



OPEX MEMORANDUM N° 204/2016

SUBJECT: EUROPE'S MIGRATION CRISIS: THREATS TO SCHENGEN

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State of Affairs at EU level

2015 has been the year of refugees. According to ACNUR, around **1.006.768 migrants have arrived to the European Union** running from war and poverty crossing the Mediterranean Sea. More than **850.000 asylum seekers arrived in Greece** crossing the Egean Sea, standing for the 84,5% of the people who arrived in Europe in irregular conditions, while the number using the **Italian route** went slightly down from **170.000 in 2014 to 152.700 in 2015**.

Member states and EU institutions have **a duty to respond to this situation under international law** and agreed on an European Agenda on Migration that stated the "immediate imperative is a duty to protect those in need" adopting a substantial package of new measures: Setting out a common approach to managing Europe's external borders, migration flows and the implementation, strengthening and development of a common Asylum and immigration policy withing the Schengen Area. Under this agreement, an **Asylum, Migration and Integration Fund (AMIF) has been set up for the period 2014-20, with a total of EUR 3.1 billion for the seven years.**

As part of this strategy, the **European Commission**, in its attempts to push forward an EU agenda, has proposed to establish a **European Border and Coast Guard** to ensure a strong and shared management of the external borders. In this line, **Frontex recently accepted a Greek request to deploy Rapid Border Intervention Teams (RABIT)** increasing the number of officers and technical equipment, such as boats and patrol cars, allowing to identify and register more migrants as soon after they arrive. In addition to 448 officers offered by Member States under this mechanism, Frontex deploys 16 vessels and more than 260 officers assisting in new arrivals, as well as border surveillance officers, and document experts. However, and due to the lack of political commitment, after this serie of so-far unsuccessful attempts to address the stream of migrants and refugees the EU has opted to push the problem out of its borders following in Greece the model implemented in the **West African migration route.**

According to EU data, the fact is incontestable: through **subsidizing third countries** to block the route to keeping migrants out of EU borders; **express readmission agreements, reinforcing** border control, guards and fences whilst **dismantling camps** at third countries soil; irregular immigration to Spain by sea decreased to very low levels. However, as in tthe Spanish case, this is not only illegal under international law. Human Right Watchdog organizations report gross and systematic violations of human rights since those measures may represent "**an unjustified militarization of the border**" and "**an outsourcing of the control of external borders of the EU to a country that does not respect human rights**".

Following this strategy, in March 2016, the EU sealed an agreement with Turkey, temporary home to more than 2 million Syrians, to stop commuting to Greece. In return, Turkey will double the 3,000 million euros of aid approved by the European Union in exchange for their commitment to 6,000 million € to "**improve border control and to cooperate in the fight against traffickers.** Besides allowing the express devolution of irregular migrants and refugees to Turkey, the deal will cap the number of Syrian refugees resettled from Turkey at 72.000. Far from the 850.000 that arrived last year and even far from the 160.000 agreed last year. Undoubtedly, the agreement represents the last attempt to **save Schengen** after the continous EU failure to set up a common response to the crisis.

The **EU Parliament** -which action is very limited due to the lack of competences- is officially discussing the agreement in addition to the future of the Schengen zone; the rights of refugees under international law; and racism and violence suffered by these incomers. Many **MEPs** have expressed grave reservations about the deal, questioning whether the agreement with Turkey violated international conventions.

European action crisis and Brexit

Also, there are other structural factors at EU level that may influence the development of a solution. On the one hand, there's **no real European leadership**. Migration has revealed the competition between Juncker (European Commission President) and Donald Tusk (President of the European Council) for the control of the EU action. Also, the EU lack of leadership reveals the limited power to intervene on the ground.

On the other hand, **the Brexit negotiations** also exert a negative influence. If Britain votes to leave the EU it will be because the politization of migration. Perhaps the biggest risk would be the political contagion in other EU countries if the **UK hampers free movement**, increasing hostility towards immigration in other states, both because of deflected immigration and how UK policies impact on the policy debate elsewhere. Immigration will be a factor in the French presidential election in 2017, where there might be pressure to follow UK immigration controls.

Fragmentation of the National Response: Block Analysis

This set of conditions triggered a race to the bottom in solidarity that halted any attempt of setting up any coordinated mechanism that would allow have allowed to share the burden and absorb those migrants. **To the date, there is still no coherent European asylum policy**, no shared recognition of positive claims, and no consistent migration policy that engages third countries in a way that is beneficial to both sides.

