

Europe's Response to the Migration Crisis

In the recent years the number of migrants and refugees¹ arriving to the European Union has notably increased, as a result of civil wars, environmental causes and globalization. Starting with the year 2013, Europe began experiencing mixed migratory pressures, reaching their peak in 2015, evolving into a wide-spread refugee crisis driven by the conflicts and poverty in Syria, Iraq, Afghanistan, Africa and South Asia.² In 2015, the migration crisis was put high on the EU's agenda, after it witnessed the greatest influx so far with more than 1.5 million refugees crossing its borders, while the number of asylum applications also remained high, with more than 1.2 million applications in the EU in 2016.³ Brussels tried to tackle these developments with proposing various initiatives, which have proven to be mainly unsuccessful. The major cause for the EU's inability to act effectively was the lack of a coherent and common migration and asylum policy, being the result of national sovereignty concerns.⁴ The EU is facing one of its biggest challenges and up until today, has not been able to find a suitable solution to this worrying phenomenon. The Member States lack mutual solidarity in their actions and are pushing forward national interests and strategies, which also dominate their policy making.⁵ Different political approaches regarding possible measures towards the crisis are deepening among the EU Member States and the European project, however resilient it may be, is going through turbulent times. However, considering its history and successful crises management in the past, this challenge could serve as an opportunity to make Europe even stronger.⁶

Europe Divided Over the Mandatory Relocation Scheme

Due to the continuous and hardly controllable migratory flows, grave divisions started to emerge between the Member States, creating conflicting positions within the EU. A notable increase in refugee arrivals could be seen since 2013,

a year marked by the Lampedusa boat disaster, where over 300 refugees drowned in the Mediterranean, while trying to reach the coast of Italy. The most affected countries, Greece and Italy, were overwhelmed by large numbers of refugee arrivals, peaked by 2015 and were lacking the needed support from other Member States. In order to seek a solution to the situation, the European Union presented a mandatory quota relocation scheme for refugees.⁷ In September 2015 the Council adopted two Decisions regarding the relocation of 160,000 asylum seekers from Greece and Italy to be relocated to other Member States in 24 months till September 2017.⁸ This mechanism was based on the Council Decision (EU) 2015/1523 of 14 September 2015, establishing provisional measures in the area of international protection for the benefit of Italy and Greece and on the Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece.⁹ The failure of this plan and the uneven policies and burden-sharing were reflected on the one hand by Germany's and Sweden's welcoming approach and generous asylum policies, taking in the largest share of migrants and on the other hand, by the opposing approach of the Central-Eastern European countries, which were lacking the effort and refusing the idea of the suggested relocation system. Countries like Hungary, the Czech Republic, Slovakia, and Romania voted against the plan, considering the latter an issue related to the state's sovereignty and territorial integrity.¹⁰ There has been a certain increase in relocations with 13,546 persons relocated as of 28 February 2017 from Greece and Italy, however even if kept at this pace, obligations set out will most likely not be fulfilled until September 2017. The only two countries meeting the obligations for Italy and Greece are Malta and Finland. Further states that relocated a large number of applicants are also France (2,758), followed by Germany (2,626) and the Netherlands (1,486). Despite of the

progress that has been achieved till now in the relocation, if Member States do not increase their contributions, the Commission will be forced to open infringement procedures against the ones, which have not fulfilled the numbers. In fact, the Commission already did so in a few cases and launched an infringement procedure against Poland, Hungary and the Czech Republic for refusing to take in refugees.¹¹ Hungary, Austria and Poland refused to follow the scheme and other countries like Czech Republic, Bulgaria, Croatia and Slovakia joined in the quota system to a very limited extent.¹² Czech Republic has relocated less than 1% of its allocation and Slovakia is relocating between 1% and 2% of its allocation.¹³ On the contrary the relocation scheme has also been challenged by Hungary and Slovakia before the European Court of Justice in Luxembourg in December 2015.¹⁴ The two Central-European countries supported the opinion that the EU's 2015 mandatory scheme was unlawful. The final ruling of the ECJ in early September 2017 rejected the case of Bratislava and Budapest and ruled in favor of the scheme.¹⁵ In order to better enforce the relocation procedure, in April 2016, the Commission started penalizing the countries that refuse to accept refugees by setting a penalty prize of €250,000 per migrant.¹⁶ As a reaction to this, the Visegrad countries introduced a friendlier proposal, a concept known as effective solidarity, during the Slovak EU presidency incorporating the Commission's opt-out idea, but proposed that the relocation scheme is replaced by participating in other EU activities, such as protection of external borders and return operations.¹⁷

