

# EPSU briefing on “controlled centres” and “disembarkation arrangements”

## **Towards a common asylum policy with no or very few asylum-seekers?**



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### **Towards a common asylum policy with no or very few asylum-seekers?**

■ EPSU commented very critically<sup>1</sup> on last June’s EU Summit failure to agree the Commission’s asylum review package, including the long-awaited revision of the Dublin rules that place disproportionate responsibility on EU Mediterranean coastal states. Instead, the Council requested the Commission to further expand on seemingly new concepts of “EU-based controlled centres” and “disembarkation platforms outside the EU” for migrants rescued at sea.

Whilst it initially expressed scepticism, on 24 July the Commission published two non-papers<sup>2</sup> on both concepts. **This new briefing provides an initial critical assessment of the controlled centres and disembarkation arrangements.** The briefing outlines the following key points:

- The controlled centres’ striking similarity with the already established and malfunctioning hotspots in Italy and Greece;
- The EC’s intention to outsource migration to third countries through disembarkation platforms;
- The legal and moral unacceptability, as well as the unfeasibility of the centres and platforms.

EPSU has been a strong advocate of a human rights and solidarity-based approach to EU migration and asylum policy. As a public service union, EPSU represents workers in different services including those dealing with the rescue, reception and integration of newcomers in Europe.

As EPSU’s affiliates recently discussed in Spain, Melilla (one of the two EU land borders with Africa), EU national asylum systems in the Mediterranean are under severe financial and political constraints causing indeed unduly long procedures and artificial



emergencies. Understaffing is also reported in the temporary migrants centres, both for adults and children, in Melilla and Ceuta, as well as in rescue services, health care, and police forces.<sup>3</sup> The lack of good administration is seen by our affiliates as means to deter potential refugees and create a false sense of crisis that could only be solved by cutting down on the numbers of newcomers.

EPSU is calling for larger investment in public services to provide newcomers with decent reception conditions, immediately upon arrival that are key to their long-term integration.

Furthermore, EPSU calls for a public evaluation of the EC-backed hotspots in Italy and Greece, in light of EU and international asylum procedure rules, taking into account the views of staff, trade union representatives and migrants, before embarking on new containment proposals. EPSU sees such an evaluation to be mandatory, as human rights organisations, MEPs,<sup>4</sup> as well as EPSU/PSI Greek affiliate Adedy<sup>5</sup> have already strongly criticized the hotspots, pointing to irregularities and human rights violations. The demand for this evaluation is explained in detail below, under EPSU's comments on the controlled centres.

We need the EU and member states to commit to the highest asylum standards – not the lowest level – in practice, by improving the administration of migration and asylum. This would more closely resemble an “orderly and well managed migration system,” as called for by EU leaders and that works for everyone.

## General Remarks:


The two non-papers lack essential details, but they clearly confirm EPSU's strong concern on an EU approach mainly focused on containing migrants and limiting access to asylum in Europe. This is morally wrong, unlawful and unfeasible.

The controlled centres appear as a rebranding of the hotspots in Italy and Greece, which in the latter is rife with violation of migrants and refugees' rights.<sup>6</sup> The hotspot approach was developed in conjunction with the EU outsourcing its migration and asylum responsibilities to Turkey.



Lesvos island, Greece - 29 October 2015. Syrian migrants / refugees arrive from Turkey on boat through sea with cold water near Molyvos, Lesbos on an overload dinghy. Leaving Syria that has war. Photo: Nicolas Economou / Shutterstock

Cover photo: War refugees at the Gyekenyes Zakany Railway Station on 5 October 2015 in Gyekenyes, Hungary. Refugees are arriving constantly to Hungary on the way to Germany. Photo: Istvan Csak / Shutterstock



We need the EU and member states to commit to the highest asylum standards – not the lowest level – in practice, by improving the administration of migration and asylum.

Regional disembarkation cooperation in the Mediterranean region, initially proposed by the IOM and the UNHCR is a legitimate goal to avoid further deaths at sea and stop member states' stand-off over whose responsibility it is to search and rescue migrant boats. However, the Commission foresees different arrangements based on outsourcing responsibility to third countries, supposedly in Northern Africa, where the national asylum systems are certainly not in conformity with international standards.