Beyond the East-West and North-South endemic fractures which has become markedly clear, the ideological divisions have become more flagrant between supporters of **a global response** and those for whom only a **return to sovereignty** will make it possible to confront the refugee crisis. Also electoral races are conditioning national positions using **migration as a political weapon**. In these conditions a carefully mapping of the divergent policy options at national level is required.

North European Countries: U-turns

The number of asylum seekers arriving to the Nordic countries in 2015 was more than twice that of 2014. **A total of 248,077 asylum seekers arrived last year**. Until October all graphs pointed an upward in all the Nordic countries. According to Eurobarometer, a record number of people now see immigration as one of the two most important issues facing these countries. Due to this, **once a champion of refugees' rights**, these countries have started presenting new laws designed to **reverse the image of the Scandinavian countries** as welcoming societies.

Denmark

1. Denmark -together with Sweden- has the **highest expenses to refugees** measured as a percentage of **GPD** in Europe. Claiming that it is not able to finance more migrants nor integrate them into society, Denmark has already **opted out** of the EU's resettlement programme for asylum seekers.
2. A new law will **delay family reunifications, confiscate migrants' valuables and make already stringent permanent residency requirements even tougher**, increasing from one year to three years the waiting period for war refugees before they can apply to bring over their family members. It also will allow Danish authorities to seize asylum seekers' cash exceeding 1,340 Euros, as well as any individual items valued at more than that. The UNHCR concluded that this would be made in **violation of the European Convention on Human Rights**, the UN Convention on the Rights of the Child, and the UN Refugee Convention. Germany's southern states have similar bills on the agenda.

Sweden

1. Sweden's Migration Agency expects up to 140,000 asylum seekers in 2016, adding pressure to a country already under strain from record numbers. **Swedish immigration authorities estimate the cost to house and subsidize refugees will be around 60 billion Swedish kroner (€6 billion)**. This is roughly the same as the cost of its entire health service. So there's a struggle among lawmakers to figure out how to cover the costs of admitting more refugees. In case the financial pressure keeps increasing, **Sweden may expel 80,000** back to their home countries or to a country that they previously travelled through.

United Kingdom

- a) On intra-EU migration, and within the **Brexit** context, it is being considered **an emergency brake mechanism** to withhold in-work benefits from EU migrants for four years. If the UK, or any other member state, can show that EU migrants are putting an excessive pressure on the proper functioning of its public services.

East and Central European Countries: A clash of civilizations?

Eastern European countries response has been particularly strong. **Anti-migrant - specially Muslim- sentiment** has unified the "Visegrad group". Selecting migrants based on religion is in clear violation of the EU's non-discrimination laws. However, these leaders have defended their policies by pointing that those who are coming from the Middle East and North Africa tend to provoke more heated political internal debate because of this **issue of communal cleavage and integration**.

Poland

- In September 2015 the previous government agreed to accept 5,000 refugees predominantly from Syria and Iraq. After the change in the government this number will be reduced to 400 refugees. The Ukrainian Parliament has adopted a new law ratifying an agreement with **Poland on**

the allocation of € 100 million to develop border road infrastructure, purchase equipment for border check points and implement other border-related projects.

Hungary

- ⤴ Hungarian new arrivals in 2015 were of about 200,000 refugees, mainly via the southern border with Serbia. Hungary, together with the "**Visegrad Group**", refuses to support discussion of a distribution mechanism for refugees.
- ⤴ In summer 2015, the **Hungarian government builded up razor fence** to block its border with Serbia and Croatia whilst has been allowing thousands of refugees to enter at the Croatian border and transporting them to the Austrian border without any registration. After Hungary's construction of a wall along its border with Serbia last summer, other barriers have been erected in various parts of Europe, such as in **Slovenia, Austria and Bulgaria**.

Slovakia

- ⤴ Most migrants head to richer EU countries such as Germany, so the number entering central European states has been low. Nevertheless, Prime minister Fico has argued for **enhancing EU border protection**, and the slovak government standed against a European Union decision to redistribute 160,000 asylum seekers among member countries. It only accepted to share the burden by taking in 200 **Christian** Syrian refugees.

