

The October 2015 European Council and migration: no news, good news?

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The October European Council meeting took place after an unprecedented sequence of actions, with the Luxembourgish Presidency, the European Commission and the Council adopting and proposing a series of legislative and operational measures (including *inter alia* relocation decisions, the establishment of “hotspots”, increasing funds, the modification of the Dublin rules and the adoption of safe country of origins lists) to address the refugee crisis.

Some of these measures were on the European Council agenda, such as the future of the Dublin system, the role of “hotspots” and the strengthening of the external borders. However, the meeting did not go as planned, with some items being dropped off the agenda and replaced by other ones.

Dropped off items

President Tusk’s invitation letter announced that the future of the Dublin system would be discussed at the Summit. More precisely, the question was whether to keep the Dublin system “as it is or to look for alternatives”.

An option on the table to reform the system was the Commission’s proposal to establish a permanent relocation scheme as a derogation to Dublin rules in specific crisis situations. This was particularly relevant after Chancellor Merkel’s declaration in the European Parliament that the Dublin rules were “obsolete”.

However, not all member states agree on abolishing the Dublin system, in particular the Visegrad countries. Despite intense discussions and given the lack of agreement, the word Dublin does not appear once in the European Council’s conclusions.

While not formally on the Summit’s to-do list, the recent Commission proposal to set up a list of safe third countries of origin was debated. In July, Justice and Home Affairs Ministers suggested that the Western Balkans countries (Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia (FYROM), Montenegro, Serbia and Kosovo) could be considered as safe countries of origin by all member states. In September the European Commission tabled a proposal establishing an EU common list of safe countries of origin. Alongside Western Balkans countries, the Commission added Turkey to the list on its own initiative. However, the inclusion of Turkey creates a number of problems.

First, some states are not convinced that Turkey should be considered as a safe country of origin. With 22% of asylum applications from Turkish nationals receiving a positive decision at first instance (Eurostat), doubts are legitimate. Second, the proposal should be adopted on the basis of the co-decision procedure and it is far from certain that the European Parliament will agree to such an inclusion. Third, even if the list is adopted, its validity will certainly be challenged before the European Court of Justice or national jurisdictions in particular with respect to its compliance with human rights instruments, including the European Charter of Fundamental Rights. Last but not least, it has become almost politically impossible to withdraw Turkey from the list as Ankara would perceive any such decision as a provocation.

In such a difficult situation, the adoption of the list seems unlikely in the short run. This is evidenced by a letter of Minister Jean Asselborn to the European Council President before the Summit. Regarding the current discussions on the Commission’s proposal, he indicates that the Council of the EU “will have to conduct a thorough assessment of the potential interference [of the list] with the fundamental rights enshrined in the Charter of fundamental rights of the EU, as required by the European Court of Justice”. And such an assessment may take time.

Considering the magnitude of disagreements on both issues (the permanent relocation mechanism and the safe countries list), it does not come as a surprise that the European Council conclusions do not mention them explicitly. They simply state that “there are [...] other important priority actions that require further discussions in the relevant fora, including the Commission proposals”.

External cooperation: using an old recipe

Cooperation with third countries is the first priority agreed upon by EU leaders. Given the large number of immigrants and refugees reaching the EU from or through Turkey, this state holds a key position, which has led to the adoption of an EU-Turkey Joint Action Plan. However, the commitment of all players will be conditional upon the ability of partners to deliver. The EU has committed itself to liberalise the visa regime and to provide massive funding. Turkey is supposed to cooperate on readmissions and stricter border controls. In this context, states also agreed to “re-energise” the accession process. Given the focus on migration and asylum it is likely that related chapters will be opened first in order to adapt Turkey’s rules and practices to the EU acquis.

Two other areas are also significant: the Balkans and African countries. While EU leaders recall commitments agreed to earlier this month regarding the Balkans, they emphasise the need to achieve significant results in the perspective of the November Valletta conference with African countries.

Cooperation with African countries should be based on three pillars with different levels of importance. The first priority should be to “achieve concrete operational measures” in fields related to return, readmission, criminal networks and illegal migration. Second, make “real efforts” to address root causes and support development. Finally, show “commitment concerning continued possibilities for legal migration”. To sum it up, the Valletta conference will mainly focus on achieving security-oriented cooperation and provide few counterparts in the field of legal migration possibilities, while also linking migration to development policies. It is not sure that this old recipe – a lot on security and very little on mobility – will bring results, as it has failed to do so in the last 15 years.

Strengthening EU’s external borders and ensuring returns

With respect to border management, the European Council Conclusions start with a paragraph quoting Article 77.2 d) of the Treaty on the Functioning of the European Union regarding the establishment of an integrated management system for external borders. By doing so, the European Council recalls the breadth of the EU’s competence and reiterates the idea of creating a European Border and Coast Guard System.

While interesting, such a possibility must – according to Summit Conclusions – take place in the context of “discussions” and “in full respect of national competence”. This sheds light on the remaining reluctances of states to give up their sovereignty and shows that the road towards a European Border and Coast Guard System may take a while.

In addition, the Conclusions foresee the enhancement of Frontex’s mandate in the field of return, including the creation of a return office within Frontex and the possibility for the EU’s border agency to organise joint return operations on its own initiative. Such measures require legislative developments and will therefore take some time.

