

MIGRATION AND REFUGEE CRISIS: A MAJOR CHALLENGE FOR THE EUROPEAN UNION. MEASURES AND POSSIBLE SOLUTIONS IN THE CONTEXT OF YEAR 2016

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Abstract

The rising number of people trying to get into Europe from the Middle East and Africa has highlighted some structural problems of EU migration policy, fact which revealed the need for setting out and adoption of immediate and long-term responses to the migration challenges that Europe faces. Taking into account the complexity of the migration phenomenon and possible impact of the refugee crisis on the proper functioning of the European Union, the aim of this study is to highlight the way in which the crisis is managed, a particular attention being paid to the initiatives of the European Commission for shaping an effective and balanced European migration policy. For a full understanding of the real situation, were analysed the implementation of EU asylum and migration law by Member States, especially because the crisis has been made worse by the failure to implement existing laws in this area. Also, a particular attention was given to Romania's involvement in finding solutions and resolving the crisis.

Keywords: *Common European Asylum System, European Agenda on Migration, implementation of EU law, refugee crisis, migration management.*

1. Introduction

Migration crisis is probably the most difficult challenge for European Union in last decades, this because is the first time from the Second World War to the present when so many populations are displaced from several conflict zones. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), by end-2014 the number of individuals forced to leave their homes due to conflict and persecution has grown to a staggering 59.5 million forcibly displaced persons worldwide.¹

Consequently, in the last period the European Union has experienced exceptionally large numbers of refugees and migrants, many of these people arrived by sea in southern Europe, particularly in Greece, come from countries affected by violence and conflict, such as Syria, Iraq and Afghanistan. According to UNHCR data, only in 2015 almost a million people having crossed the Mediterranean as refugees and migrants. Also, in 2016, up to one million refugees and migrants could attempt to use the Eastern Mediterranean and Western Balkans route to Europe.²

In light of the unprecedented situation, the importance of this study is that it highlights the fact that European Union was caught unprepared for such large numbers of refugees and migrants, situation which requires that all Member States must act

together in response to the growing emergency and, at the same time, to demonstrate responsibility and solidarity in accordance with their international obligations. For this purpose, the objectives of this study are to highlight the way in which the crisis is managed, a particular attention being paid to the initiatives of the European Commission for shaping an effective and balanced European migration policy. For a full understanding of the state of play in refugee crisis I considered that is necessary to be analysed the implementation of EU asylum and migration law by Member States, especially because the crisis has been made worse by the failure to implement existing laws in this area. Also, a particular attention will be given to Romania's involvement in finding solutions and resolving the crisis. Although the specialised literature comprises several studies on the refugees and migrants crisis I believe that a new study is necessary, on the one hand, because the European Union is currently facing a huge migratory pressure and this trend may continue to rise in 2016. On the other hand, the European citizens are entitled to be informed about the measures taken at European level and the local communities need to be supported to respond to the refugee and migrant flow in a manner that complements humanitarian assistance focused on refugees and migrants.

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¹ These included 19.5 million refugees: 14.4 million under UNHCR's mandate and 5.1 million Palestinian refugees registered with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). The global figure also included 38.2 million internally displaced persons (source: IDMC) and close to 1.8 million individuals whose asylum applications had not yet been adjudicated by the end of the reporting period - <http://unhcr.org/556725e69.html>

² This scenario is based on analysis of the current level of arrivals, the push and pull factors affecting the movements, and the situation in countries of origin related to this emergency - REGIONAL REFUGEE AND MIGRANT RESPONSE PLAN (January-December 2016), <http://reporting.unhcr.org/sites/default/files/2016%20RMRP%20for%20Europe.pdf>, accessed on January 18, 2016.

2. Legal basis of immigration and asylum policies and responsibilities of the European Union and its Member States

Pursuant to Treaty on European Union (TEU), the Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime³.

The overarching framework of the EU immigration and asylum policies is established in Treaty on the Functioning of the European Union (TFEU), according to which the Union shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals⁴.

TFEU provides that the Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement, in accordance with the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967⁵. Also, TFEU states that the Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings⁶.

It should be noted that in accordance with TFEU these policies of the Union and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States⁷. Moreover, TFEU contains a solidarity clause based on which the Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster⁸. These provisions are combined with those relating to the Union's operations in the field of humanitarian aid, such operations shall be intended

to provide ad hoc assistance and relief and protection for people in third countries who are victims of natural or man-made disasters, in order to meet the humanitarian needs resulting from these different situations. For this purpose, the Union's measures and those of the Member States shall complement and reinforce each other⁹.