Austria

- ⤴ Austria' will be imposing **a cap on asylum applications to 1.5 percent of the population**. It is unclear how Austria's decision to cap the number of applications will be implemented considering that EU asylum law and the **Geneva Refugee Convention** do not allow for it. The only way that any semblance of a cap could be put in place would be through a burden sharing mechanism, through which quotas could be allocated to member states. However, the reallocation system proposed by the European Commission is paralyzed by national stances.

Germany

- ⤴ In August 2015, Germany announced that it was **suspending Dublin regulation implementation** for Syrian asylum seekers, which effectively stopped deportations of Syrians back to their European country of entry. This move was seen as an important gesture of solidarity with entry-point states. German Chancellor Angela Merkel also warned that the future of Schengen is at risk unless all EU member states did their part to find a more equitable distribution of migrants.

South European Countries: The abandoned walls of "Fortress Europe"

The refugee crisis did not create a political cleavage in the Union but it revealed a pre-existing one. The placement of overwhelming amounts of responsibility on frontline member states which were forced to act as gatekeepers to the EU's **Schengen zone** - and constraining their financial resources- whilst some countries has open door policies.

This contradictory approach has evolved into a system that enabled member states to avoid taking **shared responsibility**. [Then, t](#)he blame could not only be upon Italy and Greece. Besides the lack of financial support, other EU countries promised to resettle **66,400 refugees**, who had successfully claimed asylum in Greece. Only **218 refugees have been relocated**, making the situation in the southern border even more critical.

Greece

- ⤴ More than 880,000 migrants arrived in Greece last year. 16,131 were forced to return; 3,460 economic migrants did voluntary return; 218 were resettled and 860,409 are still in the EU (97.8%). This remains insufficient, leading to have **NATO patrolling in the Aegean sea**.
- ⤴ So far, in words of the European Commission, the set up of the **five hotspots** identified in in the Aegean islands (Lesvos, Chios, Samos, Leros and Kos) has been slow, due in part to the need to build them from scratch and with shortcomings in infrastructure, staffing and coordination. Only one hotspot is currently fully operational (in Lesvos).
- ⤴ The proportion of **fingerprinted** migrants has risen markedly from 8% in September 2015 to 78% in January 2016. Once fully operational and equipped, the hotspots should reach a total fingerprinting capacity of around 11,000 persons per day, which is well above the average arrival numbers for January.
- ⤴ In addition, Greek authorities has promised that its **hotspots will be fully operational by February**. Currently there are 12,342 reception places in Greece, which committed in October to provide for 50,000 places. In this line, in December 2015, the **Commission approved an €80 million programme** to support reception capacity in Greece. Also, work is ongoing in other facilities with the support of the **IOM** and the **UNHCR**.
- ⤴ The European Commission gave Greece three months to **remedy "deficiencies"** in controlling the incoming flux of migrants or face border controls with the rest of the Schengen zone, after a recommendation by European ministers.

Italy

- ⤴ Frontex reported more than **170.000 irregular border crossings** into Italy; 14.000 were returned; relocated. 155,721 (92%) still being in the EU without any decision on their status.
- ⤴ It is still far behind the rate necessary to achieve the overall target to relocate 39,600 people in need of international protection in two years. In total, 279 applicants have been relocated to date. The low implementation rate is due to the limited arrivals of eligible migrants on the Italian territory.

- ⤴ The two operational hotspots (in Lampedusa and Pozzallo) have reached a **100% fingerprinting rate** for the most recent disembarkations. The proportion of migrants fingerprinted has risen from 36% in September 2015 to 87% in January 2016. Once fully operational and equipped, the hotspots in Italy are expected to have a fingerprinting capacity of 2,160 migrants per day, which is well above the average arrival numbers.
- ⤴ The Italian reception system has proven **largely sufficient** for the needs of its asylum system and dedicated facilities have already been identified for persons to be relocated. In addition, in February 2016, the Commission adopted a decision modifying the 2007-2013 **structural funds** programme "Security for development" in Italy, redirecting up to €124 million of the European Regional Development Fund to co-finance measures undertaken by Italy to rescue migrants at sea.

Spain

- ⤴ The country still paralyzed due to the intense internal debate on the **governmental takeover**. Due to the long distance to the conflict and its precarious economic situation the influence of the migratory crisis is minimal. The current acting center-right government is pending to resettle 854 Syrians approved at National level in 2014 and 2015.
- ⤴ Despite stating that Spain is ready to receive refugees and committed with the EU strategy, the Spanish contribution still being insufficient. To the date, only **50 places have been offered** -out of the 17,000 committed- Only 19 places has been fulfilled. Meanwhile, the government still insisting on reproducing the **'hotspots'** model in Spain to reinforce its borders.