Notwithstanding the lack of details, EPSU's view is that both non-papers are unacceptable. They are no substitute for a well-funded EU asylum system in which claims are processed individually in the EU, not only quickly, but also fairly and in line with the UN Geneva Convention and UNHCR's guidelines. Furthermore, they cannot replace a functioning EU system of relocation of refugees. The lack of safe, legal routes for economic migrants remains a key obstacle to a common asylum policy, leaving irregular travel the only option available for those who seek safety or a better life.

The status of the EC non-papers is unclear. EPSU understands that they would not be proposals, but mere assessments unlikely to materialise, as no EU or third country has expressed interest in hosting either the centres or disembarkation platforms, now called "arrangements".

However, given the anti-migrant stance of some EU governments, including the Austrian EU Presidency's proposal of processing asylum claims outside the EU, the Commission is playing with fire. It is important to recall that at the time when the EU/Turkey deal was first discussed, many thought it would never fly and yet it did and still does.

The Commission's strategy to develop a tough return-package in order to convince reluctant governments to cooperate and advance on the solidarity elements of the asylum package is very risky. From a cynical point of view, the ultimate plan might be to lay the ground for a common asylum policy, based on the guarantee that only very few, carefully selected refugees will benefit from it.

### **Controlled Centres (in the EU):**

The **EC's non-paper** foresees the controlled centres to be established in the EU on a voluntary basis in order to quickly register and process all third-country nationals disembarked in the Union.

According to the non-paper,<sup>7</sup> their purpose is to rapidly distinguish between those with no right to stay in the EU and who will be immediately returned, and those who “may” need international protection and to whom an unclear reference to the disembarkation platforms outside the EU is made. The non-paper outlines that this rapid processing will be done in an “orderly and effective way,” but fails to provide any reference or reassurance that the process will be fair and in line with established European and international asylum rules.

The non-paper does not clarify whether the centres will be open or closed, publicly run or not. Furthermore, it does not mention who will have the oversight and be accountable for them, and which regulatory framework applies to their functioning.

The non-paper does state that the centres could be facilities of a temporary, ad-hoc nature and manageable in size for processing and security purposes, which might indicate that they will be closed or include some limitations on free movement. In addition, it states that the centres could cover some or all types of processing and returns, which is known as a “flexible approach,” this ultimately depending on the choice of member states. Moreover, the centres should ensure that all the necessary steps – identification, initial categorisation of asylum application and security screening – are concluded “as swiftly as possible and within a maximum period of between four and eight weeks.”

The centres are to be fully supported by the EU, member states and possibly UNHCR and IOM. The member states that will choose to operate such centres would be able to call upon EU financial assistance under the AMIF and ISF programmes<sup>8</sup> to cover the costs. In addition, “financial support can be provided to member states which accept transfers of disembarked persons (€6,000/person),” which might indicate a new form of intra-EU relocation of rescued persons. However, such an ad-hoc commodified form of relocation can by no means replace the much needed reform of the Dublin rules and a proper EU relocation system that should be based upon European and international asylum law.



Gevgelija, Macedonia - September 26, 2015. Refugees wait in a queue to enter inside a refugee camp, near the town of Gevgelija at the Macedonian - Greek border. Photo: Giannis Papanikos / Shutterstock





The Commission foresees different arrangements based on outsourcing responsibility to third countries, supposedly in Northern Africa, where the national asylum systems are certainly not in conformity with the international standards.

A pilot phase is to be tested “as soon as possible,” according to a plan on how approximately two hundred staff from Frontex, for identification and return, EASO, for asylum processing, and Europol, for security checks, will be deployed in a scenario of 500 rescued persons.

On 25 July, EU ambassadors discussed the non-paper, but no information was made public. Further discussions are expected to follow in Fall, before the next EU Summit on 11-12 October.

#### **EPSU comments:**

Firstly, the controlled centres bear much resemblance to the EU-backed hotspots, which are registration and reception centres for more effective asylum procedures in Greece and Italy. The hotspots were established in conjunction with the EU-Turkey and Italy-Libya deals to deter migrants/refugees from accessing the EU in exchange for money and support of border guards.

Given their similarity, EPSU calls for a public evaluation of the hotspots in light of EU and international asylum procedure rules, taking into account the views of staff, trade union representatives and migrants, before embarking on new containment proposals.