For sketching an overview on the subject of this study we must also mention the Schengen Borders Code, document which establishes the rules governing border control of persons crossing the external borders of the Member States of the European Union. According to the stated purpose, these rules shall apply to any person crossing the internal or external borders of Member States, without prejudice to the rights of refugees and persons requesting international protection, in particular as regards non-refoulement¹⁰.

3. The evolution of the refugees and migrants crisis and response of the European Union

Following to the so-called "Arab Spring" a revolutionary wave swept several countries in North Africa and the Middle East, and even if following these social movements were ousted several dictators, these countries have not reached a Western-type democracy. More than that, their internal life continued to be marked by civil war, terrorist attacks and, recently, an exodus of civilian populations.

Deterioration of security and increasing poverty in countries from North Africa, Middle East and South Asia have spawned migration trends toward Europe, fact which made that European Union witnessing a mixed-migration phenomenon in which refugees, displaced persons and other migrants travel together, either escaping conflict in their country or in search of better economic prospects¹¹.

As a consequence of this huge migratory pressures and in response to tragedies in which many people have died trying to cross the Mediterranean Sea to reach Europe, EU officials have stated the consensus for rapid action to save lives and to step up EU action. Having regard to the European

³ Article 3(2) of TEU.

⁴ Article 67(2) of TFEU.

⁵ Article 78(1) of TFEU (These provisions are retrieved in Article 18 of Charter of Fundamental Rights of the European Union).

⁶ Article 79(1) of TFEU.

⁷ Article 80 of TFEU.

⁸ Article 222 of TFEU.

⁹ Article 214 of TFEU.

¹⁰ Article 3 of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) - OJ L 105, 13.4.2006, pp. 1–32.

¹¹ It is very important to distinguish between migrants and refugees because these categories of people benefit to different levels of assistance and protection under international law. This clarification is necessary because as a result of war atrocities the Syrian citizens have benefited from preferential treatment, their application for asylum being evaluated by the EU Member States authorities in an accelerated regime, prompting many migrants to lie about their nationality, claiming to be Syrians.

Council statement¹² and European Parliament Resolution¹³, the European Commission presented a European Agenda on Migration outlining the immediate measures that will be taken in order to respond to the crisis situation in the Mediterranean as well as the steps to be taken in the coming years to better manage migration in all its aspects. This Agenda sets out a European response, combining internal and external policies, making best use of EU agencies and tools, and involving all actors: Member States, EU institutions, International Organisations, civil society, local authorities and third countries.¹⁴

Since then, a number of measures have been introduced – including the adoption of two emergency schemes to relocate 160 000 people in clear need of international protection from the Member States most affected to other EU Member States, and the endorsement of the Commission Action Plan on Return. Also, the European Commission presented a set of priority actions to implement the European Agenda on Migration, this included both short term actions to stabilise the situation as well as longer term measures to establish a robust system that will bear the test of time. The list of priority actions set out the key measures immediately required in terms of: operational measures; budgetary support and implementation of EU law¹⁵.

A first implementation package on the European Agenda on Migration including a proposal to trigger for the first time Article 78(3) of the TFEU in order to urgently relocate 40 000 asylum seekers for the benefit of Italy and Greece; a Recommendation for a resettlement scheme for 20 000 persons from outside the EU; an Action Plan on Smuggling; and the necessary amendments to the EU Budget to reinforce the Triton and Poseidon operations at sea so that more lives can be saved.¹⁶

It should be mentioned that, in its proposal for a Council Decision, the European Commission has submitted an emergency relocation scheme to assist Italy and Greece in which Romania should have received 6,351 asylum seekers from these countries,

a fact which generated discontents of Romanian leaders who expressed dissatisfaction on introducing mandatory quotas for Member States. They had the same reaction before the Justice and Home Affairs Council of 14 September 2015 when the mandate of the Romanian Minister of Interior was "to not declare Romania's adherence to the mandatory quotas"¹⁷. Similar points of view have had the representatives of Czech Republic, Slovakia and Hungary which voted against the decision to allocate mandatory quotas for EU Member States. For all that, the Council adopted a decision establishing a temporary and exceptional relocation mechanism of 40 000 refugees from Greece and Italy¹⁸. On 22 September 2015 the Council adopted a new decision establishing a mechanism over two years which will apply to 120 000 persons, as follows: in the first year 66 000 persons will be relocated from Italy and Greece (15 600 from Italy and 50 400 from Greece), and the remaining 54 000 persons will be relocated from Italy and Greece in the same proportion after one year of the entry into force of the decision¹⁹.