EU's measures towards the migration crisis

a) The Partial Suspension of the Schengen System

In 2015, as a reaction to the migratory flows, temporary border controls were issued by several Schengen countries. In particular eight countries (Austria, Germa-

ny, Slovenia, Hungary, Sweden, Norway, Denmark, Belgium) introduced Schengen border controls based on Article 25 Schengen Border Code.¹⁸ As the situation escalated, the developments resulted into systemic pushbacks from the three most effected countries: Bulgaria, Hungary and Croatia. Hungary's actions resulted in the violation of human rights and international laws, because the country closed its borders and made several legislative changes to its asylum policy, making the irregular crossing of the border a criminal offense, sanctioned with up to eight years of imprisonment. After Hungary closed its borders in September 2015, the route was redirected to Croatia and Slovenia. Moreover, Austria presented what is known under the concept of the Austrian U-turn, which set an annual cap on asylum-seekers, meaning¹⁹ that Austria would impose a daily quota on asylum applications and cut down the influx of migrants travelling through the country. According to this proposal, approximately 80 asylum claims would be accepted daily, and 3,200 people would be permitted to travel through Austria.²⁰ In order to limit the migratory pressures the following measure was taken in March 2016, the closing of the so-called Balkan route, which resulted into the reduction of refugee numbers. However, this action redirected the route partly, with the southern entry point moving from Greece to Bulgaria.²¹ The above-mentioned measures had a deteriorating effect on the EU, while affecting the external border, leading to the collapse of the Dublin System and the partial suspension of the Schengen system.²²

b) The EU-Turkey Agreement

In order to limit the increasing influx, in March 2016 a refugee deal was adopted by the EU and Turkey. The main idea of the agreement was that Turkey would take back all new irregular migrants trying to get from Turkey to the Greek islands and in exchange the EU would resettle one Syrian refugee from Turkey for every Syrian returned. Among others, the EU also promised to speed up the previously allocated aid of €3 billion for Turkey and to support the Syrian refugees in Turkey with additional

€3 billion.²³ The effects of the EU-Turkey Statement were instantly notable and led to a substantial decrease in the number of refugees arriving to Europe.²⁴ The deal has fulfilled its initial purpose; however, some parts continue to be dysfunctional, as so far only a limited number of refugees arriving to the Greek islands have been returned to Turkey. The main burden of the EU's crisis policy keeps pressuring Greece.²⁵ The deal with Turkey is viewed controversial and potentially fragile and is only a temporary solution to the problem.²⁶ Moreover, the European Parliament is concerned that the agreement violates international law and the rights of refugees.²⁷ Two deadlines regarding visa liberalization in June and October 2016 were not met as the result of Turkey not revising its anti-terror legislation. President Erdogan and the Turkish government has numerously threatened to cancel the deal with the aim to influence the EU policy towards Turkey.²⁸ The proper implementation of the deal requires continuous efforts and depends on the political determination of those involved. Almost one year after the launch of the deal, its results are visible, considering reduced irregular and dangerous crossings, as well as deaths in the Aegean Sea.²⁹

c) The Transformation of Frontex

The wide-spread misuse of domestic asylum systems, the refusal of international protection to asylum seekers, as well as the direct involvement of the police in illegal push-backs, have caused damage to the rule of law and democracy in Europe. Therefore, to end these numerous violations and stop the negative effect of the Member States asylum policies³⁰ it is inevitable, that the EU should fight the causes of flight in the future and be active in peace-keeping and promoting democracy. The lack of cooperation with first reception countries and transit states can lead to a deterioration of living standards of the refugees. The EU should deal with the root causes in the countries of origin, cooperate with third states, tackle human trafficking and smuggling, improve the system for returning immigrants and strengthen border management by boo-

sting Frontex and revising the Common European Asylum System (CEAS), as well as enhancing cooperation through the European Asylum and Support Office (EASO).³¹ In order for the Schengen area to be sustainable, the external borders of the EU have to be effectively secured and protected.³² To improve the protection of the external border, the border protection agency Frontex has been transformed by Regulation (EU) 2016/1624 to the European Border and Coast Guard (EBCG).³³ The Regulation from December 2015 addressed the new challenges faced by the EU and launched the EBCG on 6 October 2016. Since then, the Agency has been assisting Member States with over 1,600 border guards, providing support to the EU external borders and supporting the existing national capacities of Member States of over 100,000 border guards. Frontex in its previous form, had limitations in effectively addressing the needs that the crisis created: it was lacking operational staff and relied on Member State contributions and all return or border management operations were based on the prior request of a Member State. In comparison to this, the European Border and Coast Guard Agency's role and activities have been strengthened and significantly expanded to address the lacking issues.³⁴ However, the EBCG still suffers from the lack of human resources and equipment.³⁵ EASO is supported by EUROPOL in undertaking operational functions and together form the Migration Management Support Team (MMST). According to the Dublin System these two institutions are supposed to assist the national authorities in first reception countries within the EU screening and registering asylum seekers.³⁶

d) The Reform of the Dublin System

The Dublin System establishes the criteria and mechanisms, that determine, which EU Member State is responsible for handling an asylum application. This means, that the responsibility to examine an application lies with the Member State that the applicant entered. The aim of this system is to ensure rapid access to asylum procedures and the examination of an application by a single Member State. However, the

