CEPS ESSAY

Thinking ahead for Europe

The EU's Response to the Refugee Crisis
Taking Stock and Setting Policy Priorities

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No. 20 / 16 December 2015

Abstract

What have been the most important EU policy and legal responses to the 2015 refugee crisis? Is Europe acting in compliance with its founding principles? This Essay takes stock of the main results and policy outputs from the EU's interventions to the refugee crisis. It critically highlights the outstanding policy dilemmas confronting the adopted instruments and puts forwards a set of policy priorities to guide the next phases of the European Agenda on Migration.

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1. Introduction

The year 2015 has sorely tested the added value and legitimacy of the European Union in responding to the refugee crisis. The public outcry and unprecedented levels of political and media attention to the dramatic experiences and images of asylum-seekers arriving in the EU have put huge pressures on the European institutions and member state governments to show that they can meet the challenge.

Migration policies are now at the top of the EU policy agenda. It is difficult to envisage that this will change anytime in the near future. Each of the relevant European institutions has positioned this issue at the heart of its respective agenda. During this same period a whole series of initiatives have been put on the table and heatedly discussed between the relevant institutional actors and EU member states, and indeed with third countries – as the recent Valetta Summit on migration of 11-12 November 2015 has shown.[1] These have been accompanied by a succession of inconclusive extraordinary summits and conferences reporting mixed and obscure results about the kind of concrete steps the EU might take. The resulting picture is difficult for the general public to fully grasp, which has proved to be profoundly concerned about the impasse reached on migration and the lack of commitment by European authorities. Is Europe effectively assuming responsibility in compliance with its founding principles? It is roughly one year since the new European Commission, the High Representative (HR) for Foreign Affairs and Security Policy and the President of the European Council took office.

It is therefore a proper moment to take stock of the results and policy outputs from the EU's interventions in the refugee crisis. This Essay examines the most salient policy and legislative initiatives taken by the EU in this area and identifies the main challenges associated with them from a variety of policy perspectives. Section 2 provides a synthesis of the most far-reaching policy, legislative, institutional and financial responses agreed at EU level to respond to the refugee crisis. Section 3 critically highlights the outstanding policy dilemmas confronting the next phases of the European Agenda on Migration.

The Essay illustrates that while a number of the recently adopted EU initiatives constitute a step forward in the building of a common European policy on migration, asylum and borders, a number of far-reaching challenges remain in need of attention. This is particularly true with regard to:

i)   ensuring a fairer sharing of legal responsibilities and institutional solidarity between the EU and the member states, as well as among the member states themselves;

ii)   guaranteeing a proper implementation and enforcement of existing EU laws and standards by member states on the ground and of rule of law principles in external

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[1] See www.consilium.europa.eu/en/press/press-releases/2015/11/12-valletta-final-docs/

border controls and defence/military-oriented responses; and

iii) implementing a common EU policy agenda that gives priority to – also in the short-term – all policy sectors with relevance to migration and not only those related to EU and member states' security. The latter point implies giving proper consideration to the repercussions of home affairs responses over wider economic, trade, development cooperation, human rights and foreign affairs policies.

Until the present time, most of these measures did not go deep enough to treat the actual dilemma behind this refugee crisis. This mainly concerns a lack of effective action on remodelling the sharing of protection and human rights responsibilities between all EU member state governments in a way that takes us beyond the current unworkable EU Dublin system. Still, events such as the terrorist attacks on 13 November 2015 in Paris should not be taken as an opportunity to shy away EU member states' commitments towards the legislative and policy measures already adopted in the scope of the European Agenda on Migration. The EU policy responses, both internally and in cooperation with third countries, have by and large lacked a *multi-policy sector* approach. Instead, they have given priority to security-driven (home affairs) and military concerns and interests of the EU and its member states, where the focus on border controls, return and readmission and fighting against smuggling have by and large prevailed, instead of first ensuring full compliance with fundamental human rights standards and principles. This constitutes one of the Achilles heels of the current European Agenda on Migration.

2. Overview of EU institutional, policy and legal responses

2.1 Institutional renewal and migration

Since the inauguration of the new European Commission, led by President Jean-Claude Juncker, one of whose Vice-Presidents, Federica Mogherini, is also the new High Representative leading the European External Action Service (EEAS), and the start of activities by Donald Tusk as President of the European Council, migration policies have been at the top of their political agendas. President Juncker's Political Guidelines 'A New Start for Europe' included migration as one of the key action areas.[2] The new intra-institutional configurations of the current Commission included for the first time a First Vice-President in charge of coordinating both Commissioners responsible for 'Justice' (DG JUST) and 'Home Affairs' (DG HOME), and therefore politically steering the Commission's work emanating from these two DGs, including on migration policy (Guild & Carrera, 2014). For the first time also, the Commissioner for Home Affairs was additionally nominated as Commissioner for 'Migration', yet without any significant reallocation of responsibilities in comparison to his predecessor.

In response to a spike in deadly tragedies at sea since February 2015, 'migration' has also been a key domain of intervention by Federica Mogherini, in her dual capacity as High Representative and Vice-President of the European Commission (HR/VP) responsible for the Commissioners' Group on External Action (CGEA), which includes Commissioner Avramopoulos (DG HOME) in the broader cluster (Blockmans & Russack, 2015):[3]

We cannot allow other tragedies at sea in the coming weeks and months; we need to be

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[2] Refer to http://ec.europa.eu/priorities/docs/pg_en.pdf

[3] Refer to http://ec.europa.eu/about/structure/index_en.htm#ta

able to give a strong political and operational response. As I have announced today during the College in Strasbourg,   I will convene an extraordinary meeting of the Commissioners' Group on External Action in the coming days in order to discuss with the Commissioner for Migration, Home Affairs and Citizenship, Dimitris Avramopoulos, a review of our policies. I've also decided to put a discussion on migration on the agenda of the Foreign Affairs Council soon. The fight against smuggling and trafficking, the rescue of migrants at sea, the protection of asylum-seekers are shared challenges; they require a stronger exercise of shared responsibility.[4]

On the occasion of the Foreign Affairs Council in March (the first in 10 years to discuss 'migration'), it was decided to organise an extraordinary meeting of Foreign Ministers and Interior Ministers on 20th April. This first-ever joint ministerial prepared the first 'special' European Council meeting on the refugee crisis on 23rd April, after the single-most deadly shipwreck on the Mediterranean claimed more than 800 lives. Mogherini has played an instrumental role in keeping the external dimension of the refugee crisis on the agenda since.