The case for an evaluation stems from the sharp criticisms regarding the 5 hotspots in Greece from the European Council on Refugees and Exiles and MEPs, amongst others, as places of de facto detention, police violence, violation of migrants and refugees’ rights, where fast track asylum procedures are made at the expense of a due process and where “returns” of failed asylum-seekers are carried out in breach of the ‘non-refoulement’ principle.<sup>9</sup> Unduly lengthy and deficient procedures are also reported with regard to the identification of vulnerable groups such as unaccompanied children, hundreds of whom are detained. Cases of push backs at the Greek-Turkish land border of Evros have been systematically reported in the course of 2017.<sup>10</sup>

The lack of reference in the non-paper to a due process, right of appeal, as well as access to food, water, sanitation, healthcare and psychological support, while security screening and fast processing is to be carried out rapidly, brings further concerns.

The role of EU agencies has also been subjected to criticisms. According to a report by the Greens on the hotspots in Greece, EASO’s participation in the Greek asylum procedures is governed by internal non-public instructions and Standard Operating Proce-

dures (SOPs), not by the Greek Asylum Service's legal procedure. It means that employees working side by side apply different procedures, including the possibility, according to the SOPs, to discriminate asylum applicants upon their nationality, which is not prescribed by EU or Greek law.<sup>11</sup>

Therefore, the priority must be a public evaluation of the hotspot approach, including the mandate and responsibilities of Frontex and EASO, and how they relate to the national, EU and international asylum rules in the absence of a legally binding common regulatory framework.

Secondly, the non-paper's emphasis on fast processing of asylum claims and returns fails to recognise the heterogeneity and complexity of asylum proceedings. It is doubtful that the "asylum express" procedure will be in line with European and international refugee law, asylum procedure and related UNHCR guidelines,<sup>12</sup> that are simply not mentioned.

Today, a regular asylum procedure can take 15 to 21 months, even longer, and the fast-track one up to 150 days,<sup>13</sup> whereas the EU standards on asylum procedures provide for a maximum time limit of 6 months. It is well-known that the latter, partly due to insufficient human resources, are not respected in most member states. It therefore remains difficult to see how the situation would be different in the controlled centres,<sup>14</sup> unless the actual plan is to bypass asylum-seekers' right to a due process or to reduce the numbers of asylum claims in Europe, so that processing would de facto be quicker. This seems to be indeed the orientation of the non-paper on disembarkation.


Concerns over fast-track procedure are further compounded by the experience in Greece. In this country a fast track procedure was introduced, in support of the EU-Turkey deal for asylum seekers arriving after March 2016. According to the UN Special Rapporteur on the Human Rights of Migrants, the provisions with regard to the exceptional derogation measures for persons applying for asylum at the border raise "serious concerns over due process guarantees". EASO's involvement in the fast-track border procedure and complaints as to whether EASO officers take deci-



Idomeni, Greece - March 9, 2016. A refugee boy carries a baby under heavy rain, inside a muddy field at the refugee camp of Idomeni. Photo: Giannis Papanikos / Shutterstock

sions contrary to the Regulation establishing the Agency, is under examination by the European Ombudsman.

Whilst unduly long asylum processing is not acceptable, fast track asylum processes should not infringe the individual right to a due process and should not come at the expense of quality and fairness and right to appeal.



From a cynical point of view, the ultimate plan might be to lay the ground for a common asylum policy, based on the guarantee that only very few, carefully selected refugees will benefit from it.

Finally, it is doubtful that the controlled centres will be supported by any EU Mediterranean member states in the absence of intra-EU relocation in meaningful numbers. The proposal to offer €6000 for each transferred rescued person treats migrants like a currency, which adds insult to injury, and which is anyway not feasible, since extra money or funding has not incentivized member states to accept more refugees so far. In addition, it seems to indicate that the EC-backed relocation of migrants or asylum-seekers from Greece to other member states, which ceased last December, will not be renewed, even though the hotspots remain in place.

### **Regional Disembarkation Arrangements (in and/or outside the EU?):**

The discussion at last June's Council was triggered by internal tensions over migration within the German government, the refusal by Italy's new government to continue docking migrant boats, as well as legal action by Malta to prevent NGOs from operating at sea, while hundreds of adults and children were dying in the Mediterranean. Over a month since the Aquarius boat carrying 629 saved people was denied access to any Italian, Maltese or French port, Spain ultimately allowing it to dock, the NGO boat was again in the same situation. It has carried over 140 migrants for five days, being trapped in the middle of the sea, with no country willing to accept it.<sup>15</sup> Finally, Malta allowed it to dock and the migrants on board were to be distributed among France, Germany, Luxembourg, Portugal and Spain.<sup>16</sup>

The **EC's non-paper** claims to be based on the joint UNHCR and IOM proposal "for a regional cooperative arrangement ensuring predictable disembarkation and subsequent processing of persons rescued-at-sea," that together with the "controlled centres" should ensure shared regional responsibility towards complex migration challenges.

