

Building European Asylum and Immigration Policies and a European Border Service

DESPERATE PEOPLE, DESPERATE EUROPE

Geopolitical turmoil, wars, conflicts, poverty, natural disasters and climate change pushed more than a million people to come to Europe in 2015 alone.¹ The total number of new arrivals in this period represented a less than 0.2% addition to the total EU population but the situation has caught the European Union and its most exposed Member States unprepared and unable to cope with the challenge.

In 2015, 81.3% of all arrivals to Europe came through Greece, many of whom will have transited via Turkey and the Balkans. Germany and Sweden alone processed 800,000 and 190,000 asylum claims respectively.² Shockingly, in the same year, 3,695 people are known to have drowned or remain missing following tragic attempts to reach Italy or Greece by sea.

Such trends look set to continue in 2016. In the absence of a united European system to manage the external border and a comprehensive European Asylum and Immigration Policy, the most exposed Member States are left almost alone to cope with the arrival of large numbers of people and their transit through or settlement in their territories.

The current Dublin System, determining the Member State responsible for the examination of an asylum request, has become unworkable in light of the concentration of people arriving at the Union's external border. Frontex, the EU agency in charge of coordinating European border management, has proven unable to make a difference given its narrow mandate and its reliance on limited personnel and resources voluntarily made available by Member States.

As Member States including Greece, Slovenia, Austria, Hungary and Croatia respond by installing physical border fencing and internal borders are partially or totally closed in various places, the Schengen arrangements have been tested to their limits and are now put into question. Further pressure was added following the Paris attacks in November 2015, which led France to reintroduce border checks as part of the national state of emergency.

The combination of security concerns and the unprecedented numbers of people moving into and across Europe has led to mistrust between Member States about the fulfilment of Schengen obligations. ■

THE EUROPEAN UNION'S RESPONSE SO FAR

The steps undertaken by the European Union to deal with the internal dimensions of the challenge have been limited and are running behind the facts. The relocation scheme adopted by the Council in September 2015³ aimed to share the burden of arrivals between EU Member States. However, its scale was limited, its execution left to the willingness of the Member States, and its implementation is still struggling to take-off.

New legislative proposals, such as the creation of a common list of Safe Countries of Origin to facilitate the identification and return of people not qualifying for international protection and the recent Commission package on border management (to create a small force of a Border and Coast Guard to act in emergency situations) have emerged, but the legislative process to implement them is only just beginning.

In an attempt to make progress on external issues, the EU has sought to foster greater cooperation with Turkey to help

manage the situation, including the future organisation of two annual summits⁴, but it remains doubtful whether Turkey wishes to, and can effectively, limit the flow of arrivals into Europe.

The limited scale of the actions and proposals so far has done little to help alleviate the current situation. The few European measures that have been taken focus mainly on crisis management, led by the painstaking intergovernmental decision making of the European Council, and little has been done to prepare sustainable and comprehensive long-term solutions.

Meanwhile, immigration has become one of the major concerns of EU citizens and European public opinion clearly supports the creation of a common European policy on migration and asylum. In September 2015 a European Parliament Eurobarometer poll showed 66% of the public supporting more decision making at the European level on this issue⁵. ■

THE POTENTIAL FOR THE EUROPEAN UNION TO ACT

The harrowing scale of the situation and its cost in human lives must not be forgotten. Inaction on this issue fails to live up to the fundamental values and commitment to human rights that are central to European shared values. The first priority of any EU action must be the imperative of saving lives and ensuring the dignity of all persons. It is therefore essential that a comprehensive policy is developed in order to address this issue in an effective and humane manner.

At present it is clear that the EU approach is failing both in terms of crisis-management and in finding long-term solutions. The challenge for certain Member States to cope in the current situation simultaneously risks Europe's ability to meet international humanitarian commitments and to defend its own Schengen system, a fundamental pillar of European integration. The situation clearly calls for a European response, in managing the common European border, in managing the effects of people arriving, transiting through

and claiming asylum or settling in different Member States and in third countries, and in order to ensure the continued viability of the Schengen area of free movement.

Furthermore, crisis management is not enough. A comprehensive and long-term approach is required with a European Asylum and Immigration Policy that looks beyond the internal challenges of receiving and distributing new arrivals. It should seek to address the root causes of migration for both refugees and economic migrants. Regarding asylum, it should provide regular and safe routes of entry for those entitled to protection. As for economic migration, a system should be developed to take Europe's long-term economic and demographic evolutions into account.

The following proposals aim to demonstrate how a federal approach built on European solutions is the best hope of achieving these goals. ■

FEDERALIST PROPOSALS FOR INTERNAL MEASURES

PRESERVING SCHENGEN

Member States should reassert their commitment to the principles underlying the Schengen agreement and the exceptional and temporary nature of any suspensions of free movement within the Schengen area must be stressed. Any suspension should be decided collectively not unilaterally. The need for border controls that have been re-established in response to security threats or large movements of people must be continuously reassessed with the assumption that such controls will be withdrawn as soon as possible.

