



Briefing

Reinforcing the Fortress: Commission's priority actions for the refugee situation

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The EU's response to the refugee situation has included the deployment of warships, plans for mass refoulement and the possible introduction of "one-for-one" schemes, none of which were mentioned in the priority actions proposed by the European Commission in February 2016.

The priority actions, entitled the 'State of Play of Implementation of the Priority Actions under the European Agenda on Migration' [1] aims to address the refugee situation by way of a number of priority actions which can be summarised under the following headings: 1) the future of Greece; 2) securing the EU; 3) hotspot management; 4) returns and readmissions; and 5) Management of financial resources in and outside the European Union.

Each new plan proposed follows a number of failures by the Member States to manage migration in line with previous plans agreed at European level. These include the failure of some Member States to transpose essential EU laws such as the Reception Conditions Directive, the Asylum Procedures Directive and the Return Directive effectively; the failure of Member States to match EU funding for migration-related initiatives; the failure to relocate and resettle the agreed number of refugees; and the failure to successfully set up and activate the "hotspots", to name but a few.

Despite these ongoing problems, the Commission is nevertheless optimistic that they can be overcome and that the proposed measures will "restore order to the migration system and impose control of the irregular and uncontrolled flows through the Eastern Mediterranean / Western Balkans route before the spring".

¹ European Commission, 'State of Play of Implementation of the Priority Actions under the European Agenda on Migration', COM(2016) 85 final, 10 February 2016, <http://www.statewatch.org/news/2016/feb/eu-com-sop-com-85-16.pdf>. This document is the basis for this briefing.

1. Future of Greece

Three main developments are foreseen for Greece:

i) Reinstating 'Dublin' transfers

Due to poor reception conditions and ongoing human rights violations, Greece became exempt from Dublin Regulation transfers following a 2011 European Court of Human Rights ruling. [2] This meant that asylum seekers who had entered the EU through Greece could no longer be returned there to have their asylum applications processed.

The Commission's action plan reaffirms the pressure on Greece to "do the necessary" to allow Dublin transfers to take place, despite a number of criticisms of the system. These concern not only its failure to support the Member States on the frontiers such as Greece and Italy, but in its application by Member States and the subsequent failure to address needs of asylum seekers and refugees.

Compelling asylum seekers to move to a country they do not wish to be in has already proved unworkable. [3] That being said, the Commission is insistent: "it is vital that people know they have the right to apply for asylum, but not to choose in which Member State, and are properly informed of the implications of the relocation scheme."

This assertion negates migrants' rights, ignores the context in which they may have made the choice of country in the first place, e.g to be reunited with family, and it does not respond to the widespread view that Dublin is 'unworkable'. [4] There are also doubts to the future of the Dublin Regulation. [5] Discussions on its revision are due to start soon, [6] which may render current demands made of Greece redundant.

Tied up with this is the obligation upon Greece to ensure the "the normal application of the Schengen external border control". This follows a Schengen Inspection of Greece, and the subsequent Council Recommendations. [7]

The inspection found that there was no effective identification and registration of irregular migrants and that fingerprints were not being systematically entered into the Eurodac system, nor being systematically checked for authenticity or against security databases, such as the Schengen Information System (SIS), nor Interpol and national databases.

ii) Securing the FYROM-Greek Border

The draft inspection report concludes that Greece is "seriously neglecting its obligations and that there are serious deficiencies in the carrying out of external border controls that must be overcome and dealt with by the Greek authorities". [8]

² ECHR, 'M.S.S. v. Belgium and Greece', application no. 30696/09, 21 January 2011, <http://www.statewatch.org/news/2011/jan/echr-judgment-mss-v-belgium-greece.pdf>

³ Steve Peers, Relocation of Asylum-Seekers in the EU: Law and Policy, 24 September 2015, <http://eulawanalysis.blogspot.co.uk/2015/09/relocation-of-asylum-seekers-in-eu-law.html>