The disembarkation arrangements (no longer called "platforms") are to be devised with the support of the UNHCR and IOM, for people rescued at sea to be placed in "safety." Like the controlled



centers, the aim is to allow for rapid processing of those who can benefit from international protection, while those who cannot have to be returned. Also in this case, rapid processing does not seem to be in line with European and international asylum law.

The non-paper raises many disturbing questions.

It is unclear as to where the rescued persons would be disembarked. According to the UNHCR and IOM, disembarkation should remain on EU soil. Disembarkation in North African countries could be a long-term goal, subject to capacity building of their national asylum systems.


The Commission however makes no explicit reference to disembarkation in EU countries, although it does not exclude that possibility. It states that “cooperation with third countries should be established on already existing partnerships”. In addition, “the packages for supporting them should be made on already existing EU and member state support” with more political, operational and financial support if need be.

The possibility of making future development funds or potential trade agreements dependent on those countries accepting the disembarkation arrangements on their territory has been reported recently in the media. This might be the case, considering that the proposal for the new EU budget foresees an immense increase of 200% for border management – €18.8 billion, as compared to the previous seven year budget when only €5.6 billion was allocated.<sup>17</sup> The other migration sections also receive € 12.03 billion, while development funds for Sub-Saharan Africa increase only by 7% - €28.3 billion. This is a case of treating migrants like commodities, leaving their rights subject to the amount of compensation that the EU will be willing to pay poor countries.

It is equally unclear which state would be responsible for processing asylum claims of the disembarked persons and where the latter would eventually end up. The non-paper vaguely states that this would take place with the support of all concerned actors in cooperation with IOM and UNHCR: “For those in need of in-



Fence on the border of Spain with Morocco. Photo: Pablo Sánchez / EPSU



EPSU calls for a public evaluation of the hotspots in light of EU and international asylum procedure rules, taking into account the views of staff, trade union representatives and migrants, before embarking on new containment proposals.

ternational protection durable solutions are to be found, including opportunities for resettlement.” However, and this is one of the most disturbing points, “resettlement possibilities will not be available to all disembarked persons in need of international protection” and “resettlement should remain only one of the possible solutions for such cases, and not limited to Europe.”

It further states that for refugees “for whom legal pathways are not available,” the reasons for such unavailability not being clarified, “local solutions in the third country in question” could be found.

As for refugees who are “not able to benefit from resettlement or local solutions and who are not able to be returned (e.g. unaccompanied and separated children; victims of trafficking and/or gender-based violence) that would also need to be addressed.”

In other words, it is unclear what will happen to the people who are in actual need of protection. Furthermore, the reasons for the apparent necessity of an additional categorization of those in need of international protection are also unclear.

For those who are not entitled to international protection, they should be returned and measures could be developed to prevent them from re-entering the third country in question.

The non-paper concedes, again very vaguely, that parts of the current EU resettlement scheme (of refugees from third countries) through which 20 member states made approximately 50,000 pledges “could be used for resettlement in the context of regional disembarkation arrangements.” Resettlement from other priority areas should continue, with a new pledge exercise if needed, supported by additional funding within the current budget and engagement of member states.

On 30 July, the EU, IOM, UNCHR, Northern African countries – except for Libya and Algeria – as well as the African Union met to discuss the above, with no written outcome. At the time of writing, it is understood that no third country has yet agreed to establish these arrangements on its territory.

#### **EPSU comments:**


Strengthening the search and rescue capacity of all coastal states of the Mediterranean sea is a legitimate goal. Search and rescue operations, 40% of which are now carried out by NGOs, must be stepped up to stop the deaths at sea. There is no question

that regional cooperation is essential to ensure an effective and predictable system of disembarkation, but this must rest on international maritime rules and human rights laws for which the Commission pays only lip service in passing. For EPSU, search and rescue should be the responsibility of public authority in line with maritime and asylum law, human rights and international legal standards.

Notwithstanding many missing details, the non-paper confirms yet another attempt to outsource asylum responsibilities to third countries. It is not only morally wrong but legally impossible as it is in violation of EU asylum law and article 18 of the EU Charter of Fundamental Rights, which enshrines the right to asylum. The direct or indirect involvement of EU authorities in processing applications outside the EU would still trigger their responsibility extra-territorially under both, the European Convention of Human Rights and the EU charter.