Whereas "the need to manage migration properly" (and strengthen Triton, the Frontex Operation in the central Mediterranean and the EU's support to the countries of origin and transit) had already been recognised by EU Heads of State or Government in 2014, President Tusk tried to respond to the concerns expressed by an ever-louder chorus of EU leaders by coordinating a more concerted effort at the highest political level. He appointed former EEAS Secretary General Pierre Vimont as his point man for the Valetta Summit process and has kept refugee and migration issues on the agenda of every regular European Council summit since, including the upcoming European Council meeting of 17 and 18 December 2015.[5]

2.2   The European migration agenda

In May 2015, the Commission adopted the so-called European Migration Agenda.[6] The Agenda is a political document outlining priorities in migration, asylum and borders policies for the years to come. The relevance of the above-mentioned new inter- and intra-institutional configurations became evident during the press conference presenting the Agenda to the public, which started with First Vice-President Timmermans, followed by HR/VP Mogherini and only then Commissioner for Migration, Home Affairs and Citizenship, Avramopoulos.[7] In contrast to the previous institutional arrangements, for the first time a *common* policy agenda was adopted between the two institutions, aimed at being 'comprehensive'[8] and

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[4] See http://eeas.europa.eu/statements-eeas/2015/150210_03_en.htm

[5] See www.consilium.europa.eu/en/meetings/european-council/2015/12/17-18/ See also an interesting timeline of key developments in the work of the Council and the European Council on migration here: http://www.consilium.europa.eu/en/policies/migratory-pressures/history-migratory-pressures/

[6] See http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migra-tion/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf

[7] See http://europa.eu/rapid/press-release_IP-15-4956_en.htm

[8] During the Press Conference presenting the Agenda Mogherini stated: "The response is finally European. And it is also as we say in European terminology, I don't necessarily like it very much, but you know what I refer to, is a comprehensive response, means that it tackles all different aspects of a problem that is complex, is not going to be solved from today to tomorrow but we have a set of European policies that can be put together, and we are doing that in an integrated and coordinated way…finally we don't

joining up (or ensuring consistency between) the various *internal* and *external* policy strands and instruments at the Union's disposal. Yet, has this really been the result so far?

In light of the increasingly pressing political context surrounding the arrival of asylum-seekers through the south-eastern land borders and the Mediterranean, the Agenda identified six 'immediate (short-term) EU policy actions' or proposals:

1) A temporary and emergency-driven relocation mechanism for asylum-seekers within the EU for those member states confronting higher influx, based on a new redistribution key criteria for determining responsibility for assessing asylum applications; and the presentation of a legislative initiative for a permanent system before the end of 2015

2) A relocation mechanism for 20,000 refugees from outside the EU, and an extra €50 million budget 2015-16 to support this scheme

3) Tripling the capacities and budget of the EU External Border Agency (Frontex) joint border control and surveillance operations in the Mediterranean (called 'Triton' and 'Poseidon')

4) Increasing emergency funding to frontline EU member states by €60 million, and setting up a new 'hotspot approach' in which EU home affairs agencies like Frontex, Europol and the European Asylum Support Office (EASO) would work on the ground to support 'frontline' member states in identifying, registering and fingerprinting migrants

5) Strengthening Europol's joint maritime information operation in the Mediterranean to deal with migrants' smuggling via CEPOL (European Policy College)

6) Establishing a Common Security and Defence Policy (CSDP) Operation in the Mediterranean to dismantle traffickers' networks and the 'business model' of smugglers, so as to identify, capture and destroy vessels used by smugglers

In addition to these 'immediate' actions, understood as more 'medium-term' in nature, the European Agenda on Migration outlined the following four key 'pillars' or 'levels of action' for an EU migration policy: 1) reducing the incentives for irregular migration; 2) border management – saving lives and securing external borders; 3) Europe's duty to protect – a strong common asylum policy; and 4) a new policy on legal migration. Each pillar advanced a set of specific policy actions.

A majority of MEPs supported the European Commission's proposals to address the crisis, while criticising EU member states for their failure to make tough decisions and provide a compassionate response to the refugee crisis. For its part, the June European Council embraced the Commission's European Agenda on Migration and stressed the need to make progress on all dimensions of a "comprehensive and systemic approach".

This approach includes the diplomatic work by High Representative Mogherini, supported by her staff at the EEAS, for instance in supporting the UN-brokered peace deal to form a

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have a European response but we have an integrated European response" (www.youtube.com/watch?v=KKxWBvW7llE).

government in Libya,[9] and by widening the 'E3+3' format with Iran in an effort to reboot discussions on how to bring about an end to the violence in Syria.[10] Mogherini, in her hybrid capacity as HR/VP, and fellow Commissioners (in particular Timmermans, Hahn, Avramopoulos, Stylianides and Mimica) have also tried to move Turkey (See Section 2.3.3 below), Western Balkan countries, African countries and organisations,[11] toward closer cooperation to manage refugee flows and address the so-called 'root causes of irregular migration'.[12]

2.3 Adopted legal and policy instruments (May-December 2015): State of play

EU policy proposals have been the subject of intense policy debates over the past six months. This Section explores in more detail the main legal and policy instruments adopted.[13]

2.3.1 The temporary relocation system

One of the most controversial ideas has been the establishment of a Temporary EU Relocation System for the redistribution of asylum-seekers between EU member states (Carrera & Guild, 2015). The main contribution of the initiative has been to derogate temporarily the guiding rule under the so-called 'EU Dublin system' according to which the EU member state of first entry is responsible for examining an asylum application.

The temporary system introduces a new 'distribution key' model of allocating responsibility between member states on the basis of new criteria, which include GDP, population, unemployment, etc. On the basis of the Commission's initiative, the member states adopted a Resolution on relocating from Greece and Italy 40,000 persons in clear need of international protection of 22 July 2015,[14] which was complemented on September 3rd by an additional Council Decision on the temporary relocation of 120,000 asylum-seekers from Greece and Italy.[15] EU Member States had also committed themselves in July 2015 to resettling over 22,000

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[9] See M. Toaldo, "Libya's migrant smuggling highway: Lessons for Europe, ECFR Policy Memo, 10 November 2015.

[10] Joint Statement by China, Egypt, the EU, France, Germany, Iran, Iraq, Italy, Jordan, Lebanon, Oman, Qatar, Russia, Saudi Arabia, Turkey, United Arab Emirates, the United Kingdom, the United Nations, and the United States, Final declaration on the results of the Syria Talks in Vienna as agreed by participants, EEAS Press Release 151030_06, 30 October 2015.

[11] Speech of Mogherini at the opening ceremony of the Heads of State of the G5 Sahel (Burkina Faso, Tchad, Mali, Mauritanie et Niger), N'djamena, 20 November 2015, http://www.eeas.europa.eu/statements-eeas/2015/151120_fr_02.htm; and Speech of Mogherini to the African Union, 20 October 2015, http://www.eeas.europa.eu/statements-eeas/2015/151020_01_en.htm.

[12] For an analysis on the 'root causes approach' refer to http://publications.iom.int/system/files/pdf/mpp_issue_22.pdf

[13] For summaries, see http://europa.eu/rapid/press-release_IP-15-5700_en.htm and more recently European Commission, "State of Play: Measures to Address the Refugee Crisis", 4 November 2015 (http://europa.eu/rapid/press-release_IP-15-5958_en.htm). See also European Commission, Communication, Managing the refugee crisis: State of Play of the Implementation of the Priority Actions under the European Agenda on Migration, COM(2015) 510 final, 14.10.2015.