The measures proposed by the Commission and adopted by the Council on 14 September and 22 September to relocate 160 000 people from Greece, Italy and other Member States directly affected by the refugee crisis are intended to lessen the strain on the Member States under greatest pressure and to restore order to the management of migration. But it requires effective cooperation between relocating countries and the receiving Member States and, however, that several deadlines have not been met and many commitments are still slow to be fulfilled. In opinion of the Commission, political responsibilities need to be assumed at highest level in all Member States to ensure that the agreed coordinated European response can address the refugee crisis swiftly and efficiently on the ground by national and local authorities with the EU support and assistance that has been made available over the past months.²⁰

The problem is the fact that some EU Member States (Hungary, Poland, Czech Republic and

¹² Extraordinary European Council meeting (23 April 2015) - The latest tragedies in the Mediterranean and EU migration and asylum policies - <http://www.consilium.europa.eu>, accessed on December 23, 2015.

¹³ European Parliament resolution of 29 April 2015 on the latest tragedies in the Mediterranean and EU migration and asylum policies (2015/2660(RSP)) - <http://www.europarl.europa.eu>, accessed on December 27, 2015.

¹⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A EUROPEAN AGENDA ON MIGRATION, COM(2015) 240 final, Brussels, 13.5.2015, <http://ec.europa.eu>, accessed on December 27, 2015.

¹⁵ Communication from the Commission to the European Parliament, the European Council and the Council - Managing the refugee crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration, COM(2015) 490 final/2, Brussels, 29.9.2015, <http://ec.europa.eu>, accessed on December 28, 2015.

¹⁶ http://europa.eu/rapid/press-release_MEMO-15-5038_en.htm, accessed on January 3, 2016.

¹⁷ <http://www.agerpres.ro/english/2015/09/10/iohannis-intimin-mandated-at-jha-council-to-not-declare-adherence-to-mandatory-immigran-t-quotas-14-15-03>, accessed on January 3, 2016.

¹⁸ Council decision establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, Brussels, 14 September 2015 - <http://www.consilium.europa.eu>, accessed on January 6, 2016.

¹⁹ Council Decision establishing provisional measures in the area of international protection for the benefit of Italy and Greece, Brussels, 22 September 2015 - <http://www.consilium.europa.eu>, accessed on January 6, 2016.

²⁰ Communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration, COM(2016) 485 final, Brussels, 10.2.2016, <http://ec.europa.eu>, accessed on January 6, 2016.

Slovakia) are opposing the quota system, saying it will only encourage more asylum seekers to come to Europe. Thus, the European relocation scheme for asylum seekers has sparked discontent among Member States that made the calls to defend national borders to be stronger than calls for European solidarity. Countries like Greece, Bulgaria, Macedonia, Hungary, Slovenia, Austria, Sweden, Denmark, Italy, Finland, Austria, and Germany have all imposed some form of border control amid the refugee crisis, ranging from simple document checks to razor wire fences. The most eloquent in this regard is the case of Hungary which has erected a barbed-wire barrier along its border to Serbia and other along its border with Croatia in order to try and stem a flow of refugees and migrants and also threatened to raise similar one along part of its border with Romania.

Hungary's Prime Minister Viktor Orban announced in June 2015 that it would construct the fences because of the increasing number of refugees and migrants who want to enter the country, people who, as stated by the Prime Minister, were "now not just knocking on our door, but breaking it down". More than that, addressing Hungarian parliament he stressed that it is Hungary's historic and moral obligation to protect Europe, and when Hungary is protecting its borders, it is also protecting Europe²¹.

4. Efforts aimed at stemming the unprecedented migratory flows Europe is facing

The influx of more than a million migrants and refugees who crossed into Europe in 2015 greatly increased the pressure on Schengen area and, therefore, in accordance with the Schengen Borders Code, several Member States decided to reintroduce border controls at the internal borders, thus putting into question the proper functioning of the Schengen area of free movement and its benefits to European citizens and the European economy.

