

Heads buried in the sand: member states block solutions to the refugee crisis

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What role for the EU?

Yesterday's meeting of Interior Ministers demonstrated that the EU's asylum and immigration policy remains incomplete. This is mainly due to the member states' inability to plan ahead, their reluctance to adopt binding common rules – considered as a violation of their sovereignty – and their central position in the implementation of EU rules.

This situation is not new and was already present at the start of the Schengen cooperation. In 1985, French President Mitterrand and German Chancellor Kohl gave political priority to the signature of the Schengen agreement, agreeing to postpone negotiations regarding the harmonisation of national migration policies in order to speed up the process. But due to the arrival of a new government in France, these discussions never took place.

Despite the Schengen *acquis* being integrated into the EU Treaty and a wide range of migration-related issues being “communitised”, the entering into force of the Amsterdam Treaty in 1999 did not fundamentally change the situation. First, EU actions have primarily focused on developing the existing Schengen rules, i.e. border management, visa and return policy. Second, even in more integrated fields, such as border controls, visa and asylum, member states have created European agencies (Frontex, EASO) but organised the system in such a way that they have the last say in agreeing on border crossing, the issuance of a visa or the recognition of refugee status. Third, in other fields like admission policies they have shown a strong reluctance to accept common rules, and when such rules do exist, they are overly detailed to maintain member states' administrative control over admission.

The threat of unilateralism: a domino effect in the making?

With member states having a strong control over the implementation of EU rules, two scenarios are possible. Normally, the failure to correctly apply common rules may be remedied on the basis of mutual trust between member states, and if necessary, by legal procedures enshrined in the EU Treaties.

But in a crisis mode, like today, taking unilateral decisions in an area without internal borders will have a significant impact on others, for example when member states do not apply common rules on border checks, international protection or return procedures and let people move freely across borders. Similarly, the remarkable German decision to examine the asylum applications of Syrian refugees, applying the humanitarian clause of the Dublin regulation, has heavily affected the routes asylum seekers are taking and has thus put partner countries under strain. Chancellor Merkel's decision was obviously the right one, but in a common area such decisions should at least be discussed with partners.

In the current situation, national decisions have exacerbated political tensions to the point that Germany, Austria, Poland, Slovakia, the Czech Republic, and the Netherlands have reintroduced internal border checks or plan to do so. Unilateral actions, despite being legally grounded, have created an unprecedented domino effect.

Where do we stand?

This domino effect has not helped to cool things down. Not only is the uncertainty extremely worrying for the asylum seekers and refugees stuck in countries inside and outside of the EU, but the outcome of the Justice and Home Affairs meeting has also shown an entrenchment of a worrying trend.

While member states have formally agreed to relocate 40.000 asylum seekers from Italy and Greece, as well as on the development of so-called “hotspots”, a small group (Poland, Hungary, Slovakia, Czech Republic, Romania, and Latvia) remains opposed to any kind of

mandatory redistribution of asylum seekers. Hence, the second relocation mechanism targeting 120.000 asylum seekers is likely to remain voluntary, i.e. with no mandatory distribution key.

In addition, the Council's conclusions are mainly security-oriented, aiming *inter alia* to provide financial support to member states and third countries to cope with migratory flows, reinforcing border controls and returns. It has also adopted conclusions for the introduction of an entry ban in the Schengen Information System.

Despite the intense discussions in the days before the Council meeting – hoping to prevent the negative outcome – some member states were not willing to compromise. While the Luxembourgish Minister currently holding the Council Presidency emphasised the positive aspects, underlining the decision to agree on the first relocation mechanism as “an important political message”, the meeting has not overcome the fundamental split over this issue. On the contrary, the situation looks completely blocked: certain member states remain opposed to the mandatory relocation, the Schengen area is more fragmented than ever and asylum seekers and refugees are stuck in limbo. A large majority of member states even refused to convene an extraordinary European Council to find ways to move beyond the political deadlock.

First Schengen, then the EU integration process...

Once again, member states have illustrated their inability to move away from narrowly defined national interests and embrace a possible solution to the humanitarian crisis at the only viable level, the EU. Instead of providing a common answer to a pan-European challenge, national agendas and decisions continue to prevail.

As rightly underlined by the President of the European Commission in his State of the Union address: “There is not enough Europe in this Union. And there is not enough Union in this Union.” To overcome this situation, a true and deep integration move is required, starting with a common approach on external border management, by giving the Commission and European agencies more power and appropriate funding on the operational side.

Regarding asylum, it is no longer possible to maintain the *status quo* where common rules are interpreted in different ways. French and German leaders have called for a unified asylum system whereby asylum seekers undergo the same procedure and have the same chances of receiving international protection, regardless of the country where they first apply for asylum. Such an integration leap is necessary but should be accompanied by a fair distribution mechanism of asylum seekers, taking into account objective criteria and integration prospects.

Finally, member states must recognise two other things. First, the current crisis makes it clear that immigration and asylum are more than mere home affairs issues. They are linked to other policy fields, such as foreign policy, defence, development, agriculture, trade, integration etc., and so a ‘desiloisation’ effort is desperately needed. This is crucial in order to address the root causes of migration and manage global challenges linked to human mobility. Second, building a European labour market without taking into account labour migration policies is a non-starter. Harmonisation of labour migration policies within the EU is key. This should go hand in hand with the development of labour migration policies with the EU's close neighbours.

If member states keep their heads deeply buried in the sand, they will not be able to provide solutions to the current unprecedented humanitarian crisis, nor will they be prepared for future ‘mobility challenges’. The EU is, once again, seen as overpromising but under-delivering, damaging the European integration project in the process. By refusing to act together at EU-level, member states risk offering EU citizens grounds to believe that the EU integration project is not working anymore, which might lead them to reject it in its entirety.

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