[14] http://data.consilium.europa.eu/doc/document/ST-11131-2015-INIT/en/pdf

[15] http://data.consilium.europa.eu/doc/document/ST-11132-2015-INIT/en/pdf http://data.consilium.europa.eu/doc/document/ST-11161-2015-INIT/en/pdf

people from outside Europe.[16]

The first relocation flight took place from Italy on October 9th, transporting 19 Eritrean asylum-seekers to Sweden.[17] Twelve days later, on October 21st, another 19 Eritrean and Syrian asylum-seekers were relocated to Sweden and 48 to Finland. In what concerns Greece, the European Commission announced on the 4th November that the first relocations flights of 30 asylum-seekers will take place to Luxembourg.[18] As of December 11th, the resulting picture is as follows: 54 asylum-seekers have been relocated from Greece and 130 from Italy (see Table 1 below).[19] The EU member states that have participated most actively so far are Finland, Sweden and Luxembourg; followed by France, Spain and Germany. It is not surprising that the member states' resolve has become the object of criticism: "At the current pace, it would take more than 750 years to relocate the 160,000 asylum-seekers covered by a now-expanded resettlement plan."[20]

Table 1. State of play of relocation of asylum-seekers from Greece and Italy

	Finland	France	Germany	Luxem	Spain	Sweden
ITALY	49	19	11		12	39
GREECE	24			30		

Source: Authors' elaboration.

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[16] According to the Commission Communication COM(2015) 510, Managing the Refugee Crisis, the first resettlements have already taken place and "132 Syrians staying in neighbouring countries have already been resettled under the scheme agreed on 20 July 2015 to the Czech Republic (16), Italy (96), and Liechtenstein (20)"(p. 6).

[17] For the current state of affairs of member states' support to emergency relocation mechanism (December 2015), see http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf

[18] See http://europa.eu/rapid/press-release_IP-15-5971_en.htm and information provided at http://www.eu2015lu.eu/en/actualites/articles-actualite/2015/11/04-asselborn-athenes/index.html See also http://www.unhcr.org/566eac399.html

[19] See http://europa.eu/rapid/press-release_IP-15-6134_en.htm

[20] See http://www.nytimes.com/2015/10/26/world/europe/merkel-and-east-european-leaders-discuss-migrant-crisis-in-brussels.html?_r=0

2.3.2   The hotspots approach

A second accompanying measure to the relocation system has been the so-called hotspot approach in specific (more problematic) venues in Italy and Greece and the strengthening of EU Home Affairs agencies.[21] As briefly mentioned above, this model entails the deployment of operational support by Frontex, Europol and EASO experts involved in the 'screening' of third country nationals (identification, fingerprinting and registration), provision of information and assistance to applicants of international protection and the preparation and removal of irregular immigrants.

The hotspots involve setting up a joint operational headquarters called the European Union Regional Task Force (EURTF), composed by representatives from the three EU agencies who coordinate the work on the ground collaborate with national authorities. In Italy, hotspot areas include Augusta, Lampedusa, Porte Empedocle, Pozzallo, Taranto and Trapani. A first Migration Management Support Team is up and running in Lampedusa, which builds upon the EURTF in Catania, Sicily. In Greece the following areas have been identified: Lesvos, Chios, Leros, Samos and Kos. The EURTF is based in Piraeus and the first Migration Management Support Team has been based in Lesvos.[22]

Frontex has also seen its capacities 'tripled' when it comes to Joint Operations in the Mediterranean (Triton and Poseidon), including financial allocations, an increase in staff by 60 new members (corresponding to €1.3 million) and an additional pool of EU member state officials (291) to be deployed in the hotspots,[23] which compares to the higher original demand by Frontex of 775 border guard officials. Frontex is also expected to become more involved in 'joint return operations' and to create a dedicated returns office to organise return operations. EASO has also increased its staff (by 30 additional members) and called for 370 national experts to support asylum management authorities in Italy and Greece.

2.3.3   Safe third countries

A third important development has been the adoption of a Regulation establishing a common list of safe third countries[24] and the adoption of Council conclusions on the same subject.[25] The main idea behind the Regulation is the designation of countries, in particular the (potential) EU candidates along the Western Balkan route (Bosnia-Herzegovina, Macedonia, Montenegro, Kosovo, Serbia and Turkey), as 'safe countries', which entails that nationals from those countries are not *a priori* deemed as 'refugees' and an expedited procedure can be applied by

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[21] Annex 2 to the Commission Communication, Managing the refugees crisis: Immediate operational, budgetary and legal measures under the European Agenda on Migration, COM(2015) 490 final, 23.9.2015.

[22] For an overview of the current state of play (December 2015) of the Hotspots see http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_hotspots_en.pdf

[23] Frontex News http://frontex.europa.eu/news/member-states-provide-291-border-guards-to-frontex-to-be-deployed-in-greece-italy-2tVnYY

[24] http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/proposal_for_regulation_of_the_ep_and_council_establishing_an_eu_common_list_of_safe_countries_of_origin_en.pdf

[25] http://data.consilium.europa.eu/doc/document/ST-11133-2015-INIT/en/pdf

national authorities. This does not mean that all applicants of international protection from these countries can be automatically refused or directly treated as unfounded.

To this end, the EU first hosted a High-Level Conference on the Eastern Mediterranean /Western Balkan Route on October 8th and adopted a plan of collective action. A second, more restricted, high-level meeting was convened on October 25th, with leaders from Austria, Bulgaria, Croatia, Germany, Greece, Hungary, Romania, Slovenia as well as Albania, Serbia and Macedonia invited to attend. The Presidents of the European Commission and the European Council, the current and future rotating presidencies of the Council (Luxembourg and the Netherlands), as well as the UN High Commissioner for Refugees were also in attendance. The meeting agreed on a "17-point plan of pragmatic and operational measures", where increased border management and implementation of the EU-Turkey Action Plan (agreed on October 15th) feature prominently.[26]

More recently, a contact points group composed of senior member state officials, EU agencies and the Commission, followed up with, inter alia, an additional 50,000 reception places along the Western Balkans Route before the end of the year, of which 12,000 have been already committed by Austria, Serbia, Croatia and Slovenia.[27] It also called for launching the civil protection mechanism for the benefit of Croatia, Serbia and Slovenia.[28]

Meanwhile, the EU has been bending over backwards to engage with Turkey, in the hope that the country will cooperate in stemming the flow of refugees. Two extraordinary EU-Turkey summits were held in Brussels, one with President Erdogan (5October 5th) and the other with Prime Minister Davutoglu (29th November), both on the request of the Union.[29]

The EU and Turkey agreed to activate the Joint Action Plan to step up cooperation for support of Syrians under temporary protection and migration management for the purposes, according to the statement, to address the crisis created by the situation in Syria. According to both parties: "results must be achieved in particular in stemming the influx of irregular migrants." It is not entirely clear whether the parties were referring to Syrians as irregular migrants or others, one can only hope that they meant the latter. The parties sought to bring order into migration flows and help stem irregular migration. This will include active cooperation on migrants not in need of international protection to prevent them from travelling to Turkey and the EU.

The parties agreed to activate the EU Turkey Readmission Agreement from June 2016 and ensure that it is used to swiftly return migrants who do not need international protection to their countries of origin. Turkey agreed to adopt immediate measures to improve the socio-economic situation of Syrians resident in that country under temporary protection. In a similar vein the parties agreed to take decisive action to enhance the fight against 'criminal smuggling networks.'

This cooperation comes with a price tag: an initial €3 billion of additional resources to help Turkey cope with the high numbers of Syrian refugees currently in the country; the

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[26] See http://ec.europa.eu/news/2015/10/20151025_en.htm and the final statement available at http://ec.europa.eu/news/2015/docs/leader_statement_final.pdf

[27] http://europa.eu/rapid/press-release_IP-15-5952_en.htm

[28] http://ec.europa.eu/news/2015/docs/factsheet_the_eu_civil_protection_mechanism.pdf

[29] http://www.consilium.europa.eu/en/meetings/international-summit/2015/11/29/ The German Chancellor has followed a parallel track, entering into direct bilateral negotiations with Erdogan.

acceleration of the visa liberalisation process; the opening of a new chapter to re-energise Turkey's accession process. One of the positive outcomes of visa liberalisation would of course be a stronger border control of its coastal waters, as indeed a change in Turkey's visa policy, provided that Ankara does not abuse its newly found power position in exploiting vulnerabilities of the EU to new spikes in the flow of refugees towards Europe.

