

Does Europe need a new legal framework to tackle the crisis of mass migration?

The number of migrants that have arrived in the EU since the beginning of 2015 cannot definitively be ascertained. Figures range from 500,000 to over 800,000. What can be said with absolute certainty is that the EU is in disarray over its management of mass migration. The mass influx of asylum seekers from war zones in the Middle East, South Asia and Africa has ignited grave humanitarian concern and heated political discussion. Europe seems unable to cope and Member States are divided. The crisis has also undoubtedly added more impetus to existing political debates in certain Member States; most notably the United Kingdom's 'in/out' of the EU referendum discussion. It is the assertion of this piece that the EU can tackle the crisis of mass migration more effectively by reforming particular laws and utilising others. It should also institute mandatory self-executing mechanisms which would enable rapid responses to such situations.

The biggest humanitarian concern of the current migration crisis is the chaos and tragedy surrounding entry. The EU imposes a strict visa policy which is enforced through carrier sanctions and FRONTEX operations. It effectively makes its borders impenetrable for asylum seekers thus forcing them to gain access illegally and in perilous ways. According to the United Nations High Commissioner for Refugees (UNHCR), there have been over 3,000 deaths in the Mediterranean Sea since January 2015. The first substantive change the EU must make to its legal framework is a relaxation of its entry laws with a view to creating legal asylum channels. However, this must be coupled with fairer entry laws for economic migrants so as to dissuade third-country nationals from entering the EU in the same manner. This would reduce the role of the people smugglers, save lives and encourage orderly entry modes.

The Dublin III Regulation¹ requirement that third-country nationals must seek asylum in the first EU country of entry also militates against an effective asylum system. The most popular modes of entry are through periphery countries such as Greece, Italy and Hungary. These countries, therefore, face unreasonable pressure when the EU experiences a surge in migration. Due to this rule, Greece's asylum system once deteriorated so significantly that the European Court of Human Rights in *MSS v Belgium and Greece* ruled that returning an asylum seeker to Greece violated various Convention rights.² Although Article 33 of the Dublin Regulation seeks to address this by enabling the implementation of preventative action planning and crisis management action planning when needed, Member States resorted to suspending the Regulation amidst the 2015 crisis. This indicates that a new system is needed: one that gives migrants a higher degree of autonomy. The Commission has scheduled to review the Dublin system in 2016 following these issues.

Central to tackling mass migration is the triggering of the Temporary Protection Directive (TPD)³. Its purpose is to 'establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons'⁴ and was drafted in the spirit of solidarity under the understanding that Member States would cooperate with each other to organise transfers of those given temporary protection. Surprisingly, the TPD has never been invoked despite the UNHCR's view that the current influx of Syrians into Europe could be categorised as a 'mass influx' pursuant to Article 2(d). Its use would undoubtedly have helped to manage the crisis as the reception of asylum seekers would have been followed by systematic relocation from 'hot spot' countries. However, opponents to this Directive would

¹ Council Regulation (EU) No 604/2013 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 [2013] OJ L180/17.

² (Judgment), (2011) Application No.30696/09.

³ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving international protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequence thereof [2001] OJ L212/7.

⁴ *ibid* Preamble para 8.

argue that it encourages more asylum seekers to set sail for Europe. Whatever the reason for its absence, the EU's failure to utilise tools tailored for mass migration requires a critical and necessary reformation of its mandatory laws.

Aside from the TPD, the only real mechanism the EU has for managing mass migration is Article 78(3) of the Treaty on the Functioning of the European Union (TFEU). This provides that the Council may, on a proposal from the Commission, adopt provisional measures for the benefit of Member States affected by sudden inflows of third-country nationals. Through this, and following the Commission's May 2015 paper, 'a European Agenda on Migration', the Commission proposed to relocate 120,000 people in clear need of international protection from Greece, Italy and Hungary. It was accepted by the European Parliament a week later in September 2015. As an additional measure not covered by Article 78(3), the Commission proposed an EU-wide resettlement scheme enabling the resettlement of over 20,000 displaced persons from a third country to a Member State.

Enshrining these schemes into the EU legal framework would certainly be steps in the right direction. Merely falling back on them as emergency measures is clearly insufficient. Fortunately, European Commission President, Jean-Claude Juncker, admitted that '[a] true European refugee and asylum policy requires solidarity to be permanently anchored in our policy approach and our rules'. The Commission's May 2015 paper addresses the framework's flaws and considers how improvement can be achieved, both in order to tackle the crisis of mass migration and address the structural limitations of EU migration policy.

Although this piece argues for a revised legal framework, it does not assert that an immaculately drafted framework on its own can tackle the crisis. The EU must offer more support to the regions of origin and transit of asylum seekers through Regional Development and Protection Programmes. These support particular regions in various ways to increase

their capacity to provide protection to displaced persons. Effectively implemented regional protection programmes have the ability to stem large flows of asylum seekers. The EU currently has programmes for refugees and host communities in Lebanon, Jordan and Iraq which should continue to be developed.

In summary, to tackle the crisis of mass migration, the EU must reform its entry laws, overhaul the Dublin Regulation, trigger the TPD as circumstances demand and formulate mandatory laws on relocations and resettlements. It must also increase support beyond its borders. Ultimately, the principles of solidarity and fairness must truly permeate the legal framework and all external initiatives.