

24 September 2020

## **VDL'S MIGRATION PLAN – THE FINE ART OF PLEASING NO-ONE**

by Hugo Brady

**The Von der Leyen Commission plans to crack down on widespread abuse of Europe's asylum system whilst doubling down on relocation as the solution to irregular boat arrivals in the Mediterranean. Can the Schengen area learn the lessons of the 2015-2016 crisis?**

If Europe's pro- and anti-migration forces are both speechless with fury, then my proposals are sound. That seems to be the conclusion reached by Ursula von der Leyen, President of the European Commission, on tabling a proposed grand bargain between EU countries on migration. Although optimistic indeed about potential fixes such as fast-track asylum processing, Von der Leyen's blueprint is a serious attempt to marry Member State concerns over spontaneous arrivals with the Commission's firmly liberal line on migration. Even for seasoned observers, however, open questions remain.

The package sets out plans to modernise and reform the Schengen area, the EU's passport-free zone. And it begins a long overdue conversation on EU crisis management arrangements that can anticipate mass irregular arrivals on the scale of 2015-2016 and mobilise money, border guards and diplomacy well ahead of time. But the chief focus is the notoriously difficult task of reforming Europe's common asylum rules.

### **Toughening up or no frontiers?**

Chastened by the failed reforms of the Juncker years, the Commission proposes to incorporate those elements which EU countries were able to agree, namely revamped rules on reception conditions for asylum seekers and the common legal definitions qualifying asylum status. Furthermore, the package calls for more powers and resources for the EU's asylum agency by the end of the year. This too is consensual, but requires goodwill from EU countries and the European Parliament.

Next, there are three big innovations, all inter-connected. First, the Commission wants to convert the Dublin regulation, a 30-year-old border control regime aimed at discouraging asylum seekers from transiting Schengen states, to an EU-wide burden-sharing system. Countries will still be able to send back asylum seekers that arrive from other member states (as they can now). In fact, the Commission wants to extend the window for these 'take-back'

requests from the current one year to three. However, the Berlaymont also introduces a very specific and controversial exception: all migrants rescued at sea are to be automatically shared out around the Union via a system of pre-allocated quotas.

Key here is the realisation that most boat people rescued in the Western and Central Mediterranean do not qualify for political asylum and claim asylum status only as a gateway to enter the EU. Depending on preference, member states can therefore opt either to settle the minority of real refugees or help send home the majority who are not. Both are expensive, logistically demanding tasks that would show solidarity with countries under pressure. The Commission would set national quotas according to GDP and population size, but discount these up to 50 per cent for governments that send materials and experts to the external border.

Second, the Commission wants coastal Schengen states to screen irregular entrants in special transit zones, at or away from the border, within five days. A quid pro quo for mandatory burden-sharing, mandatory screening will combine identity, security and health checks (which often went missing-in-action during the irregular arrivals crisis of 2015 and 2016) with a rapid assessment of whether an asylum claim is admissible. This is intended to separate arrivals quickly, especially those rescued at sea, into those who are to be returned or those who should receive a hearing. Nationalities with acceptance rates below 20 per cent will be rejected quickly unless something clearly distinguishes their claim. However, irregular arrivals often destroy their travel documents on the advice of smugglers. If this happens, it remains to be seen how arrivals will be identified in five days.

Third, the Commission wants to significantly toughen up EU asylum procedures, an area just as controversial but less visible than the burden-sharing issue. Commission officials plan to integrate the Union's procedures for determining refugee status with those for returning failed asylum seekers, taking inspiration from highly efficient asylum systems in the Netherlands and Switzerland. ([See ICMPD's comprehensive review of national appeals processes here.](#)) Replacing two often tortuously long legal proceedings with a single shorter one makes accelerated processing more realistic, especially at a time of heavy migration pressure. Authorities will also have increased powers to detain asylum seekers who deliberately mislead the authorities, lose touch with their case handler or are likely to abscond.

By any standards, these reforms are a brave recognition by the Commission of the loopholes in the current rules that facilitate irregular entry. However, Mediterranean countries typically have slower legal systems than the Netherlands or Switzerland. Hence it is naïve to hope that even rapid screening and smarter procedures will not create camp-like situations at the external border. They almost invariably will.

## **A big bet on returns**

Von der Leyen's plan is already under immense scrutiny as national officials query how sharing out irregular Mediterranean arrivals will reduce migratory pressures rather than acting as a 'pull factor' for smugglers. The Commission will offer reassurance in the form of an unprecedented effort to increase the return of failed asylum seekers up to 70 per cent, through a mix of cross-border logistical co-operation in Europe and international diplomacy with the migrants' home countries. To support the entire effort, Eurodac – the EU's antiquated asylum registry, which currently only deals with asylum applications – will be upgraded into a proper immigration database for the Union, including tools to better spot those migrants gaming the system.

Non-EU countries will be encouraged to take their nationals back through a mix of positive and negative incentives, from the carrot of significantly increased money in the EU's budget for migration-related diplomacy to the stick of restricted travel access to the Schengen area. For starters, the Commission wants a big push to return bogus claimants from countries enjoying visa-free access to Europe, such as Georgia or Albania. (Under EU rules, visa-free countries should not be a source of asylum applications but the reality is that they are.) When more irregular entrants are accepted back by governments, many more will choose to go home voluntarily, and less will come in the first place. This is the Commission's big bet to raise confidence in European migration management.

## **Europe needs a plan**

For almost a decade now, the boat people issue has divided the Schengen area. Despite Europe's unprecedented feat of saving well over half a million lives at sea, countries continue to blame each other for a phenomenon that is hardly exclusive to Europe but has rocked most wealthy democracies worldwide. Experience shows that even the most efficient, robust and fair asylum system is not sufficient without border co-operation arrangements in place with the coastal countries that surround the EU. These need to be developed alongside a concrete offer on labour migration that prioritises talent and an increasing emphasis on refugee resettlement. These elements of the Commission's plan bear further elaboration.

Over the coming two years, the EU's rotating presidencies – Germany, Portugal, Slovenia, France and the Czech Republic – have the job of turning the Commission President's asylum proposals into a workable consensus. In parallel, they should consider coordinating a single external diplomatic effort from Senegal to Turkey, in tandem with the Commission and EU External Action Service, following the same timeline and sensitive to events. A sophisticated

low-key external strategy, with deliverables tailored to national and institutional strengths, is the best chance Europe has to move on from a seemingly endless debate.

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