2.3.4 *Irregular migration, trafficking and smuggling*

Among the most visible responses by the European Commission have been the adoption of an EU Action Plan against Migrants' Smuggling COM(2015) 285,[30] EU Action Plan on Return COM(2015) 453 of 9 September 2015,[31] and a Recommendation on Common Return Handbook.[32] These measures have been by and large welcomed by all EU Member States, a clear example being the Council Conclusions on the future of the return policy of 8 October 2015.[33] The focus of these measures is on the return of irregular entering and staying third country nationals, and cooperation with third countries on readmission.[34]

The EU policy in fighting traffickers has also involved the launch of a CSDP operation called EUNAVFOR MED - recently re-baptised 'Operation Sophia' – on the high seas of the southern Mediterranean.[35] From its invitation to the High Representative to start preparations until today, the European Council has insisted that the CSDP operation be conducted in accordance with international law. To strengthen the EU's presence at sea, the European Council also agreed to triple the resources available to Triton, the EU border mission in the Central Mediterranean, and to enhance its operational capability with the supply of additional vessels,

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[30] https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_action_plan_against_migrant_smuggling_en.pdf

[31] http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/communication_from_the_ec_to_ep_and_council_-_eu_action_plan_on_return_en.pdf

[32] http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/return_handbook_en.pdf and http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/commission_recommendation_establishing_a_return_handbook_for_member_states_competent_authorities_to_deal_with_return_related_tasks_en.pdf As part of a broader package of proposals, the European Commission and the High Representative adopted a joint communication JOIN(2015) 40 of 9 September 2015, "Addressing the Refugee Crisis in Europe: The Role of EU External Action", in which they describe how the Union's international engagement has built upon the 2011 Global Approach to Migration and Mobility COM(2011) 743.

[33] http://www.consilium.europa.eu/press-releases-pdf/2015/10/40802203341_en_635799226800000000.pdf

[34] As part of a broader package of proposals, the Commission and the High Representative adopted a joint communication JOIN(2015) 40 of 9 September 2015, "Addressing the Refugee Crisis in Europe: The Role of EU External Action", in which they describe how the Union's international engagement has built upon the 2011 so-called 'Global Approach to Migration and Mobility' (GAMM). The EU and Turkey have agreed to apply from June 2016 the readmission agreement. They are aiming to complete the visa liberalization process, and the lifting of visa requirements for Turkish citizens in the Schengen zone, by October 2016.

[35] See Council Conclusions on Migration, 12 October 2015 (www.consilium.europa.eu/en/policies/migratory-pressures) and section 3.3 below.

aircraft and experts by member states. Other agreed measures include increased cooperation against smuggling networks with the help of Europol and the deployment of immigration officers to third countries.

2.3.5   Funding

Another rather visible output, this time of a predominantly financial nature, has been the so-called Trust Funds for the Syrian crisis (with an additional €500 million) and Africa.[36] An Emergency Trust Fund for stability and addressing root causes of irregular migration in Africa (Trust Fund for Africa) of €1.8 billion.[37] Financial solidarity has also taken the form of additional emergency assistance in 2015 under the Asylum, Migration and Immigration Fund and the Internal Security Fund-Borders, totalling €100 million.[38]This has come along with additional funding reallocated from the European Neighbourhood Instrument of about €300 million. For the year 2015, Greece has received +/- €41.8 million (including €8.7 million in emergency funding), and Italy +/- €58.3 million (including €19 million in emergency funding).

In light of the above, most of the 'actions' that the European Agenda on Migration framed or identified as 'immediate' have been largely adopted during the last five months. It is too early to project and examine the actual practical repercussions that these EU instruments are having or will have on the ground. The framing of these actions as 'short-term' by the Agenda is however misleading, as their actual impacts will be mainly noticed on the ground in the medium and long terms.

2.3.6   The Commission's proposal for a European border and coast guard

The European Agenda on Migration adopted in May 2015 anticipated that "within the scope of the Treaties and its relevant Protocols", the European Commission would launch a reflection on how to foster "a shared management of the European border". It stipulated:

> a European System of Border Guards…would cover a new approach to coastguard functions in the EU, looking at initiatives such as asset sharing, joint exercises and dual use of resources as well as a the possibility of moving towards a European Coastguard.[39]

President of the Commission Juncker declared in his state of the union speech[40] the need to reinforce significantly Frontex's competences and "develop it into a fully operational European border and coast guard system."[41] This was reflected in the Commission's Work Programme for 2016 "No Time for Business as Usual",[42] which anticipated the presentation of

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[36] http://ec.europa.eu/priorities/migration/docs/letter-tusk-bettel-juncker_en.pdf

[37] https://ec.europa.eu/europeaid/emergency-trust-fund-stability-and-addressing-root-causes-irregular-migration-and-displaced-persons_en

[38] Refer to Annex 8 of the Communication COM(2015) 510.

[39] European Agenda on Migration, COM(2015) 240, 13.5.2015, page 17.

[40] See http://ec.europa.eu/priorities/soteu/docs/state_of_the_union_2015_en.pdf

[41] The Speech continued by saying that "It is certainly feasible. But it will cost money. The Commission believes this is money well invested. This is why we will propose ambitious steps towards a European Border and Coast Guard before the end of the year."

[42] European Commission, Communication 'Commission Work Programme 2016: No Time for Business as Usual', COM(2015) 610, 27.10.2015.

proposals before end of 2015 "for a European Border and Coast Guard, building on a significant strengthening of Frontex". In the European Council Conclusions of 15 October EU Member States' representatives called for the need to

> in accordance with the distribution of competences under the Treaty, in full respect of the national competence of the Member States, enhance the mandate of Frontex in the context of discussions over the development of a European Border and Coast Guard System, including as regards the deployment of Rapid Border Intervention Teams in cases where Schengen evaluations or risk analysis demonstrate the need for robust and prompt action, in cooperation with the Member State concerned.[43]

The Commission has followed up these calls with the publication of a Communication and a package of legislative measures.[44] The Communication "A European Border and Coast Guard and effective management of Europe's external borders" COM(2015) 673 lays down the main featuring components of the new Commission initiatives and the newly envisaged European Border and Coast Guard Agency (Guild, Brouwer, Groenendijk & Carrera, 2015).

The European Border and Coast Guard has been developed in the shapes of a Regulation under the ordinary legislative procedure. It would be based on a new European Border and Coast Guard Agency of semi-military nature and have the legal status of 'body of the Union'.[45] The Agency would be built from Frontex, and the EU member states' authorities responsible for border control and national coastal guard authorities when they perform maritime border surveillance. It would have two main competences: first, facilitating the development and implementation of common EU border management standards; and second, operationally support frontline EU Member States whose national border authorities are not effectively copying with the challenges on the ground.