In these circumstances, the Commission has presented in December 2015 an ambitious set of measures aimed at securing the EU's borders, managing migration more effectively and improving the internal security of the European Union, while safeguarding the principle of free movement of persons. This package includes proposals on a Regulation establishing a European Border and Coast Guard, a targeted revision of the Schengen Borders Code and a Regulation on a European travel

document for the return of illegally staying third-country nationals²².

A few days later, on 18 December 2015, the European Council²³ took stock of the implementation of decisions taken in previous meetings and agreed to speed up actions on: the operation of hotspots; the implementation of the relocation decisions and returns; the control of the EU's external borders; cooperation with countries of origin and transit. Also, asked the Council to rapidly examine the European Commission's proposals of strengthening the EU's external borders²⁴.

On 10 February 2016, the Commission presented a Communication on a State of Play on the Implementation of the Priority Actions under the European Agenda on Migration²⁵. In opinion of the Commission, in the last months, a route has formed through the Eastern Mediterranean and across the Western Balkans which sees migrants passing swiftly north through one border after another, in fundamental contradiction with the principles of the Common European Asylum System and the Schengen rules. For this reason it is urgent to do whatever is necessary to restore order into the migration system and impose control of the migratory flows, whereas restoring orderly management of borders on the Eastern Mediterranean/Western Balkans route is the most pressing priority for the European Union at this moment. However, the Commission stressed that this approach will require tough decisions, determined action, responsibility and, solidarity, by all Member States.

The Commission's view was supported by the European Council at its meeting in February 2016, on which occasion showed that the objective must be to rapidly stem the flows, protect EU's external borders, reduce illegal migration and safeguard the integrity of the Schengen area. In its turn, the European Council emphasized the need to build an European consensus on migration and on implementation of decisions already taken.²⁶ During this meeting, the President Klaus Iohannis has pleaded for the preservation of the Schengen area and stressed that Romania is part of the solution to the migration crisis. Iohannis revealed that "Romania maintains its position on approaching the root causes of migration, not just attempting to fight its effects". Therefore, has added Iohannis, "we must focus on implemented the decisions already agreed on a European level to combat illegal migration; on effectively defend the outer borders of the EU, where

²¹ <http://www.kormany.hu> – Website of the Hungarian Government, accessed on January 7, 2016.

²² European Agenda on Migration: Securing Europe's External Borders, Strasbourg, 15 December 2015 - http://europa.eu/rapid/press-release_MEMO-15-6332_en.htm, accessed on January 15, 2016.

²³ Should be noted that at this European Council's meeting, President Klaus Iohannis delegated Prime Minister Dacian Cioloș to participate in the reunion.

²⁴ Conclusions of the European Council, 17-18 December 2015 - <http://www.consilium.europa.eu>, accessed on January 20, 2016.

²⁵ COM(2016) 85 final.

²⁶ Conclusions of the European Council, 18-19 February 2016 - <http://www.consilium.europa.eu>, accessed on February 25, 2016.

Romania has an active role; and on the cooperation with the origin and transit states"²⁷.

The current migratory situation, including the monitoring of implementation of the measures already agreed, were analysed on 25 February 2016 by Justice and Home Affairs Council. During this meeting, the Council aimed to reach a general approach on the proposed regulation to reinforce checks against relevant databases at external borders, a demarche which seeks to improve security inside the EU by making mandatory the current possibility of checks on EU citizens against all relevant databases. Ministers also was briefed on the state of play on the proposed regulation establishing a European Border and Coast Guard, an agency would bring together resources from FRONTEX and member states in order to monitor migratory flows, identify weak spots and respond in situations where the EU's external border is at risk (as shown in outcome of the meeting, the Netherlands presidency of the Council intends to reach a political agreement before the end of its term on 30 June 2016)²⁸. During the meeting was devoted a particular attention to current developments on the Western Balkans route, for which reason the ministers discussed cooperation with Turkey in the presence of the Turkish Deputy Minister of Interior. It should be noted that the meeting was chaired by Klaas Dijkhoff (Minister for Migration of the Netherlands) who showed that the crisis can be solved "if all member states are ready to work together, as well as work with the countries on the Western Balkan route and with Turkey"²⁹. Just two days before he held a joint press conference with Dimitris Avramopoulos, during which the two officials have expressed their concern about the developments along the Balkan route and the humanitarian crisis that might unfold in certain countries. Therefore, they have called on all countries and actors along the route to prepare the necessary contingency planning to be able to address humanitarian needs, including reception capacities. Moreover, they stressed that all countries involved have a responsibility and obligation to respect the European rules and put an end to the "wave through" approach. Thereby "all Member States should act in a joint spirit of solidarity and responsibility, especially in times when unity and common solutions are needed"³⁰.

