

POLICY PROPOSAL

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The European migrant crisis (2013-2016) initiated a period of political and ideological instability across Europe which reflected in the fact that the European institutions and the national governments were not enough well-prepared to respond fast in a coordinated way to the pressure coming from the EU's borders. However, significant progress has been made since the crisis reached its peak in 2015 with the 10,000 arrivals per day. The European Union did indeed face the challenges arising from this situation by supporting its Member States, the asylum seekers and at the same time by working in the direction of the origin of the migration crisis (European Commission March 2019)

Notwithstanding the foregoing, the European Commission believes that further reinforcement of the European Migration policy is needed in order to be able to anticipate similar migration phenomena in the future. This is to say, even though the number of migrants has decreased drastically, the EU must be ready in case of a new migratory wave and therefore, a long-term plan, based on sustainable actions, should be elaborated.

PROPOSAL 1: EUROPEAN UNION ASYLUM AGENCY

Background

It is not only since the migration crisis that the EU has started working on common asylum standards, but it has been a long process taking place throughout the last 20 years. However, the European Agenda on Migration introduced in 2015 new crisis management mechanisms. Additional funds were mobilized, better border protection was put in place which includes the establishment of the European Border and Coast Guard Agency. As a result of a higher political coordination, new arrangements were signed which led to a decrease in the number of irregular migrants.

Since 2011, the European Asylum Support Office is helping all the EU member States to implement a Common European Asylum System. It already provides support and assistance to Member States to face the consequences of the migration crisis and has proved its utility throughout the crisis (European Asylum Support Office 2019).

Nevertheless, the European Asylum Support Office has shown its limitations as it failed to fully help the Member States undergoing huge migration pressure due to a lack of financing, restrictive missions and means.

Therefore, the European Union wants to redesign this structure into a reinforced EU Asylum Agency.

Objectives

The EU Asylum Agency shall ensure that the Member States can permanently benefit from a full EU Operational Support regarding migration. To do so, the EU Asylum Agency will be equipped with necessary mandate, tools and financial means (European Commission 12/9/2018)

The three main points of the proposal are the following:

- A full operational support on asylum procedures
- Joint EU migration management teams will support the Member States when needed and requested, including in hotspots and controlled centres.
- Increased financial means

Elaboration

- Full operational support on asylum procedures

The EU asylum agency will include teams available to provide support activities to member States, either at the state's request or upon its own initiative in agreement with a Member State. This support includes operational and technical assistance during the asylum procedure, but also during the Dublin Regulation procedure. Member States will take all final decisions (European Commission 12/9/2018)

The Agency's tasks will include:

- Identification and registration of asylum seekers
- Providing logistical and other support to independent appeal bodies
- Assisting with or carrying out admissibility and substance interviews
- Providing interpretation and translation services
- Preparing administrative decisions on applications for international protection for the responsible national authorities
- The deployment of Asylum Support Teams

- Joint EU migration management on the field

When needed and requested, joint EU migration management teams will help Member States on the field, including in hotspots and controlled centres.

The joint EU migration management will be composed of experts coming from the European Border and Coast Guard, the EU Agency for Asylum and Europol. They will be coordinated by the Commission (European Commission 12/9/2018).

They will be under the authority of the host Member States and will be able to fulfil missions as arrival receiving, distinguishing between persons in need of protection and those not, and carrying out asylum and return procedures.

- Increase of financial means

The Commission's initial proposal on the EU Agency for Asylum was of €364 million until the end of 2020. The Commission proposes an additional €55 million per year between 2019 and 2027. For the new MFF, the Commission proposes a budget of €1.25 billion for the Agency (European Commission 12/9/2018).

ALTERNATIVE TO PROPOSAL 1: EXTERNAL HOTSPOTS

Lead by French president Emmanuel Macron since 2017, the idea of external hotspots in the Sahel region seems to be a sensible solution.

Indeed, it has 3 sound arguments (Mentzelopoulou and Luyten 2018):

- *It would make the Mediterranean route useless* as asylum-seekers would be able to apply for asylum in safe third countries and avoid crossing illegally the sea.
- *It would release the pressure on EU external borders and facilitate the 'return policy' issues* which are two problems that EU should tackle.
- *Our policy would be proactive and orderly instead of reactive and crisis-led.* This would ensure safe and legal pathways decided by the EU.

However, there are many practical obstacles (Walter-Franke 2017)

- Our partners outside the EU are not willing to open hotspots in their territory. For example, Tunisia, Egypt and Chad already assessed that they are reluctant to do it.
- Convincing them would imply a significant financial development aid which EU members are already unwilling to consider.
- Scaling up the EU resettlement program is complicated
- It would cause some legal issues as asylum granting is still a national competence. The security in the hotspots and the liability of Member countries in external hotspots also raise questions.