As regards the budgetary implications of the proposal, the Commission is envisaging an amount of "at least" €31,5 million in 2017 to be added to the Agency's Union budget and an additional 602 posts until 2020 (in addition to the corresponding financial resources), which is expected to include 329 establishment plan posts and 273 external staff.[46]

The model running the Agency would work on the basis of *liaison officers* who would be sent or seconded by the Agency to the EU member states' concerned.[47] They would be fully

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[43] See http://www.consilium.europa.eu/en/press/press-releases/2015/10/16-euco-conclusions/

[44] Refer to http://europa.eu/rapid/press-release_IP-15-6327_en.htm See European Commission, Proposal for a Regulation amending Regulation No 562/2006 (EC) as regards the reinforcement of checks against relevant databases at external borders, COM(2015) 670 final, 15.12.2015; Commission Recommendation adopting the Practical handbook for implementing and managing the European Border Surveillance System (EUROSUR Handbook), C(2015) 9206 final, 15.12.2015. See also European Commission, Eighth biannual report on the functioning of the Schengen area 1 May - 10 December 2015, COM(2015) 675 final, 15.12.2015.

[45] European Commission, Proposal for a Regulation on the European Border and Coast Guard COM(2015) 671 final, 15.12.2015.

[46] Refer to page 8 of the proposal.

[47] Article 11.3 of the proposal laids down the specific tasks of the officers, which include "(a) act as an interface between the Agency and the national authorities responsible for border management, including coast guards to the extent that they carry out border control tasks; (b) support the collection of information required by the Agency for carrying out the vulnerability assessment referred to in Article

integrated into the national authorities' work and information systems, so that the Agency would be informed 'in real time'. The EU border officers would identify weaknesses in the system and propose recommendations to overcome them. The Agency would acquire important evaluation powers over "the resources and equipment of the Member States as well as their contingency planning", and its decisions concerning corrective actions to address deficits or gaps would be binding upon member states.

The new Agency would move beyond the current Frontex model by: First, creating a mandatory rapid reserve pool and a technical equipment pool from EU member states;[48] and second, granting the Agency the power or right to intervene in urgent situations to a particular fraction of the EU external border irrespective of an EU member state requesting it or not (Article 18 of the Commission Proposal).[49] The Agency would have three main additional competences: i) developing the Hotspot approach; ii) coordination of operational cooperation with third neighbouring countries; and iii) initiate return operations and support member states' in returns.

3.   Assessing the EU responses: What are the challenges?

3.1   A fairer sharing of responsibilities in the European asylum system

Some EU responses can be regarded as steps forward in exploring new ways of sharing responsibilities both between EU member states, and between them and the EU. Various measures have attempted to display institutional, legal and financial solidarity in the areas of asylum and external borders policies. Examples include such instruments as the EU temporary relocation system for the redistribution of responsibility for asylum-seekers or the operational support by EU Home Affairs agencies to Greece and Italy, combined with an increase in the

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12; (c) monitor the measures taken by the Member State at border sections to which a high impact level has been attributed in accordance with Regulation (EU) No 1052/2013; (d) assist the Member States in preparing their contingency plans; (e) report regularly to the Executive Director on the situation at the external border and the capacity of the Member State concerned to deal effectively with the situation at the external borders; (f) monitor the measures taken by the Member State with regard to a situation requiring urgent action at the external borders as referred to in Article 18".

[48] According to the Communication (pp 5-6): "a rapid reserve pool of experts [would be placed] as a standing corps at the disposal of the Agency. … the Agency will be able to call on this pool within a very limited timeframe in circumstances requiring immediate response. Member States will have to make available at least 1500 border guards to be deployed by the Agency in rapid border interventions within days. Similarly, the Agency will have at its disposal a technical equipment pool where Member States will be required to make available at immediate notice operational equipment acquired at a 90% co-financing rate under the additional allocations of specific actions8 of the Internal Security Fund."

[49] The Communication states that "such action could be necessary due to a disproportionate increase in the pressure at that section of the external border where the national border guard authorities (and coastguards to the extent that they have border control tasks) are not able to cope with the crisis which has developed. On the other hand, the requirement of urgent action at a particular section of the external border could be due to a deficiency in the border management system of a member state which the Agency had identified as a result of a vulnerability assessment and had recommended corrective measures which the member state concerned failed to implement within the set time limits.", page 6. See Articles 14 and 18 of the proposal.

financial allocation of funds.

That notwithstanding, most of these measures do not go deep enough to treat the root causes behind the refugee crisis (Carrera & Lannoo, 2015). True, the EU temporary relocation system constitutes a welcomed move from the EU Dublin System rule.[50] The new relocation system has introduced a new set of criteria considering other numerical factors such as population size, total GDP, average number of asylum applications per one million habitants over 2010-14 and unemployment rate.

Although many observers have voiced the view that the Dublin system is 'dead' and no longer works in practice (Carrera, 2015), the EU temporary relocation system aims to retain the system in abeyance by introducing an instrument that has been devised for exceptional and emergency situations. The alternative distribution key criteria are only to be used "in times of crisis". The current situation, however, is not so exceptional or casuistic, showing as it does a phenomenon that can be expected to continue and that has made revealed a deeper malady affecting the common European asylum system (CEAS).

The logic of the Dublin system puts a disproportionate amount of pressure on frontline EU member states holding the common EU external land and sea borders. Photographs and other evidence provided by the UN, the Council of Europe and civil society organisations working on the ground show that the reception and humanitarian conditions in many of these EU member states are systematically deficient (Carrera & Guild, 2015). UNHCR has acquired ample evidence showing that inadequate access to asylum procedures, a continued backlog in assessing asylum applications and inhuman detention conditions in several EU member states.[51]

The Parliamentary Assembly of the Council of Europe has stated that the Dublin system is "dysfunctional and ineffective and should be urgently reformed to ensure 'equitable burden sharing' among member States".[52] A similar call has been given by the Human Rights Commissioner of the Council of Europe, who has said that "the "Dublin system" leaves a few frontline southern EU countries to bear a disproportionate responsibility for asylum-seekers, and in any case it doesn't conform with international human rights standards. EU countries need to agree on a new system based on the principles of inter-state solidarity as well as on effective human rights protection."[53]

Hence, people often do not wish to stay and apply for asylum in these countries, but would prefer to move elsewhere in the EU. The controversial assumption in the Dublin system that people can be generally obliged to stay and apply for asylum in the country of first entry has proved to be one the main obstacles hindering the effectiveness of EU asylum policy (Guild, Costello, Garlick & Moreno-Lax, 2015a). The new EU relocation system is a significant

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[50] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180, 29.6.2013, pp. 31–59.

[51] See http://www.un.org/apps/news/story.asp?NewsID=45116# and United Nations High Commissioner for Refugees (UNHCR), (2015), "UNHCR welcomes more EU support to refugees, urges fast implementation", 24 September (http://www.unhcr.org/5603d2a66.html).