⁴ ibid

⁵ Greg O'Cellaigh, Dublin Regulation to be scrapped?, 20 January 2016, <https://www.freemovement.org.uk/dublin-regulation-to-be-scrapped>

⁶ EU may revise Dublin Regulation by 2016 end amid migrant crisis, 23 January 2016, <http://sputniknews.com/europe/20160123/1033604885/eu-dublin-end.html>

⁷ European Commission, Commission discusses draft Schengen Evaluation Report on Greece, 27 January 2016, http://europa.eu/rapid/press-release_IP-16-174_en.htm

⁸ ibid

A subsequent Council Decision included 50 recommendations which essentially demand that Greece “ensure that at all external borders of Greece, external border control is carried out and brought in line with the Schengen Acquis in order not to jeopardise the functioning of the Schengen area.” [9]

The Commission has since demanded that Greece, with “stepped-up support from Frontex to exercise full control of its border” with the Former Yugoslav Republic of Macedonia, meaning primarily to establish border processing points. [10] In line with this, Frontex staff have been deployed to northern Greece, and the Commission notes that it needs to increase its potential to “maximum...notably by increasing the range of tasks that may be carried out by seconded officers.” [11]

The Commission notes:

“Whilst it is not possible to deploy a Frontex joint operation directly on the territory of the Former Yugoslav Republic of Macedonia, alternative means of Frontex assistance are currently under preparation”. [12]

These decisions comes at a time when the Commission has proposed to revise the Frontex Regulation and create a European Border and Coast Guard Agency, a point discussed further below.

iii) Increase in financial assistance

To “help build reception capacity to house migrants and refugees in Greece” the EU is committing to an €80 million programme. This includes providing 50,000 additional places, part of which will come from a network of 20,000 places for asylum seekers run by the United Nations High Commissioner for Refugees (UNHCR) by way of a voucher scheme. [13]

A total 14,950 places have so far been identified under this scheme so far, and they come in addition to the establishment of 7,000 places in the “hotspots”, located in Lesbos, Chios, Samos, Leros and Kos.

2. Securing the EU

In December 2015 the Commission adopted a borders package to manage migration and to address security “threats” in the EU. At the core of this is the Commission’s proposal on the European Border and Coast Guard:

⁹ Council of the European Union, Council Implementing Decision setting out a Recommendation on addressing the serious deficiencies identified in the 2015 evaluation of the application of the Schengen acquis in the field of management of the external borders by Greece, 12 February 2016. (OR. en). 5985/16 <http://www.statewatch.org/news/2016/feb/eu-council-schengen-evaluation-greece-recommendations-5985-16.pdf>

¹⁰ European Commission, ‘State of Play of Implementation of the Priority Actions under the European Agenda on Migration’, COM(2016) 85 final, 10 February 2016, <http://www.statewatch.org/news/2016/feb/eu-com-sop-com-85-16.pdf>

¹¹ Ibid

¹² Ibid

¹³ Ibid

“The proposal is to establish a common system which will substantially raise the effectiveness of controls at external borders, identify shortcomings much more quickly, and define clear, operational measures for tackling them.” [14]

Under the proposals, Frontex would be transformed into a European Border and Coast Guard Agency with new tasks, responsibilities and powers; and increased financial and technical resources.

In an effort to address the smuggling networks seen as underpinning the refugee flows in the Mediterranean, the European police agency Europol has launched the European Migrant Smuggling Centre, as noted in the action plan:

“[An EU information hub on migrant smuggling] will also deepen cooperation between key bodies such as the Financial Intelligence Units, the Internal Referral Unit and Member States’ National Contact Points.”[15]

A Migrants’ Information Strategy Task Force (MIS) has also been set up, and are operational, managed by EASO. They aim to “define and disseminate effective information to asylum seekers about their rights and obligations”. [16] This is to ensure that refugees and asylum seekers have the correct information and are properly informed in the hotspot areas, of the relocation scheme.

