDC.

European Commission (2020) videocall interview with an official from the Asylum unit from the DG HOME (anonymity requested), 26 October.

European Commission. (2020), *Communication from the Commission, COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement*, C(2020) 2516 final.

European Commission (2020), *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum*, COM(2020) 609 final.

European Commission. (2020) *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions*,



Building a European Health Union: Reinforcing the EU's resilience for cross-border health threats, COM(2020) 724 final

European Commission. (2020) *Communication from the Commission to the European Parliament, the European Council and the Council, COVID-19: Temporary Restriction on Non-Essential Travel to the EU*, COM(2020) 115 final.

European Commission (2020) *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 851/2004 establishing a European Centre for disease prevention and control*. COM(2020) 726 final.

European Commission. (2020) *Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817*, COM/2020/612 final.

European Commission. (2020) *Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]*, COM/2020/610 final.

European Commission (2020) *Proposal for a Regulation of the European Parliament and of the Council on a reinforced role for the European Medicines Agency in crisis preparedness and management for medicinal products and medical devices*. COM(2020) 725 final.

European Commission (2020) *Proposal for a Regulation of the European Parliament and of the Council on serious cross-border threats to health and repealing Decision No 1082/2013/EU*, COM(2020) 727 final.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (2020) *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, Council of Europe, CPT/Inf(2020)13.

European Council on Refugees and Exiles. (2020) *Information sheet 8 April 2020: Covid-19 measures related to asylum and migration across Europe*, ECRE.

European Council on Refugees and Exiles. (2020) *Information sheet 28 May 2020: Covid-19 measures related to asylum and migration across Europe*, ECRE.

European Council on Refugees and Exiles. (2020) *Greece: 1000 Vulnerable People Evacuated, Relocation of Children Started, Asylum Procedures Suspended, Renewed Tensions at Turkish Border*. Available from: <https://www.ecre.org/greece-1000-vulnerable-people-evacuated-relocation-of-children-started-asylum-procedures-suspended-renewed-tensions-at-turkish-border/> [Accessed 10 November 2020].

European Council on Refugees and Exiles. (2020), *Greece: Unrest Amid Intensifying Corona Threat, ECtHR Orders Measures for Vulnerable Groups*. Available from: <https://www.ecre.org/greece-unrest-amid-intensifying-corona-threat-ecthr-orders-measures-for-vulnerable-groups/> [Accessed 10 November 2020].

European Council on Refugees and Exiles (2020) *Joint Statement: The Pact on Migration and Asylum: to provide a fresh start and avoid past mistakes, risky elements need to be addressed and positive aspects need to be expanded*. Available from: <https://www.ecre.org/the-pact-on->



[migration-and-asylum-to-provide-a-fresh-start-and-avoid-past-mistakes-risky-elements-need-to-be-addressed-and-positive-aspects-need-to-be-expanded/](#) [Accessed 8 December 2020].

European Parliament. (2019) *Legislative Train Schedule – Towards a New Policy on Migration, Proposal for a regulation on establishing a European humanitarian visa*. Available from: <https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-proposal-for-a-regulation-on-establishing-a-european-humanitarian-visa> [Accessed 12 November 2020].

European Union Agency for Fundamental Rights. (2020) *Migration: Key fundamental rights concerns 1.1.2020 to 31.3.2020*, Quarterly bulletin.

Frontex Press Office (2020) Email sent to Marguerite Arnoux Bellavitis, 24 November.

Giuffrida A. & Tondo L. (24 February 2020) Italians struggle with 'surreal' lockdown as coronavirus cases rise, *The Guardian*. Available from: <https://www.theguardian.com/world/2020/feb/24/italians-struggle-with-surreal-lockdown-as-coronavirus-cases-rise> [Accessed 30 October 2020].

Hirsch C. (31 March 2020), Europe's coronavirus lockdown measures compared, *Politico*. Available from: <https://www.politico.eu/article/europes-coronavirus-lockdown-measures-compared/> [Accessed 30 October 2020].

Kleist N. & Bob-Milliar G. (2013) *Life after deportation and migration crisis: the challenges of involuntary return*, Danish Institute for International Studies.

Kugyel P. (2017) *End of European Soft Power? Implications for EU Foreign Policy*, The Polish Quarterly of International Affairs. Available from: https://www.researchgate.net/publication/324601697_End_of_European_Soft_Power_Implications_for_EU_Foreign_Policy?enrichId=rgreq-6aeaca05b92a8f16fb23039af6ac9c69-XXX&enrichSource=Y292ZXJQYWdlOzMyNDYwMTY5NztBUzo2MTcwNDY5MDc4MzAyNzJAMTUyNDEyNjgINTEzOQ%3D%3D&el=1_x_3&esc=publicationCoverPdf [Accessed 8 December 2020].