[52] http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5798&lang=2&cat=8

[53] http://www.coe.int/en/web/commissioner/-/a-to-do-list-for-the-refugee-crisis

improvement in that it takes due account of the private, family and personal circumstances of asylum-seekers in making relocation decisions. Contrary to claims by certain actors such as the European Parliament, however, the new system still does not take into account the personal preferences of the persons involved.[54]

When it comes to the 'hotspots approach', one can indeed welcome the priority given to making EU home affairs agencies, such as EASO and Frontex, more effectively operationalised in supporting most affected EU member states in confronting domestic challenges in migration and asylum systems. The fact that this approach, however, is still anchored in the Dublin system and that the reception conditions in many countries are profoundly deficient undermine this model. Moreover, the agencies' responsibilities are, at least formally, limited to supporting Greek and Italian authorities in specific areas considered to be particularly problematic or "hot". These EU agencies do not directly intervene or take part in national decisions concerning border controls (entry/refusal) in the common Schengen area or in assessing asylum applications, which in turn also limits the extent to which they can actually fill the gaps in current national systems.

3.2 Enforcing member states' implementation of EU standards

The last months have also made clear that the extremely poor state of domestic transposition and practical implementation of EU-level asylum standards by some EU member states. When it comes to asylum policy, a particularly problematic aspect is the low record of implementation by member states of the EU reception conditions Directive 2013/33 (Guild & Carrera, 2015).[55] This not only relates to an 'easy check' of specific legislative reforms following EU legal acts. It also demonstrates a more profound deficit concerning the judicial and administrative capacities of some EU member states, particularly when it comes to domestic asylum systems (Gros, 2015).

The Commission's announcement that it will more effectively ensure the enforcement of EU legislation and standards is a welcome development. A total of 40 infringement decisions against several EU member states were launched in mid-September 2015 for failing to implement EU asylum legislation.[56] The Commission adopted on the 10 December 2015 a total of 8 infringement decisions for failing to fully transpose and implement the Common European Asylum System against Greece, Croatia, Italy, Malta and Hungary.[57] Conversely, Slovakia has asked the Court of Justice of the European Union to rule on the legality of the above-mentioned EU temporary relocation scheme on largely dubious grounds of lack of legal competence and interference of national sovereignty.[58]

Guaranteeing a proper and timely implementation and enforcement of existing EU laws and

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[54]   See   www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0306&language=EN

[55] 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, OJ L 180, 29.6.2013, p. 96–116

[56] For a detailed picture of these infringement procedures, see http://europa.eu/rapid/press-release_IP-15-5699_en.htm

[57] See www.statewatch.org/news/2015/dec/eu-com-infringements-10-12-15.pdf

[58] See EUobserver, "Slovakia filing case against EU migrant relocation", 30 September (https://euobserver.com/justice/130499).

standards by member states on the ground is critical for the legitimacy of the entire CEAS and the effectiveness of any of the EU measures adopted during the last five months of 2015. Civil society organisations like ECRE (European Council of Refugee and Exiles) have recalled European countries duty to ensure adequate reception conditions and treat of people in need of international protection with dignity and respect, particularly in prospect of the winter season approaching.[59] In the same vein, the UN Office of the High Commissioner for Human Rights has recently stated:

> Over the last two months, several European countries of transit have been employing restrictive policies against migrants and refugees who are trying to reach European countries further north. However, the Czech Republic is unique in routinely subjecting these migrants and refugees to detention for 40 days, and reportedly sometimes even longer -- up to 90 days -- in conditions which have been described as degrading.[60]

When it comes to Schengen, some voices have alluded to the existence of a link between the refugee crisis and the Schengen system. As it has been argued elsewhere, there is no evidence showing that the Schengen system has been under threat during these last months or that there is a need for legislative reform (Guild, Brouwer, Groenendijk & Carrera, 2015). The few EU member states which have reintroduced temporary internal border checks for over a period of two to three months have done so in accordance to the rules envisaged in Article 25 the Schengen Borders Code and the rules on temporary reintroduction of border checks. They have been properly notified to the member states, the General Secretariat of the Council and the European Commission.[61] The necessity and proportionality of any further expansion of these controls has been also subject to EU rule of law scrutiny.

Moreover, the dramatic events in Paris on the 13 November 2015 have shed some shadows as regards the acquired obligations by EU Member States under the EU temporary relocation system. That notwithstanding, President of the European Commission Juncker speech at the G20 Meeting on the 15 November importantly underlined the need to delink terrorism and refugee's debates in Europe,[62] and that people seeking international protection are not criminals or potential terrorists.[63] He argued:

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[59] See http://ecre.org/component/content/article/70-weekly-bulletin-articles/1223-eu-preoccupied-with-border-protection-instead-of-the-protection-of-refugees-rights.html and http://ecre.org/compo-nent/content/article/70-weekly-bulletin-articles/1222-with-winter-approaching-ecre-urgently-calls-on-europe-to-act.html

[60] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16632&LangID=E

[61] According to the information provided by these three countries to the General Secretariat of the Council, in the case of Austria, for instance, the main purposes of these measures has been to allow registration of persons entering and ensuring proper reception, medical care and initial food provision. Refer to Council of the EU, Prolongation of the temporary reintroduction of border controls at Austrian internal borders in accordance to Article 25 of Regulation No. 562/2006 establishing a Community Code on the rules governing the movement of persons across borders, 12435/15, 28 September 2015. See also Council of the EU, Prolongation of the temporary reintroduction of border controls at Slovenian internal borders in accordance to Article 25 of Regulation No. 562/2006 establishing a Community Code on the rules governing the movement of persons across borders, 12418/15, 25 September 2015.

[62] http://europa.eu/rapid/press-release_SPEECH-15-6091_en.htm

[63] See D. Bigo et al. (2015), "The EU and its Counter-Terrorism Policies after the Paris Attacks", CEPS

> I try to make it crystal clear that we should not mix the different categories of people coming to Europe. The one who is responsible for the attacks in Paris cannot be put on an equal footing with real refugees, with asylum-seekers and with displaced people. These are criminals and not refugees or asylum-seekers. I would like to invite those in Europe who are trying to change the migration agenda we have adopted –I would like to invite them to be serious about this and not to give in to these basic reactions. I don't like it.

Moreover, he stated: "The cynics who exploit the suffering of Paris have not understood that those who perpetrated the attacks are precisely those whom the refugees are trying to flee."[64]

The situation in Hungary is rather specific one, but certainly not an exception in the EU. There have been observed distinct shortcomings in the country's respect for democratic rule of law and fundamental rights, which have repercussions in many areas including those related to asylum and border controls. The building of walls in the border zones between Hungary and Croatia and Slovenia have drawn wide criticism and concerns. In his State of Union speech before the European Parliament, Commission President Juncker stated that "walls and fences have no place in EU Member States".[65]

A key challenge in current border policies and criminalisation practices in Hungary is that Schengen rules accept no walls stopping asylum-seekers from having access to international protection in the EU. This principle is not only a key foundational component of EU borders and asylum law. It is one of the key values outlined in Article 2 of the Treaty on European Union as a condition for EU membership. In early October of this year, the Commission sent a letter to the Hungarian Government asking for information concerning the latest legislative reforms in the laws on asylum, borders, police and national defence adopted in July and September 2015, in order to examine their compatibility with EU law. The letter expresses deep concern about the quasi-systematic dismissal of applications for international protection in the border with Serbia, the lack of guarantees in asylum procedures and effective remedies, criminal sanctions imposed on immigrants crossing the borders and the lack of adequate safeguards in the rights of the defence, the closing of border crossing points and powers granted to the military in the area of border management. On 10 December 2015, the Commission officially opened infringement procedures against Hungary concerning its new asylum law.[66]

With respect to the latter concern, the Commission's letter states that military authorities must be bound by the same guarantees and legal obligations, including the provisions regarding the rights of refugees and persons seeking international protection. Furthermore, the Commission added that measures taken at the common EU external borders must be proportionate and necessary, subject to effective control and compliant with fundamental rights. These issues remain unresolved in the case of Hungary and will require further EU rule of law intervention in the near future.