3. Hotspot management

Closely linked to the issue of EU border management are the newly established “hotspots”. [17] These are processing centres “designed to ensure integrated teams of border agents operate in dedicated facilities, 24 hours a day and seven days a week.”[18]

Perhaps predictably for Greece, “the rollout of hotspots has been slow, with a need to build hotspots from scratch and with shortcomings in infrastructure, staffing and coordination”. [19]

The need for these in places such as Greece and Italy– which are supposed to ensure that “no one should arrive in the EU without having been properly registered and fingerprinted” [20] – has become something of a mantra for EU officials over the last year.

The proportion of migrants whose fingerprints are included in the Eurodac database having risen in Greece from 8% in September 2015 to 78% in January 2016, and in Italy from 36% to 87% over the same period.

However, while their ability to capture biometrics, such as fingerprints has risen they are still lacking other facilities: “better medical support, further coordination of the disembarkation of migrants rescued at sea, and full connectivity of databases for security checks”. [21]

¹⁴ Yasha Maccanico, The Italian Roadmap 2015 Hotspots, readmissions, asylum procedures and the re-opening of detention centres, <http://www.statewatch.org/news/2015/dec/no-279-Italian-Road-Map-2015.pdf>

¹⁵ European Commission, ‘State of Play of Implementation of the Priority Actions under the European Agenda on Migration’, COM(2016) 85 final, 10 February 2016, <http://www.statewatch.org/news/2016/feb/eu-com-sop-com-85-16.pdf>

¹⁶ ibid

¹⁷ European Council (15-16 October 2015) - Draft conclusions, Council of the European Union. Brussels, 09 October 2015. (OR. en). 11137/15 <http://www.statewatch.org/news/2015/oct/eu-council-summit-draft-concil-draft%20conclusions-1137-15.pdf>

¹⁸ European Commission, ‘State of Play of Implementation of the Priority Actions under the European Agenda on Migration’, COM(2016) 85 final, 10 February 2016, <http://www.statewatch.org/news/2016/feb/eu-com-sop-com-85-16.pdf>

¹⁹ ibid

²⁰ ibid

Hotspots have come under much criticism, one main concern is the use of “nationality screening” as a way to determine whether a person should have access to protection:

“...the hotspot system implies the annihilation in Europe of the right to asylum as a perfect individual right that everyone, regardless of his or her origin and condition, can claim in any country... Moreover, people who are given access to asylum procedures also face rigid restrictions of their rights and liberties, as illustrated by the case of migrants protesting in Lampedusa” [22]

Another concern is the use of fingerprinting, as shown here for the case of Lampedusa, Italy:

“Migrants who resist fingerprinting procedures in Lampedusa are caught in a double spatial trap: they don’t enter the protection system and are indefinitely detained on Lampedusa, far away not only from their aspired-to refuge, but also from the mainland. The spatial conundrum (should people give up their freedom to choose where to claim asylum only to end up detained on Lampedusa?) comes from the temporal captivity of indefinite detention on the prison-island. It decelerates the “swift” hotspot approach and results in differential speeds of migration management. Fingerprinted migrants are quickly transferred to hosting centres in Italy, while those who resist identification remain trapped on the island.” [23]

Therefore, there is no surprise when reports show of ongoing instances of some people refusing to be fingerprinted. On this point, the Commission reiterates the “proportionate use of coercion” as a “last resort”. [24]

Additional to the hotspots in Greece and Italy, the Commission is “ready to organise a mobile hotspot team (with agents from Frontex and EASO) in Eastern Sicily”, again to ensure identification, fingerprinting and provision of information to people who cannot be disembarked in the designated hotspot ports, in an effort “to help plug gaps in the fingerprinting and registration of migrants beyond the hotspots”, despite the concerns.[25]

4. Returns and readmissions

Since the priority action document was released, and the Action Plan on Returns in September 2015, the return of migrants has become more militarised, for example with NATO patrolling the Greek-Turkish sea border. [26]

The priority action plan lays some ground work to this, as the Commission planned to being an integrated return management system bringing together all Member States and EU