Legal Centre Samos – ASF France (2020). Available from: <https://www.facebook.com/LegalCentreSamos/posts/535340317409850> [Accessed 27 October 2020].

Maccanico Y. (2020) *Mediterranean: As the fiction of a Libyan search and rescue zone begins to crumble, EU states use the coronavirus pandemic to declare themselves unsafe*, Statewatch.

Médecins Sans Frontières (2019), *Greek and EU authorities deliberately neglecting people trapped on islands*. Available from: <https://www.msf.org/deliberate-neglect-greek-and-eu-authorities-towards-those-trapped-islands?component=image-272646> [Accessed 26 October 2020].

Mijatović D. (2019) *Letter to the Minister of Citizen Protection of Greece and the Alternate Minister for Migration Policy*, Commissioner for Human Rights of the Council of Europe. Available from: <https://rm.coe.int/letter-to-the-greek-minister-of-citizen-protection-and-the-alternate-m/168098efe3> [Accessed 14 November 2020].



Montaldo S. (2020), The COVID-19 Emergency and the Reintroduction of Internal Border Controls in the Schengen Area: Never Let a Serious Crisis Go to Waste, *European Papers*, 5(1), 523-531, doi: 10.15166/2499-8249/353.

Nye J. (2004) *Soft Power: The means to success in world politics*, Cambridge, USA, PublicAffairs™.

Organisation for Economic Co-operation and Development, *OECD Health Statistics 2020*. Available from: <http://www.oecd.org/els/health-systems/health-data.htm> [Accessed on 8 December 2020].

Papadopoulou A. (2017) *The implementation of the hotspots in Italy and Greece – A Study*, Dutch Council for Refugees.

Rasche L. (2020) *Four implications of the Covid-19 pandemic for the EU's asylum and migration policy*, Hertie School Jacques Delors Centre, Policy Brief.

Radjenovic A. (2020) *Tackling the coronavirus outbreak: Impact on asylum-seekers in the EU*, European Parliament Briefing, PE 649.390.

Refugees International. (2020), *Covid-19 and the displaced: Addressing the threat of the novel Coronavirus in humanitarian emergencies*. Available from: <https://www.refugeesinternational.org/reports/2020/3/29/covid-19-and-the-displaced-addressing-the-threat-of-the-novel-coronavirus-in-humanitarian-emergencies> [Accessed 6 November 2020].

Santoro G., Delle Cese F., Petrucco P. (2020), *Detenzione migranti ai tempi del Covid*, Coalizione Italiana Libertà e Diritti Civili.

Tondo L. (10 March 2020) Coronavirus Italy: PM extends lockdown to entire country, *The Guardian*. Available from: <https://www.theguardian.com/world/2020/mar/09/coronavirus-italy-prime-minister-country-lockdown> [Accessed 30 October 2020].

Papadopoulou A. (2017) *The implementation of the hotspots in Italy and Greece – A Study*, Dutch Council for Refugees.

Rajdenovic A. (2020) *Reforming asylum and migration management*, European Parliamentary Research Service, PE 659.316.

Regulation 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code). (2016) *Official Journal*, L77, 1.

United Nations High Commissioner for Refugees (2014) *Considerations on the Impact of Measures Relating to Ebola Virus Disease, on Persons Who Are or May Be in Need of International Protection*. Available at: <https://www.refworld.org/pdfid/548014ce4.pdf> [Accessed 10 October 2020].

United Nations High Commissioner for Refugees. (2020) *Practical Recommendations and Good Practice to Address Protection Concerns in the Context of the COVID-19 Pandemic*. Available at: <https://www.unhcr.org/news/press/2020/7/5efb7e544/unhcr-issues-recommendations-eu-ensure-refugee-protection-during-pandemic.html> [Accessed 22 October 2020].

United Nations Network on Migration (2020) *Forced returns of migrants must be suspended in times of COVID-19*. International Organization for Migration. Available from:



<https://www.iom.int/news/forced-returns-migrants-must-be-suspended-times-covid-19> [Accessed 10 November 2020].

United Nations Office of the High Commissioner of Human rights (2020) *The rights and health of refugees, migrants and stateless must be protected in COVID-19 response: A joint statement by UNHCR, IOM, OHCHR and WHO*. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25762&LangID=E> [Accessed 8 December 2020].

Von Der Leyen U. (2020), *State of the Union address 2020*, European Commission.

World Health Organization Regional Office for Europe. (2020) , *Coronavirus disease (COVID-19) pandemic*. Available from: <https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/novel-coronavirus-2019-ncov#:~:text=By%20mid%2DMarch%202020%2C%20the,virus%20was%20from%20the%20Region>. [Accessed on 30 October 2020].