Paper in Liberty and Security in Europe, Brussels.

[64] Refer to http://independent.com.mt/articles/2015-11-22/blogs-opinions/A-European-approach-to-migration-learning-the-lessons-of-Malta-6736145635

[65] Refer to http://ec.europa.eu/priorities/soteu/docs/state_of_the_union_2015_en.pdf

[66] See http://www.statewatch.org/news/2015/dec/eu-com-infringement-hungary-10-12-15.pdf

3.3 Guaranteeing rule of law and human rights when the EU goes abroad?

Questions of compliance with EU standards and principles, as indeed international law, not only relate to member states' actions inside the EU, but they also concern measures abroad or in cooperation with third countries. A first case in point is the CSDP Operation Sophia. This operation has been qualified as particularly tricky and sensitive in nature, given its ambitions and its potentially damaging effects and risks due to its legal uncertainty and blurred strategy, as well as the potentially damaging repercussions in Libya (Faleg & Blockmans, 2015).

Launched on June 22nd, Operation Sophia was only granted international legal mandate by way of United Nations Security Council (UNSC) Resolution 2240 on October 9th. This Resolution authorises states and regional organisations to intercept, inspect, seize and dispose (i.e. destroy) vessels on the high seas off the coast of Libya for a period of one year, but only when they have "reasonable grounds to believe" that these vessels, inflatable boats, rafts and dinghies are being used for smuggling and human trafficking from Libya.[67] In fact, the UNSC Resolution circumscribes the kind, level and reach of the intervention within strict rule of law parameters.

For instance, the Resolution puts special emphasis on the need for states and regional organisations to display "good faith efforts to obtain the consent of the flag state" before the inspection of the vessels. Any subsequent seizure or disposal of such vessels must happen in accordance with applicable international law "with due consideration of the interests of any third parties who have acted in good faith". The Resolution also stresses the obligation of states and regional organisations carrying out such UNSC mandated activities "to provide safety for the persons on board as an utmost priority and to avoid causing harm to the maritime environment or to the safety of navigation".[68]

Adopted under Chapter VII of the UN Charter, the Resolution thus effectively details the circumstances under which the use of force may be used, all in keeping with the protection of migrants' rights, international human rights obligations, international refugee law and the UN Convention on the Law of the Sea. In short, UNSC Resolution 2240 lays down a set of standards which may well complicate the practical running of the operation, especially when confronted on the high seas with smugglers who have proven to possess callous disregard for the well-being of their 'clients'. To be sure, UNSC Resolution 2240 does not authorize EUNAVFOR MED to act within the territorial and internal waters of Libya, let alone on Libyan territory, as projected by the Decision adopted by the Council of the EU.[69]

When it comes to cooperation with third countries, the situation of Syrian refugees in Turkey remains critical, as recent reports from NGOs and UNHCR evidence.[70] The careful language of the above-mentioned statement (Section 2.3.3 above)[71] regarding persons in need of

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[67] UNSC Resolution 2240 (2015), SC/12072, 9 October 2015.

[68] Refer to paragraphs 7, 8 and 10 of the Resolution.

[69] See part (ii) of phase 2 as well as phase 3 of the Operation, in Article 2(2)(b) and (c) of Council Decision (CFSP) 2015/778 of 18 May 2015, OJEU L 122/31.

[70] See www.unhcr.org/pages/49e48e0fa7f.htmlhttp://www.migrationpolicy.org/research/syrian-ref-ugees-turkey-long-road-ahead; and www.hrw.org/report/2015/11/16/europes-refugee-cri-sis/agenda-action

[71] See Press 870/15, 29/11/2015.

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international protection indicates that the EU leaders are well aware that the return of Syrian, Iraqi or Afghan refugees to Turkey is likely to be impossible both in practice and in law. If the reception conditions in Greece are inadequate for their return to that country, it is unlikely that the European supranational courts will find that the ever more problematic reception conditions for Syrian refugees in Turkey will be acceptable and compliant with European fundamental human rights law.

3.4 A multi-policy angle for the EU agenda on migration

The Migration Agenda put forward a set of 'pillars' or fields of action to guide the common EU migration policy in the 'medium term', including questions related to working in parallel on matters related to the management of border controls, asylum, irregular immigration and legal immigration aspects. President Tusk has recently stated:

> Europe is taking its responsibility - saving lives, welcoming refugees and those entitled to international protection, offering more organised routes for legal migration, and dismantling criminal organisations. If we are not able to find humanitarian and efficient solutions, then others will find solutions which are inhumane, nationalistic and for sure not European.[72]

The overview provided in the previous sections of this essay illustrates how so far the priority has been given to policy responses driven by security (home affairs), diplomatic and military concerns and interests of the EU and its member states. Examples include the predominance given to measures covering the fight against smuggling, measures on removal and readmission of irregular migrants or measures targeting the reinforcement of border controls. This has been noted by the Parliamentary Assembly of the Council of Europe, which has stated that EU countries should avoid "a narrow emphasis on border control and security" in dealing with the migration crisis, and instead embrace a "holistic, rights-based and effective" approach involving countries of transit and origin", and expressed concerns about the priority so far given by the EU to:

> …keeping refugees out or at the periphery of the European Union. Beyond that, however, it reveals a reluctance to accept protection responsibilities, with no mention of resettlement, and a lack of solidarity in burden-sharing between States.[73]

The official justification given for these developments to take priority over others has been their framing as "immediate actions" and urgent "short-term measures". This has led to the marginalisation of other non-security related policy sectors of especial relevance for migration policies which frame human mobility not as a 'security issue' but rather one related mainly to employment, economic and trade opportunities, fundamental rights and development considerations. And while the Commission and High Representative are calling for more 'coherence' between different EU policy sectors, this should not lead to EU responses that give priority to EU and member states' security prerogatives over other policy approaches and

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[72] See www.consilium.europa.eu/en/meetings/european-council/2015/10/15-16/ and Opening Speech at Valetta Conference (www.consilium.europa.eu/en/press/press-releases/2015/11-tusk-opening-statement-valletta-summit/).

[73] See http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=22058&lang=en and http://assembly.coe.int/nw/xml/News/News-View-en.asp?newsid=5799&lang=2

agendas.[74]

This single-minded focus of the EU measures and developments adopted during the last five months has prevented proper consideration, priorities and concrete outputs related to cross-border human mobility and asylum. For instance, the economic and social dimensions of asylum and immigration are of central importance but they have not been properly addressed in the last few months. The Commission has stated that asylum-seekers should have access to EU labour markets, but no concrete ideas or initiatives to this end have been presented so far.