Therefore, we are not favouring this solution.

PROPOSAL 2: REFUGEE DISTRIBUTION

Background

As we all know, the quota system of the Dublin regulation failed as some Member States refused to welcome refugees. Therefore, a new policy taking into accounts both our legal and humanitarian duties and the will of our Member States is needed (European Commission 2018b)

Objectives

Ensuring safe and sound welcome of refugees is a main objective. Making a compromise with all the Member States to reach that goal is mandatory.

Elaboration

Therefore, we would propose a sharing based on the voluntariness of each Member States. To ensure solidarity between the Member States, all members will contribute to the Multiannual Financial Framework to the benefits of the countries that welcome the most migrants.

PROPOSAL 3: THE RULE OF LAW

Background

There are strong disagreements between Poland and Hungary on the one hand and the remaining member states and the European Commission on the other hand regarding the rule of law in the two nations.

Objectives

In the joint position paper, all member states and the European Commission have committed themselves to the fundamental importance of the Rule of Law.

Elaboration

The European Commission has identified three alternative pathways to ensure the Rule of Law in the EU.

1. To rely on the existing regulations: Article 7 TEU procedure and infringement procedure under Article 258 TFEU
2. Completion of the already existing possibilities, above all through stronger monitoring, which does not require any changes to the European Treaties
3. Far-reaching strengthening of accountability for compliance with the rule of law and enforcement options, including conditionality of receiving EU funds to the status of the rule of law

In the following, the three alternatives will be presented briefly, including their advantages and disadvantages, and why the European Commission considers alternative 3. to be the most suitable one.

The existing regulations include an infringement procedure under Article 258 TFEU, which can be initiated if there is a reason to suspect that a specific law of the Union has been breached. In the following process, the European Court of Justice decides whether this is the case. Article 258 TEU is thus a mechanism designed to address a concrete infringement, while Article 7 TEU exists for the case of a systematic danger to the values of the Union (defined in Article 2 TEU) and may ultimately lead to the withdrawal of the voting rights of the country concerned. In addition, it is already possible to limit access to European funds, as these are subject to conditions, including the existence of an independent judiciary that can ensure proper allocation (Garrido and Castillo 2019; Michelot 2018).

The modest strengthening of these mechanisms, as proposed by the European Parliament, would mainly involve more regular monitoring and evaluation of compliance with the rule of law. These tasks would be carried out by expert organisations such as the Vendig Commission or the EU Agency for Fundamental Rights. Besides, the effectiveness of infringement procedures should be improved by means of new freezing procedures (Garrido and Castillo 2019).

The advantages and disadvantages for no and minor changes are in principle identical. The main advantage is that there is no need for treaty changes, which would be difficult given the current political situation. In addition, the already existing possibilities can and already have positive results, as the temporary suspension of the reform for the retirement age for judges of the Supreme Court of Poland has shown (Garrido and Castillo 2019; Michelot 2018). However, the drawback seems to be that the mechanisms are not far-reaching enough, since despite all efforts the situation in neither Poland nor Hungary is significantly improving. The currently sharpest instrument, the possible withdrawal of voting rights under Article 7 (2) TEU, is also blunt in the face of the required unanimity and two affected and for this cause allied countries (Heinemann 2018; Garrido and Castillo 2019).

For this reason, the EU Commission proposes to significantly improve the possibilities to guarantee the rule of law. The proposal consists of two parts: Firstly, Article 7 TEU is to be strengthened by removing the need for unanimity in the decision on the penalties resulting from it and by reducing the requirement to a two-thirds majority. In order to increase legitimacy and to provide a legal basis for the decision, the EU Commission further suggests that the European Court of Justice must confirm the decision. Secondly, in the new MMF, a conditionality from receiving cohesion funds and CAP to the state of the rule of law should be introduced. The precondition should be that Article 7 TEU procedure is in place against the country concerned and the European Court of Justice approves the reduction. In order not to affect individuals or European projects but the responsible government through the penalties, a binding clause is needed so that the suspended European financing must be replaced by national funding (Heinemann 2018; Garrido and Castillo 2019).

The implementation of the proposals will pose some difficulties, in particular the first part which will require amendment of the Treaties. Apart from that, there is a risk that it will be perceived as a punishment by the Polish and Hungarian populations, thereby increasing EU scepticism. The right communication of the reform is therefore crucial (Garrido and Castillo 2019). The reforms would, however, ensure an effective guarantee of the rule of law in the EU. The rule of law is the basis for cooperation between and within the countries of the European Union and a prerequisite for increasing prosperity. Implementing the reforms would also reduce the divergence of expectations between the EU and its actual performance (Garrido and Castillo 2019; Heinemann 2018).

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