Dublin system was not meant to ensure a sustainable sharing of responsibilities for asylum applicants across the EU and therefore needs to be reformed. The biggest resulting obstacle is, that the burden of the majority of asylum applications is shared only by a small number of Member States, often exceeding the capacity of the particular Member State. This is why in May 2016, the Commission proposed a reform to the Dublin System. The update is aiming to create a new system, in which, when reaching an excessive number of asylum claims in just one Member State, the number of asylum seekers exceeding the absorption capacity of that country will be distributed among all Member States that are not confronted with the same amount of pressure.³⁷

Future Perspectives and Recommendations

When handling a crisis of such scale, it is clear to the EU, that no country can carry the burden of the impact alone and the Member States need to cooperate and find a coherent approach to the crisis. Simply absorbing the arriving refugees is not a sustainable solution, the EU needs to address the causes of people's displacement, including terrorism, hunger, a lack of jobs and economic prospects instead.³⁸ The needs of the citizens to migrate from neighboring countries for economic reasons have to be tackled. Thus, the EU needs a common asylum policy with clear laws,³⁹ instead of tactics of closing the borders and enforcing national quotas.⁴⁰ Europe is missing a fundamental understanding of the nature of current migration flows in Europe and suffers from the inability to tackle the root causes of the crisis. In order to do so, Brussels could strengthen the cooperation with third countries and learn to understand the push factors driving migration. It is inevitable that Europe shares information regarding the routes and economic models of trafficking and smuggling networks and curtails such action. To better identify and arrest smugglers the EU police and judicial cooperation and the use of military interventions ought to be enhanced. The EASO should be the key player, support-

ing national immigration authorities in properly implementing the EU rules. The reception conditions for refugees in every country should be brought in line with the EU standards. Further, the EU should improve the efficiency and fairness of the asylum application process and create a common European policy on legal economic migration, which could help meet the collective needs of the European economy.⁴¹ As major flows of migrants arrive from Africa and the Middle East, creating safe zones and promoting legal access to the EU through resettlement programmes and massive investment in Africa could be essential measures as well. A better control of migration could be handled through creating asylum centers and processing asylum requests outside the EU⁴² and carrying out direct asylum procedures there. In cooperation with the countries of North Africa, asylum-seekers could come to the EU legally through a safe channel, without risking their lives.⁴³ If Europe fails to tackle the direct cause, refugees will always find their way to migrate. Factors like population growth, climate change, wars and famine will be constant triggers for population movements. The European Union should continue to reduce incentives for irregular migration and be active in saving lives and the securing of the external borders, as more than 2400 refugees have drowned in the Mediterranean Sea so far this year.⁴⁴

Conclusion

The migration crisis is here to stay for the upcoming decades. Growing demographic pressures in Africa and the lack of stability in the region is likely to result in an influx of immigrants, increasing year by year. Sub-Saharan Africa, in particular is a continent growing in population and in 25 years its population will double in comparison to the population of the European continent,⁴⁵ that remains a destination for numerous people seeking protection. Europe can expect a more intense influx of the immigrants in the near future.⁴⁶ Overall 6.6 million people are waiting to cross the borders of the European Union around the Mediterranean. Up to 2.5 million people from North Africa are waiting to get to Eu-

rope and 3.3 million migrants are prevented from crossing in Turkey.⁴⁷ In order to address these challenges stemming from the crisis, the EU as mentioned previously has tried to work on different components of a comprehensive migration policy and proposed several initiatives since 2015, with none successful. The relocation scheme turned out to be dysfunctional and steered divisions across Member States. Regarding the creation of hotspots, only one of the five hotspots planned to be created in Greece, is in operation. Regarding the controversial deal with Turkey, this is partly effective, although thousands of refugees and migrants still enter the EU via Turkey on a daily basis.⁴⁸ Regarding the European common asylum policy, in 2016, the Commission introduced initiatives to amend all the CEAS instruments, suggesting to recast the Dublin Regulation, create a European Union Agency for Asylum, reinforce the Eurodac system for fingerprinting migrants and replace the Asylum Procedures Directive and the Qualification Directive with directly applicable regulations. The CEAS was put under increased criticism due to its complexity, slow pace and malfunctioning and it needs to manage migration in the absence of a system for legal migration.⁴⁹ The way in which these possible solutions will evolve remains open. Europe will either manage to achieve and implement a coherent CEAS or it will continue to further split and produce measures that breach international law and rights of the refugees and Member States will continue with their policy of fear and refusal.⁵⁰

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Notes

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