For a better highlight of existing situation we really need to mention the statements of Natasha

Bertaud (a spokeswoman for the European Commission), who said that "some member states are acting outside of the agreed framework for the Western Balkan route cooperation" and expressed the belief that "Member States should work together other, and not against each other in this respect"³¹.

5. Conclusions

Taking into account the data presented above, I am convinced that the wave of migrants tends to become the largest and most complex challenge facing the European Union in its entire history and, therefore, the way in which the refugees and migrants crisis is managed may affect the future evolution of the Union.

Thus, a problem facing the entire European Union demands a common and coherent approach, desiderate which it seems difficult to achieve given that the crisis has opened up an east-west divide between Member States concerning idea of forced distribution of asylum-seekers under an EU quota system. More than that, on the background the migration crisis appeared intent of UK to withdraw from the Union, fact which accentuates the impression of weakness of the European Union as a whole, feeling that can be speculated very well by the Eurosceptics.

As can be seen, the Member States are united in that they face the same crisis, but so very divided in their attitudes and decision making.

In these circumstances, many European officials appealed for solidarity and called sharing responsibility of Member States, because the flow of refugees and migrants could be manageable if European Union countries work together. Eloquent in this regard is the statement of the EU foreign policy chief, Federica Mogherini, who warned that the European Union risks "disintegrating" over the ongoing migrant crisis if not respond "collectively" and equipped with necessary instruments³².

In its turn, the European Commission is working in order to ensure a strong and coordinated European response, in this regard could be mentioned the proposal for a Council Regulation enabling the provision of emergency support in response to exceptional crises or disasters within EU

²⁷ <http://www.presidency.ro/ro/presedinte/agenda-presedintelui/declaratia-de-presa-a-presedintelui-romaniei-domnul-klaus-iohannis1455925984>, accessed on February 25, 2016.

²⁸ Outcome of the Council meeting, Home Affairs, Brussels, 25 February 2016 - <http://www.consilium.europa.eu/en/meetings/jha/2016/02/25>, accessed on February 29, 2016.

²⁹ Ibid.

³⁰ Joint Statement by Dutch Minister for Migration Klaas Dijkhoff and European Commissioner for Migration, Home Affairs and Citizenship, Dimitris Avramopoulos, Brussels, 23 February 2016 - http://europa.eu/rapid/press-release_STATEMENT-16-395_en.htm, accessed on February 29, 2016.

³¹ <https://euobserver.com/migration/132416>, accessed on March 2, 2016.

³² <http://www.eubusiness.com/news-eu/europe-migrants.14xv>, accessed on March 5, 2016.

Member States, which give rise to severe humanitarian consequences³³.

Analysing the efforts made at European level in recent months I express my hope that Member States will be able to overcome misunderstandings between them, because the European Union urgently needs to put in place a coherent, long-term and comprehensive strategy that tackles both the causes and the consequences of the current crisis.

Also, I am confident that European Union will show solidarity for refugees and migrants in need, but at the same time, we stress that it must be combated firmly intentions of those trying to risk citizens' security, especially that, as shown in the recent statements of a NATO official, "violent

extremists, criminals and foreign fighters are part of the daily refugee flow into Europe"³⁴.

Seriousness of these affirmations and NATO's involvement in helping to stem the flow of migrants into Europe leads us to believe that finding solutions to the crisis will be the pivotal issue of the next months, whereas the better manage of the migration phenomenon will strengthen Union and, therefore, will restore confidence in the European project.

Remains to be seen if the European Union and its Member States will succeed in their common action to cope with this historical challenge or will behave like legendary orchestra which continued playing the hymn "Nearer, My God, to Thee" during the Titanic's sinking. We will see!

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³³ COM(2016) 115 final, Brussels, 2.3.2016.

³⁴ Statements of U.S. Air Force Gen. Philip Breedlove, commander of the U.S. European Command and NATO Supreme Allied Commander for Europe - <http://www.militarytimes.com>, accessed on March 5, 2016.