Perspectives and Ways Forward

Figures exposed the **failure of the European Union** to deal with the migration crisis to the extent that some countries have even reinstated border controls Schengen area, endangering the core values of the EU. The IOM reported that since the start of the year 2016, Greece has registered around **21 times** as many refugee and migrant sea arrivals from a year ago, with 31,244 people reaching the country so far this month compared to 1,472 for the whole of January 2015. IOM also explained that such numbers may suggest that maritime arrivals in Greece for 2016 could surpass the record 853,650 individuals who reached the country by sea over 2015.

The UNHCR demands the European countries to provide more places for refugees through resettlement programmes, family reunification, humanitarian admission, and work and education visas and is more than concerned about legality of the Turkish deal. It seems that the only solution that EU leaders offers to save Schengen is to continue pushing the problem onto their neighbours doorstep. **First Greece, then Turkey, but who will be next?** EU Member States must commit to collective legal action to protect the rights of those who require protection, either as a refugee or as an asylum seeker. **Building higher and further fences** won't stop migrants from trying to come to Europe.

The design of the current policy approach reveals limited understanding regarding migratory flows, specifically **the motivation factor**. Outer-border countries has not been an end destination country for asylum seekers due to their economic performance. It is not surprising that Germany and Sweden are the favoured destinations. **Leadership must be regained** inside and outside the EU. A lack of compassion will encourage hostility, distrust, racism, criminalisation and **xenophobia**. Beginning to solve the crisis would require three things:

- 1) **Regain unity and enforce internal solidarity**
- 2) **Effective migration management at European level**
- 3) **Revitalize the EU moral leadership out of its borders.**

Within this framework, there are **proposal** to be considered:

- ⤴ All European MS should increase their **support to South European countries** dealing with the increasing number of refugee arrivals. Thus, It is needed an **European common asylum policy** with clearly defined rules and comparable levels of assistance to support those who need help. Also, an European Fund for refugees and asylum, jointly funded by EU members according to their share of EU GDP, should uphold solidarity and help countries to cope with the burden of refugees, **penalizing non-cooperation** and rewarding those who cooperate.
- ⤴ The establishment of a **European Border and Coast Guard** would a mean to agree on one set of rules that governs its actions. Although the new EU border agency is a step in the right direction, the Schengen Area itself needs joint external border security. This includes an **European Reception Network** where refugees would be taken care of, registered, and sent home if their asylum requests fail.
- ⤴ The **Dublin regulation** has failed and it induced a race to the bottom, whereby European states compete to become the least attractive for migrants whilst it is straining the frontline countries of **Greece and Italy**. As expected, the Commission should put forward a reviewing of this mechanism.
- ⤴ **Hotspots and relocation schemes** were born as short term policy responses. Rethinking hotspots insisting that every arriving migrant should be registered and identified at the point of entry is entirely acceptable. However - and taking into account the principle of solidarity and fair sharing of responsibility (Article 80 TFEU) - **identification should be decoupled from the responsibility to organize the reception**, protection or return of every arriving migrant, since it poses huge logistical and legal difficulties. **Sharing money and operational capacities is less problematic**, and there would be scope for vastly increasing both under the EU Treaties.

- ⋈ The role and the influence of the European Union in **promoting peace** and stability must be considered in a rapidly changing world where conflicts go unresolved for decades. The European Union must collectively examine the impact of political and military decision to helping broker an **end to Syria's Civil War, restoring stability to Lybia, and upping aid to sub-Saharan Africa.**
- ⋈ In this sense, **divisions on the European responsibility** to propose for responses to the global refugee crisis seem sufficient to damage the image of the EU. Therefore, it is of paramount importance to have certainty about who is in charge of doing what in order to guarantee unity in the **international representation of the EU.** Restoring internal leadership and a sense of control is crucial to the future of the whole European project.
- ⋈ On **Syria**, the objective should be the creation, defense and gradual expansion of **safe zones.** In the long run, to stablish a large humanitarian resettlement program. This approach ensures that the region maintains the necessary local competencies to rebuild the country. Some refugees are doctors, lawyers, engineers and have certain levels of education. It is critical that this knowledge base remain in the area in order to optimize chances of **recovery once the conflict is resolved.**

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