²¹ ibid

²² Alessandra Sciarba, Hotspot system as a new device of clandestinisation: view from Sicily, 25 February 2016, <https://www.opendemocracy.net/can-europe-make-it/alessandra-sciarba/hotspot-system-as-new-device-of-clandestinisation-view-from-si>

²³ Glenda Garelli and Martina Tazzioli, The EU hotspot approach at Lampedusa, 26 February 2016, <https://www.opendemocracy.net/can-europe-make-it/glenda-garelli-martina-tazzioli/eu-hotspot-approach-at-lampedusa>

²⁴ European Commission, ‘State of Play of Implementation of the Priority Actions under the European Agenda on Migration’, COM(2016) 85 final, 10 February 2016, <http://www.statewatch.org/news/2016/feb/eu-com-sop-com-85-16.pdf>

²⁵ ibid

²⁶ Ewen MacAskill and Emma Graham-Harrison, NATO launches naval patrols to return migrants to Turkey, 11 February 2016, <http://www.theguardian.com/world/2016/feb/11/nato-launches-naval-patrols-to-return-migrants-to-turkey>

networks in charge of return and reintegration. This included Frontex joint return flights on the basis that:

“The systematic and rapid return of irregular migrants is an indispensable part of successful migration management and a powerful deterrent to irregular migration.”

For the Commission, returning people who are not in need of international protection “is a key component of EU migration policy” [27]. However, it has long been a rather unsuccessful component, a problem the Commission hopes to address through a variety of initiatives.

During 2015 Frontex coordinated 66 joint return flights carrying a total of 3,565 people, and a far greater number of people will have been returned through Member States’ own operations, although there are no up to date EU-wide statistics accessible.

Despite these figures, the Commission notes that:

“[N]ational return systems are facing many practical problems: lack of travel documents, lack of detention capacity in the Member States, long and ineffective national procedures which can only facilitate absconding, and countries of origin which obstruct readmission” [28].

Regardless of these ‘practical problems’ the Commission is dedicated to effectively returning migrants.

The Commission makes it very clear:

“Third countries have obligations to readmit their nationals. But the persistent difficulties in doing so and in the light of the trends of irregular migration in 2015 have now made return and readmission one of the top priorities in EU relations with third countries of origin and/or transit.” [29]

This is an old mantra, enforcing neo-colonial pressure upon the European neighbourhood to control EU borders, not only through the carrot (visa liberalisations in readmission) but also the stick (trade leverages). According to the conclusions of the October 2015 European Council, there are some new initiatives, including:

“[C]omprehensive and tailor-made packages to underline to partners the importance of cooperation on readmission to relations as a whole. These packages of incentives and leverages, including the operation of trade preferences, should be applied in a coordinated manner by the EU and its Member States.”[30]

Some specific countries are mentioned: Algeria and Morocco (“where negotiations for the conclusion of a readmission agreement are not advancing”), and Pakistan (“where the already concluded readmission agreement is not properly implemented”).

²⁷ European Commission, ‘State of Play of Implementation of the Priority Actions under the European Agenda on Migration’, COM(2016) 85 final, 10 February 2016, <http://www.statewatch.org/news/2016/feb/eu-com-sop-com-85-16.pdf>

²⁸ *ibid*

²⁹ *ibid*

³⁰ Council of the European Union. European Council (15-16 October 2015) - Draft conclusions, 09 October 2015. (OR. en). 11137/15 <http://www.statewatch.org/news/2015/oct/eu-council-summit-draft-council-draft%20conclusions-1137-15.pdf>

Whether the pressure applied by the EU will be enough to force these countries to do its bidding remains to be seen, especially as individual Member States, such as Italy, already have their own bi-lateral agreements with the some of the countries mentioned. [31]

It is evident that the Commission is willing to compromise protection for the return of migrants. An example of that is in the preparations to extend ‘third safe country’ recognition to countries which limit the protection available under it to certain categories of people:

“The concept of safe third country as defined in the Asylum Procedures Directive requires that the possibility exists to receive protection in accordance with the Geneva Convention, but does not require that the safe third country has ratified that Convention without geographical reservation.”[32]

This is a clear reference to Turkey which has ratified the Geneva Convention, but with a geographical reservation: that is, it does not offer full refugee status to people from non-European countries.

