

# Are asylum and immigration really a European Union issue?

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**Attempts to find an EU-wide solution to asylum may be preventing the finding of workable solutions at the bilateral or national level.**

It is redundant to say that the European Union (EU) is failing itself, failing refugees and failing humanity with its current policy towards immigration and asylum. The daily reports of more deaths at sea and on land, of battles between border police and people seeking safety or a better life, and of camps, fences and desperation are testament enough to that.

Exhortations for a cooperative approach in Europe and engagement with countries of origin, calls to stop people smugglers, and condemnation of the failings and abuses of the current asylum system have been standard in the migration field in Europe from policymakers since the earliest days of inter-governmental cooperation in the 1992 Treaty on European Union and during the Bosnia crisis.

While there is a great deal of truth underlying many of these and similar ideas,

some of them are, or should be, open to question. For example, it might be appropriate at this point to ask whether this really is a European problem, which can only be solved with EU-wide answers. We cannot continue to take this as a given in the light of two decades of failure to reach agreements on policy and implementation that are satisfactory to all twenty-eight Member States or that realistically address the real needs for refugee protection, as well as allow sufficient legal migration to meet Europe's labour needs.

## **This is a European problem...**

Since those early days of European cooperation, the underlying premise has been that in an area with free travel, without frontiers, and where the external border (land, sea or air) of any single Member State is effectively the border of the entire EU (or at least of the Schengen area), the entire

policy area of asylum and immigration can best be handled at the European level. In essence, what this means is that in creating a frontier-free space for European goods, services and citizens, the EU Member States have acknowledged the (almost) unintended consequence of creating a frontier-free space for people from all over the world. They have tried subsequently to compensate for that consequence by creating an EU approach to asylum and immigration, most notably in the form of the Common European Asylum System (CEAS), which is well developed on paper but poorly implemented.

In the more bureaucratic terms of the EU, the principle of subsidiarity – deciding whether a policy area can best be handled at the local, national or EU level – has been applied and it has been found that in the policy area of asylum and immigration, the appropriate level is the EU level.

Yet, the EU-level agreements that have been reached (beyond the basic principle that agreement ought to be sought at the EU level) have always been hard-fought, usually lowest-level compromises, which have rarely been found to have great impact in practice. Over the past twenty years, the same essential sub-issues of defining a refugee; assigning responsibility for dealing with asylum claims; reception conditions; temporary protection; and matters such as long-term residence status, family unity, seasonal work and others have been the subject of repeated efforts to intensify cooperation, with the agreements reviewed and re-negotiated under each subsequent work programme or treaty.

#### .... or is it?

While leaders continue to espouse the view that the project of a frontier-free Europe means immigration and asylum are by definition a European issue, actual policy and practice continue to be national in every way, including the migration decisions of those individuals arriving in the EU whether legally, irregularly or as asylum seekers or resettled refugees.

Few, if any, of the migrants setting out on boats across the Mediterranean have 'reaching the EU' as a goal – if they did then

they would stop in Greece, Italy, Malta and even France, rather than try to continue to Germany, Sweden or the UK. Perhaps if the EU were a more coherent whole, people would not have a particular nation state in mind as their destination – or if they found the situation in whichever place they arrived in the EU to be accommodating and to offer safety and protection then they might change their minds about their destination. Furthermore, efforts to 'spread the burden' and relocate people within the EU could only become a solution if protection were the same in any member state.

The EU's principle of 'subsidiarity' says that there are three criteria for determining that EU-level intervention is desirable:

- Does the action have transnational aspects that cannot be resolved by Member States?
- Would national action or an absence of action be contrary to the requirements of the Treaty?
- Does action at European level have clear advantages?

European leaders' insistence that the 'migrant crisis' is a European problem requiring a European solution could in part be a result of the pre-determination that a 'frontier-free' Europe requires an EU-level, rather than national- or local-level, approach. It seems that it is not based on a careful assessment of whether national policies and bilateral agreements in fact could address the problems or of whether seeking the EU-level approach is, in fact, creating barriers to effective management of the situation at hand.

Logically, migration has transnational aspects, including most obviously the simple fact that third-country nationals (that is, non-EU citizens) cross multiple EU Member State frontiers to reach their destination, whether seeking asylum or for irregular work. Could Member States resolve those transnational aspects? The constant push towards a European solution suggests that the Member States believe they cannot solve them alone, although the basic necessities for a European solution have not been there for the past two decades and seem unlikely to appear now.

Realistically, the conditions for EU-level action on asylum to even be agreed upon, let alone implemented in such a way that those advantages can be realised, are clearly lacking.

If basic elements were in place such as, at the broadest level, political will, and more directly a re-assessment of sovereignty to mean that there is less attachment to the principle of deciding for oneself who will cross one's border or be permitted to stay, then perhaps an EU-level solution could be found. Yet the insistence on the need for a European solution might be the most significant barrier to straightforward bilateral or multilateral agreements between Member States and their neighbours on border control. It might also be one of the barriers to the more humanitarian protection policies for which the same politicians who consistently enact more draconian rules are calling.

Agreement to achieve a Common European Asylum system is part of the Treaty, so to some extent national action would be contrary to its requirements – but in the absence of a strong CEAS, all Member States have their own asylum policies and systems, within the framework of minimum standards.

An EU-level agreement to manage the current scale of asylum seekers and irregular flows seems very unlikely, partly because

there is no machinery in place to elevate asylum and migration to the European level in terms of genuine, full-scale implementation. Nor is there leadership to guide Member States through the current crisis in the absence of an EU-wide ethos of protection, and with the differing immigration needs of member states relative to their demographic and socio-economic situation.

The French Foreign Minister, Laurent Fabius, has said of the fence erected by Hungary to keep out immigrants, "Europe has values and these values are not respected by putting up wire fences."<sup>1</sup> A solution to the migrant crisis which respects those values might see each Member State enacting short- or long-term policies on asylum, protection, resettlement, management of irregular migration or prosecution of traffickers and smugglers. Sometimes they would act unilaterally to address their needs, sometimes bilaterally where such agreements will strengthen protection, build capacity and address the humanitarian crisis. This would be a more useful step than insisting on EU-level agreement while thousands suffer.

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1. <http://tinyurl.com/Fabius-on-Hungary-s-fence>