Finally, the third paragraph of the Conclusions is entitled “Responding to the influx of refugees in Europe and ensuring returns”. While the link between refugee issues and return procedures is not always clear - as they pertain to two distinct categories of persons covered by separate rules - this paragraph deals with the development of issues agreed upon previously, such as hotspots, relocation and returns.

This section deserves three comments. First, the European Council asks member states to meet the calls for expertise from Frontex and the European Asylum Support Office (EASO). In order to implement the “hotspot approach”, the EU agencies

have launched calls for contributions to request human resources and technical equipment from member states. However, and according to the European Commission, state contributions currently “fall far short of the real needs”. Second, new elements are put forward regarding Frontex’s mandate (see above) and the creation of a European *laissez-passer* in the field of return. Third, some paragraphs in this section simply repeat, sometimes with the same words, orientations already agreed on by the June European Council.

Words matter

The October 2015 conclusions are worrisome when looking at the language used. The first paragraph is entitled “Cooperation with third countries to stem the flows”. The use of such wording is unusual. According to Cambridge Dictionary online, the word ‘stem’ is defined as follows: “to stop something unwanted from spreading or increasing”. In the middle of a refugee and humanitarian crisis using such negative wording is not appropriate.

Such wording is repeatedly used by political leaders and in the European Council President’s communication. The invitation letter to the October Summit contains the following sentence: “the goal of my talks in Ankara was to stem the wave of refugees to Europe”. Similarly, written remarks sent after the European Council highlight that discussions with Turkey “were devoted to one goal: stemming the migratory flows”. Later it is added that “an agreement with Turkey makes sense only if it effectively contains the flow of refugees”. Having the Cambridge definition in mind, the objective is then to stop the increasing number of unwanted refugees to come to Europe.

In addition, and more worryingly, it should be underlined that Tusk’s invitation letter to the Summit stated that “Even if the influx of refugees slows down during the winter, we must be ready for spring and the threat of bigger waves flowing to Europe”. Should we understand that refugees, i.e. families fleeing bombings, wars and dictatorships (like many Europeans did in the past), are a threat to Europe? If this is the meaning of the invitation letter, its compliance with EU values is under question. Words have a meaning and as underlined by Albert Camus “*mal nommer un objet, c’est ajouter au malheur de ce monde*” (“To badly name an object is to add to the misery in this world”).

What was this summit worth?

In the end, and with the exception of a few new elements, the Summit ended with poor conclusions locked in poor logic: developing cooperation with third countries focused on security and avoiding the arrival of refugees to the EU.

The European Council has two main tasks: deciding on emergency measures in times of crisis and defining orientations for the future. While it has fulfilled the first task over the last months, it is still not able to provide comprehensive policy orientations in the field of immigration and asylum.

The current crisis makes it clear that immigration and asylum are European issues and should be fully dealt with at EU level. This requires the ability of member states to recognise this once and for all and to adapt a proper policy which, according to the Treaty, should be “common”. However, member states fall short as they have been unable to renew their position and propose for a policy involving all angles of the migration phenomenon.

This inability to modify old reflexes is obvious when looking at the external dimension of the policy, which mixes immigration and development issues. If third countries are delivering on the security side (readmission, return and border management) the EU will offer financial support, in particular through enhanced development aid. This approach does not take into account two key elements. Migration is crucial for the least developed countries, who receive more from remittances than from public development aid. There is sometimes little incentive to cooperate. Second, the idea that development aid will decrease migration is scientifically false. Well-managed development policies lead, in the first phase, to more migration, but member states continue to proclaim the contrary.

In addition, member states are unable to provide sound and reliable legal migration possibilities for third country nationals. Cooperation is currently limited to mobility, i.e. mainly based on short-term visas. If states want to seriously address the mobility issue it should be broadened and contain real possibilities for third country nationals to enter and reside in the EU for study and work purposes. Preparing for the future calls for the establishment of agreements between the EU and selected countries in its immediate neighbourhood, offering legal avenues instead of limited short stay visa opportunities.

On another dossier, EU leaders have to decide whether they want to complete the Common European Asylum System (CEAS). Despite the adoption of several Directives and Regulations, big differences remain between national rules and practices. Achieving the CEAS requires clear orientations taken at the highest political level and setting the objectives and steps for the establishment of such a common system in order to ensure that wherever the asylum claim is lodged, the procedure, rights and outcomes will be the same.

Finally, and given the size of the current crisis, EU leaders do not adequately address the integration of thousands of refugees that EU member states have welcomed and will welcome to their territory. More broadly, the integration of refugees, beneficiaries of subsidiary protection, labour migrants, students, family members, etc. are tomorrow's biggest challenges and up until now, no clear policy orientation has been defined. It is high time to factor this side of the policy in, and to provide orientations for which kind of integration policy member states should go for and how the coordination of national policies can accordingly be enhanced.

The October 2015 European Council took measures but did not define ground-breaking orientations. At least, it acted as a communication tool, showing citizens that EU leaders are dealing with the issue at the highest political level. While important in the current political context, communicating is not a policy and implementing old recipes which are unlikely to provide results does not provide adequate solutions. The refugee crisis is extremely profound and will last for a long time. The migration topic will continue to be central in the future. If leaders are unable to agree on sound, really comprehensive and bold policy orientations, bad times lie ahead for refugees, immigrants, citizens and the European project as a whole.

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