As a recent Statewatch analysis noted: “The notion of ‘safe country of origin’ is at odds with a meaningful evaluation of an asylum application” [33]

5. Management of financial resources in and outside the European Union

The priority action plan proposes increasing the already-considerable amount of humanitarian aid that the EU provides to victims of the Syrian conflict. The EU’s contribution for the Syria crisis in 2016 will reach €1.1 billion, a significant increase on last year:

“The contribution from the EU budget exceeded €400 million in 2015 – part of the EU’s overall commitment of more than €5 billion in humanitarian, development and stabilisation assistance. This included direct support to Syrians still in Syria, as well as the countries dealing with the biggest per capita share of Syrian refugees. More than €160 million was devoted to life-saving operations inside Syria itself, in sectors such as health, protection, water, sanitation, food and shelter: €97 million for refugees in Lebanon, €58 million for Jordan and €35 million in Turkey.” [34]

The EU Regional Trust Fund for Syria i.e. the ‘Madad Fund’ [35] has so far attracted contributions of €654 million, “though national contributions have not yet reached the target of matching the EU budget contribution.”

The fund will supposedly devote €350 million for urgently needed aid to 1.5 million refugees and overstretched host communities in Lebanon, Turkey, Jordan and Iraq, “to help core needs like education, healthcare and hygiene.” [36]

³¹ Paolo Cuttitta, Readmission in the Relations between Italy and North African Mediterranean Countries, 01 August 2010, <http://www.mei.edu/content/readmission-relations-between-italy-and-north-african-mediterranean-countries>

³² European Commission, ‘State of Play of Implementation of the Priority Actions under the European Agenda on Migration’, COM(2016) 85 final, 10 February 2016, <http://www.statewatch.org/news/2016/feb/eu-com-sop-com-85-16.pdf>

³³ Emanuela Roman, Theodore Baird, and Talia Radcliffe, Why Turkey is Not a “Safe Country”, February 2016, <http://statewatch.org/analyses/no-283-why-turkey-is-not-a-safe-country.pdf>

³⁴ European Commission, ‘State of Play of Implementation of the Priority Actions under the European Agenda on Migration’, COM(2016) 85 final, 10 February 2016, <http://www.statewatch.org/news/2016/feb/eu-com-sop-com-85-16.pdf>

³⁵ European Union, EU Regional Trust Fund in Response to the Syrian Crisis, the ‘Madad Fund’ State of Play and outlook 2015/2016, http://ec.europa.eu/enlargement/neighbourhood/pdf/key-documents/syria/madad_info_note_en.pdf

However, there is an ongoing problem for the EU's efforts to increase expenditure on humanitarian aid – Member States are not willing to put their money where their mouths are. Similarly, contributions to the World Food Program for Syria were slashed in 2014, until last year when they were restored, and Member States are still falling behind on actual donations compared to pledges made.

A fund was also set up for African countries, following the Valetta Conference:

“The EU set up an Emergency Trust Fund for Africa, which addresses stability and the root causes of irregular migration and displaced persons and cooperation in migration with countries of origin and transit.” [37]

Meanwhile another €3 billion [38] has been set aside for refugees in Turkey:

“Intensive contacts have been made with the Turkish authorities to ensure that concrete measures under the €3 billion Facility for Refugees in Turkey should start financing projects as soon as possible.”

In return for the €3 billion – which some Member States, notably Italy, were strongly against contributing to – the EU and Turkey have agreed an action plan that calls on Turkey to undertake a number of actions of dubious benefit to refugees in that country or to those hoping to arrive or leave there. [39] This includes visa restrictions, stepping up police operations against smugglers and better guarding of the external border.