Border management practices and the way they are enforced must be consolidated and unified to European standards. The process to adopt Smart Border packages, establishing an Entry/Exit System and a Registered Traveller Programme and aiming to improve the management of the external borders of the Schengen Member States, fight against irregular immigration and provide information on over-stayers, as well as to facilitate border crossings for pre-vetted frequent third country national travellers, must be sped-up.⁶

SUSTAINABLE CRISIS MANAGEMENT

In the areas most affected by large numbers of people arriving as refugees and migrants, special reception and protection centres should be built with the EU supporting their construction and operation. When required, such centres should be directly built, managed and staffed by EU personnel.

A crisis emergency mechanism for massive influxes of refugees and migrants, with clearly defined criteria for activation at the EU level, should be established. This mechanism would provide the means to deal with future peaks in the number of people arriving as asylum seekers and migrants, building on the experience developed by Member States and current and future EU agencies in the face of ongoing events.

FROM FRONTEX TO A EUROPEAN BORDER SERVICE AND A EUROPEAN COAST GUARD

The mandate of Frontex, the EU agency in charge of managing the cooperation between national border guards securing the EU's external borders, should be extended. Frontex's obligations in searching and rescuing vessels in distress when human lives are in danger should be codified and made operational. Its role in the management of identification, reception and protection centres in the most exposed Member States should be strengthened.

Initially such operations should complement and be integrated into those of national border and coastal guards and forces, and staffed with a mix of national and European experts and other personnel. The contribution of personnel and resources by Member States should be made mandatory. Sufficient resources should be made available, especially with respect to emergency rapidly-deployable teams.

As soon as possible the agency should evolve into a true federal European Border Service, including a European Coast Guard with its own personnel, means and infrastructure. This service would go beyond "support" operations to Member States and have direct and independent responsibility for the common border of the European Union or at least of the Schengen area, at least in areas exposed to particular pressure and at times when Member States are in distress. Current national forces and authorities should be integrated into this European federal system of border management. The Eurosur cooperation between civilian and military authorities for maritime borders, years of Frontex experience, common risk assessment and experience from common training activities should all be used to inform the development of the new European Border Service and Coast Guard.

Any expansion of the mandate of Frontex and the creation of new or evolved agencies must be accompanied by increased transparency and accountability mechanisms to ensure and monitor that their actions comply with international and European obligations. Such mechanisms should include direct democratic oversight by the European Parliament.

EXPANDING THE EU CIVIL PROTECTION MECHANISM

The current EU Civil Protection Mechanism, a system fostering cooperation among national civil protection authorities acting in response to natural and man-made disasters across Europe, should be extended and revised in order to provide in-kind emergency assistance, rapidly deployable to areas most at need. Assistance should include, but not be limited to, response teams, equipment and expertise.

DUBLIN REGULATION AND MANDATORY RELOCATION

A revision of the Dublin Regulation, which determines which Member State is responsible for assessing asylum applications and usually allocates asylum seekers to the Member State of entry, is urgently required. With large numbers of people arriving in Europe the current arrangement puts an unreasonable and unmanageable burden on the most exposed front-line countries.

A relocation system to distribute asylum seekers based on a fair allocation formula (or “quota”), considering GDP, population, unemployment rates and the proportion of asylum claims already received should be implemented on a significant scale reflecting the total amount of people arriving in the European Union and seeking asylum. It should be administered by the European Commission. The cooperation of Member States in such relocations and any related arrangements should be made mandatory.

EUROPEAN ASYLUM AUTHORITY

A new European Asylum Authority (EAA) would put an end to “asylum shopping”. Mutual recognition mechanisms setting standards in administrative and judicial decision introduced in the short term should form the basis of a single European Asylum system able to process claims against agreed European standards.

Increased resources should be allocated to ensure the time taken to process asylum claims is as short as possible and that decisions are made in full compliance with the Geneva Convention and all relevant European law.

The EU should consider the implementation of common rules for allowing the EAA to issue humanitarian visas and establish, through EU funding, regular entry routes through asylum offices in third countries.

AN AMBITIOUS EU ECONOMIC MIGRATION POLICY

For third-country nationals who wish to reach the EU for economic reasons, the EU should propose a system to allow entry to the European Union. Such a system should take into account areas of the jobs market where there is a particular shortage in the workforce in some Member States. The system should be sizeable and influential enough to impact the movement of economic migrants and be developed in cooperation with business, trade unions and other social partners. People interested in coming to Europe to work under this system should be able to apply in the EU delegations or dedicated EU migration offices in their country of origin.

INTEGRATION FOR REFUGEES AND ECONOMIC MIGRANTS

Accepted refugees must be able to obtain work permits and have access to the jobs market and training opportunities immediately. They should be offered assistance with their integration in European society and be protected from the danger of falling into irregular work and labour exploitation.

All those granted the right to remain in the EU should benefit from a fully dedicated integration chapter, contributing to the fight against radicalisation, racism and xenophobia.