A welcomed exception to this has been the European Economic Forecast published by the DG for Economic and Financial Affairs of the European Commission. The Forecast puts put forward some positive economic effects and repercussions of the current refugee flows into the EU and states:

> It should be noted that an inflow of about one million persons into the EU in 2015 as a whole would correspond to just 0.2% of the total population. This is markedly less than e.g. the increase in the foreign-born population by more than 6 million persons (or 15%) in Spain alone between 1995-2008. The number also pales when compared to Syria's neighbouring countries. Depending on how the situation in Syria and its neighbouring countries develops (as well as other parts of MENA, South Asia and Africa), a sustained further rise in the influx of migrants cannot be excluded.[75]

Moreover, when it comes to the impact of the larger-than-expected inflows of asylum-seekers on the economies of the EU, the report concludes that "the economic impact is expected to be relatively small in the medium term, raising the level of GDP by 0.2-0.3% above the baseline by 2020", and argues:

> While unevenly distributed across countries, the estimated additional public expenditure related to the arrival of asylum-seekers is limited for most EU Member States. For the most affected transit countries, the currently-estimated effect on the headline balance amounts to a maximum of 0.2% of GDP in 2015, broadly stabilising in 2016. For destination countries, the impact amounts to a maximum of 0.2% of GDP in 2015, with a small further increase in some countries in 2016. In Sweden, which has among the highest share of refugees as a percentage of the population in the EU, the impact on the headline balance is expected to be closer to 0.5% of GDP this year. The corresponding positive effects on growth would be somewhat smaller….As a result, this implies an increase in the EU labour force of about 0.1% by the end of 2015 and by 0.3% in both 2016 and 2017.[76]

Moreover, as DG Trade of the Commission has recently acknowledged in its strategy "Trade for All",[77] the temporary movement of professionals constitutes an essential factor for all the sectors to conduct business internationally, it provides exports and helps to close the skills gap

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[74] This was in fact identified as one of the key elements to guide the European Agenda. The Communication stated that "As outlined by President Juncker in his Political Guidelines, a robust fight against irregular migration, traffickers and smugglers, and securing Europe's external borders must be paired with a strong common asylum policy as well as a new European policy on legal migration. Clearly, this requires an *enhanced coherence between different policy sectors*, such as development cooperation, trade, employment, foreign and home affairs policies (page 6). (Emphasis added)."

[75] See http://ec.europa.eu/economy_finance/publications/eeip/pdf/ip011_en.pdf

[76] Pages 48-51 of the report.

[77] See http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf

in the EU. For the EU to fully benefit from the economic and social potential of migration, a key priority area needs to be ensuring a more flexible and improved application of current EU visa policy, which should include more flexible and harmonious use of humanitarian visas (Jensen, 2014). This needs to be accompanied by the development of more legal channels for economic immigration into the EU for employment-related purposes. The creation of legal channels of immigration has been conspicuously absent across all the EU responses to the crisis. A similar view has been expressed by the UN special representative international migration, who has argued:

> Perhaps the single most effective contribution would be to establish less cumbersome means for asylum-seekers to reach safety. Providing humanitarian visas – which can be issued with minimal delay – constitutes one clear commitment countries could make immediately. Over time, countries could also establish procedures enabling asylum-seekers to apply more easily for labor, student, or family reunification visas.[78]

These sector-specific contributions, which move beyond a security-driven vision of cross-border human mobility, have not been properly acknowledged, communicated and followed up by European authorities. The responses so far have not taken either into account the relevance and effects of the adopted instruments from a foreign affairs and development cooperation perspectives. In a previous Commission Communication on the work of Task Force Mediterranean the Commission had stated:

> Given the nature of migratory movements, transit countries along the Southern Mediterranean coasts will need to be given incentives to engage in cooperation concerning migrants who are not citizens of their countries. Therefore, a wider perspective needs to be applied and positive messaging on migration by the EU put forward. Relations with partner countries will also have to take into account the specific sensitivities and expectations of partner countries on the migration dossier, and *their perception that the EU wishes to focus primarily on security-related aspects, readmission/return and the fight against irregular migration* (emphasis added).[79]

This still constitutes an Achilles heel of the European Agenda on Migration (Guild & Carrera, 2013; Carrera, 2011). The above-mentioned Council Conclusions on the future of the return policy of 8 October 2015 may be seen a step backwards in EU policy by insisting on a purely conditional and 'more-for-more' approach when it comes to EU cooperation with third countries on migration. The idea to make development cooperation and humanitarian aid conditional on cooperating with the EU on return and readmission sends a clear message in the same direction. The compatibility of this 'conditionality' approach with the UN Sustainable Development Goals is highly questionable.

4. What policy priorities for the next phase of the European agenda on migration?

PRIORITY 1: EU policy responses need to move from a security-centric focus towards a 'multi-sector policy approach guaranteeing a balanced setting of priorities across all relevant policy sectors such as development cooperation, foreign affairs, trade, economic, as well as

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[78]   ttps://www.project-syndicate.org/commentary/europe-refugee-crisis-by-peter-sutherland-2015-09#OqRZgfGrwAHRaj76.99

[79] Commission Communication (2013), on the work of Task Force Mediterranean, COM(2013) 869.

social and employment considerations. All these responses should fully guarantee a fundamental human rights compliant focus, so that their effects over individuals' well-being and lives are properly and systematically prioritized over other sectoral policy considerations and interests. This is a central condition for ensuring the legitimacy of the EU both inside its borders as well as when engaging in effective cooperation and partnerships with third countries. A policy mainly focused on security approach driven by EU and Member States' interests will damage EU's image abroad and will pose fundamental obstacles over foreign affairs and wider international relations.

PRIORITY 2: The EU Dublin System needs to be fundamentally revisited and substituted by a new regime of redistribution of responsibility on the basis of new 'key criteria'. These criteria should combine numerical factors, as well as the personal, family and personal circumstances and preferences of asylum-seekers. The issue is not only about moving asylum-seekers around but also about making sure that proper reception conditions are in place everywhere across the Union. The upcoming evaluation by the European Commission of the Dublin system constitutes a key opportunity for this process to be launched. A key for the success of the future European asylum and borders systems will be boosting legal sharing of responsibility by boosting institutional capacity. The EU should call for the setting up of a common European Asylum service with the competence in assisting member states in the assessment of asylum applications, building their domestic capacity on reception and deciding on the redistribution of asylum applications on the basis of new criteria (Carrera, Gros and Guild, 2015).

PRIORITY 3: The Commission should, in close cooperation with the European Parliament, more effectively (and independently) monitor and properly enforce existing EU law asylum and borders standards by Member States, as well as their compliance with the principles laid down in Article 2 TEU. Strict oversight should be exerted to the implementation of EU measures that have the potential of violating international law. A case in point is CSDP Operation Sophia, whose Operation Plan and Rules of Engagement should be scrupulously subjected to the highest international (legal) standards and guarantees applicable to search and rescue at sea, including human rights law.

PRIORITY 4: The future of the EU common external borders policy is also a central issue. If the Schengen Area is to endure, it needs to establish a common institution responsible for securing external borders (Gros, 2015). The Commission aims at opening a debate about the setting up of a common European border service and coastal guard. Any future step towards the setting up a common European border service should take the uniform and high standard application/implementation of the Schengen Borders Code. Such as service should follow a predominantly civilian (non-military) nature and should come along the establishment of a 'border monitor' to ensure administrative guarantees and fundamental rights (Carrera, 2010). The mandate and competences of these European officials could be set up in a gradual or phased-in fashion basis in selected external (air, land and sea) border crossing points, with the ambition to expand to all the main external crossing points. A starting point should be a true 'European coast guard', with its own budget, ships, and personnel, as a flexible tool to a flexible tool with which to allocate resources as effectively as possible at any given moment (Gros, 2015).

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