However, the implementation of a bilateral readmission agreement between Greece and Turkey has been described by the Commission as having “fallen well short”. More recently, it appears that cooperation has stepped, for example with the return of 308 people from Greece to Turkey. [40]

From 1 June an EU-Turkey readmission agreement is supposed to come into force, in theory permitting returns to Turkey from all EU Member States; and NATO has also deployed warships that will apparently play a part in returning migrants to Turkey. [41]

Conclusions

1. **Greece:** Greece is facing massive problems dealing with the influx of people in part due to the austerity measures imposed by the EU/IMF/ECB and to which successive Greek governments have acquiesced – the ongoing political threats made against Greece (suspension from Schengen, etc.) further adds to the difficulties outlined here.

³⁶ European Commission, ‘State of Play of Implementation of the Priority Actions under the European Agenda on Migration’, COM(2016) 85 final, 10 February 2016, <http://www.statewatch.org/news/2016/feb/eu-com-sop-com-85-16.pdf>

³⁷ European Commission, A European Union Emergency Trust Fund for Africa, 12 November 2015, <http://www.statewatch.org/news/2015/nov/eu-com-etf-prel.pdf>

³⁸ Statewatch, Talking Turkey: €3 billion to control migration, 30 November 2015, <http://www.statewatch.org/news/2015/nov/eu-turkey-3-billion.html>

³⁹ European Commission, EU-Turkey Joint Action Plan, October 2015, <http://statewatch.org/news/2015/oct/eu-com-revised-draft-action-plan.pdf>

⁴⁰ European Commission, ‘Managing the refugee crisis: Stepping up return procedures to Turkey’, 2 March 2016, <http://www.statewatch.org/news/2016/mar/eu-turkey-returns-prel.pdf>

⁴¹ NATO, NATO Defence Minister agree on NATO support to assist with the refugee and migrant crisis, 11 February 2016, <http://www.statewatch.org/news/2016/feb/refugees-NATO-mil-force-med-prel.pdf>

2. **Securing the EU:** The strengthening of Frontex is highly controversial due to implications for a) national sovereignty; b) the Agency's current lack of accountability for human rights violations; and c) lack of complaints mechanism. Meanwhile the law enforcement approach to smuggling may see some arrests but the fact that there are no legal routes to the EU means that any attempts to stop smuggling practices will ultimately be in vain.

3. **Hotspots:** The infrastructure for hotspots is being put into place – with a priority on fingerprinting above health care, accommodation – but the counterpart to the hotspots was supposed to be the relocation scheme, which is failing. Given this – and the inability of Greece and Italy to deal with so many people – there may be little practical option other than to let people choose the country in which they want to apply for asylum, an issue likely to come up in any future negotiations on revising Dublin.

4. **Returns:** The rare moment when the Commission and Member States agree is on the subject of returns. Whether they can successfully do so on the scale suggested by some Member States without massive violations of human rights is another question. Similarly, the EU's new attempts to pressure "third countries" have got off to slow start.

5. **Finance:** Member States continue to drag their heels on pledging and contributing towards the crisis. What exactly some of the money in the various funds/facilities proposed is going to, and who will need to be scrutinised very closely as projects are implemented.

Overall the Commission's message over the last year has been nothing if not consistent: fingerprinting and registration is essential for all those arriving in Europe; returns are essential; and continuous efforts need to be made to encourage third countries to stop people coming to Europe in the first place.

Often forgotten is that access to asylum procedures is imperative to protection, yet the Commission emphasises fingerprinting, registration and returns. This of course is only relevant to those who manage to reach Europe – something that the EU's plans are, overall, intended to prevent. Funds launched to ensure the provisions of sanitary conditions and safety for those in Syria, as well as schemes to keep people in Turkey amount to billions of Euros, yet there are consistently shortfalls in the donations from the Member States.

There is a fundamental gap between political will and action that appears to be widening as more refugees are struggling to cross into Europe. What is clear is that in an attempt to securitise the border, and restrict freedom of movement, it will be European values which will continue to suffer. Decisions made during this time will go down in European history, and it will not be a proud moment. Either way, the EU will, and can never be the same again.

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