As mentioned in the introduction, EPSU's affiliates recently discussed in Spain, Melilla, how EU national asylum systems in the Mediterranean are understaffed and under severe financial and political constraints, causing indeed unduly long procedures and artificial emergencies.<sup>18</sup>

The situation is highly problematic in EU Mediterranean states, and much worse in North Africa. According to the European Council of Refugees and Exiles, not one single North African country has a fair and effective national asylum system in place. Therefore, it is unacceptable that the EU outsources its asylum responsibilities to these countries.



It is unacceptable that the EU outsources its asylum responsibilities to North African countries.



# Notes

<sup>1</sup> <https://www.epsu.org/article/new-epsu-briefing-conclusions-migration-reached-last-eu-summit-28th-29th-june>

<sup>2</sup> [https://ec.europa.eu/home-affairs/news/managing-migration-commission-expands-disembarkation-controlled-centre-concepts\\_en](https://ec.europa.eu/home-affairs/news/managing-migration-commission-expands-disembarkation-controlled-centre-concepts_en)

<sup>3</sup> <http://www.world-psi.org/en/european-and-spanish-migration-policies-must-change-and-become-people-focused>

<sup>4</sup> <https://www.ellyschlein.it/wp-content/uploads/2017/07/letterMoriadef.pdf>

<sup>5</sup> <http://www.world-psi.org/en/psi-greek-affiliate-adedy-launches-study-refugee-crisis-and-greek-public-services>

<sup>6</sup> <https://www.greens-efa.eu/en/article/document/the-eu-turkey-statement-and-the-greek-hotspots/>

<sup>7</sup> [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180724\\_non-paper-controlled-centres-eu-member-states\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180724_non-paper-controlled-centres-eu-member-states_en.pdf)

<sup>8</sup> The AMIF is the EU's Asylum, Migration and Integration Fund - was set up for the period 2014-20, with a total of EUR 3.137 billion for the seven years – [https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund\\_en](https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund_en); the ISF is the EU's International Security Fund - was set up for the period 2014-20, with a total of EUR 3.8 billion for the seven years, it promotes the implementation of the Internal Security Strategy, law enforcement cooperation and the management of the Union's external borders – [https://ec.europa.eu/home-affairs/financing/fundings/security-and-safeguarding-liberties/internal-security-fund-police\\_en](https://ec.europa.eu/home-affairs/financing/fundings/security-and-safeguarding-liberties/internal-security-fund-police_en). Again, security gets more than integration.

<sup>9</sup> Article 33 (1), 1951 United Nations Convention relating to the Status of Refugees.

<sup>10</sup> Aida, Country report Greece, 2017 update, <https://www.asylumineurope.org/reports/country/greece>, p.14.

<sup>11</sup> The EU/Turkey statement and the Greek hotspots: <http://extranet.greens-efa-service.eu/public/media/file/1/5625>

<sup>12</sup> <https://cms.emergency.unhcr.org/documents/11982/49074/UNHCR,+Handbook+and+Guidelines+on+Procedures+and+Criteria+for+Determining+Refugee+Status+under+the+1951+Convention+and+the+1967+Protocol+Relating+to+the+Status+of+Refugees/30fe78f2-5414-47ec-9439-0f2663889e58>

<sup>13</sup> <https://www.ecre.org/wp-content/uploads/2016/10/AIDA-Brief-DurationProcedures.pdf>

<sup>14</sup> Ibid.

<sup>15</sup> [https://elpais.com/elpais/2018/08/13/inenglish/1534146930\\_578482.html](https://elpais.com/elpais/2018/08/13/inenglish/1534146930_578482.html)

<sup>16</sup> <https://www.politico.eu/article/aquarius-migrant-rescue-ship-to-dock-in-malta/>

<sup>17</sup> <https://www.euractiv.com/section/africa/news/for-tomorrow-eu-will-spend-more-on-border-and-migration-control-than-on-africa/>

<sup>18</sup> <http://www.world-psi.org/en/european-and-spanish-migration-policies-must-change-and-become-people-focused>





**EPSU is the European Federation of Public Service Unions.** It is the largest federation of the ETUC and comprises 8 million public service workers from over 260 trade unions across Europe. EPSU organises workers in the energy, water and waste sectors, health and social services and local, regional and central government, in all European countries including the EU's Eastern Neighbourhood. It is the recognised regional organisation of Public Services International (PSI). For more information please go to: [www.epsu.org](http://www.epsu.org)

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