The EU should continue to fight against any type of labour exploitation and irregular work and an EU Action Plan should be established to fight various forms of labour exploitation and the causes of illegal work. Such a plan should include awareness-raising elements for businesses and the public. European labour inspectors or law enforcement officers should be able to ensure that the system is being run fairly and effectively, investigate cases of abuse and protect victims where necessary.

INCREASED FUNDING FOR REFUGEES WITHIN THE UNION

Member States receiving large numbers of refugees in proportion to their populations or means should be allocated extra resources. The use of resources from the EU budget, or of revenues raised directly by the EU specifically for such purposes, should be considered as the primary way of funding such a programmes and any relocation scheme. ■

FEDERALIST PROPOSALS FOR EXTERNAL MEASURES

GEARING UP COMMON FOREIGN AND SECURITY POLICY AND COMMON SECURITY AND DEFENCE POLICY

The Union's Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP) need to be strengthened and their pitfalls tackled if the European Union wants to find structural answers to causes of mass migration to Europe.

Migration aspects must be taken into account in the discussions on the new EU Global Strategy expected to be endorsed by the European Council in the course of 2016 and in the review of the European Neighbourhood Policy in both Eastern and Southern dimensions.

ENDING CURRENT CONFLICTS

Diplomatic steps must be urgently taken within the CFSP framework to help end conflicts, particularly in Syria, Iraq, Libya, Afghanistan and Ukraine in order to tackle the root causes of the current situation. A united and comprehensive strategy should be forged within CFSP, specifically to deal with the threat posed by the so-called "Islamic State" group in Iraq, Syria, Libya and elsewhere.

COOPERATION WITH COUNTRIES OF ORIGIN

The EU must continue to work with countries of origin including through the Rabat, Khartoum, Budapest and Prague processes and the ACP-EU and EU-Africa Migration and Mobility dialogues (as decided at the Valletta Conference in November 2015) in order to create peace, stability and to support such countries' sustainable economic development leading to a reduction in the number of people forced to or choosing to leave such countries to come to Europe.

ASSISTING THIRD COUNTRIES HOSTING REFUGEES

Funding must be increased and secured for the UNHCR, the World Food Programme and other organisations operating refugee camps in third countries. Member States should step up their contributions to these ends as a matter of urgency.

COOPERATION WITH AND ASSISTANCE IN COUNTRIES OF TRANSIT

The EU should work closely with Turkey and other transit countries with particular attention to preventing the operation of people-smuggling networks. However, with regard to Turkey, no further accession talks should proceed without an improvement in the rule of law and demonstrable progress with regard to fundamental rights and freedoms.

In the Western Balkans, fragile regions and weak institutions should be supported in managing the movement of people through their territories. Neighbouring third countries should be encouraged to join the EU Civil Protection Mechanism so that assistance and humanitarian aid can be provided where it is required under clearly defined rules and in line with a coherent European response to migratory flows. Agreements should be put in place with such countries to enable Frontex operations on their territory when exposed to large numbers of people transiting through specific areas. Such forms of cooperation should add new impetus to the enlargement process in this region.

Alongside reception and protection centres within the Union and in countries of origin, such capabilities should also be established in transit countries and supported by EU resources. Whenever such capabilities are deployed they must be based on existing best practices and experience.

IMPROVING AND EXPANDING THE COMMON SECURITY AND DEFENCE POLICY (CSDP)

Existing CSDP instruments should be better used to address the challenges presented in transit countries, including the possible allocation of European civilian resources to assist in crisis situations.

A new horizontal civilian CSDP mission could build on existing cooperation within Frontex and Europol to offer expertise and the rapid deployment of personnel and resources to crisis-hit areas⁷. Such a mission could be deployed in third countries when help is requested in assisting with large and concentrated movements of people. ■

CONCLUSIONS

Europe's success on these issues will depend on striking a balance between commitments to human rights and the freedoms of European citizens on the one hand and the need to ensure and secure the Schengen area and the Union's external borders on the other.

The complexity and severity of the current situation cannot be overstated. Europe faces a number of simultaneous challenges in managing the arrival, transit, settlement and, in certain cases, return of people coming to Europe on an unprecedented scale. The particular nature of the current situation requires a comprehensive response that includes both internal and external elements. Steps must be taken in the short term to address immediate challenges, as well as in the medium to long term to prepare for an uncertain future.

The case for unified federal measures to address the crisis is stronger than ever and the steps laid out in this paper demonstrate the potential for fair and European action.

The crucial proposals for a European Border Service, including a European Border and Coast Guard, and for a European Asylum Authority must be taken seriously if the European Union is to develop the tools needed to manage asylum and immigration issues in the future. As such steps impact on national sovereignty, their completion is only conceivable as part of a plan to relaunch European political union, according to a clear and definite time frame.

Ensuring that the EU is fit for the challenges of the 21st century depends on ensuring an effective and united Union and opposing regressive calls for dilutions or suspensions of Europe's greatest achievements. Now is the time to secure Europe's future by taking further steps towards a federal Europe. ■

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