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Lessons Not Learned

Commentary on the EU's 17-point Plan and Its Alternative

As the massive refugee influx continues to grow, the European Union is attempting and failing to find effective solutions. The most recent such attempt was the meeting in Brussels at the end of October, which gathered leaders from Albania, Austria, Bulgaria, Croatia, Macedonia, Germany, Greece, Hungary, Romania, Serbia, and Slovenia. The result of this meeting was the 17-point plan of action (the Plan). This CEP Insight deconstructs the Plan and provides critique of its most controversial measures. Furthermore, the Temporary Protection Directive is presented, explained, and advocated for as an alternative solution to the current crisis. Finally, the article considers the repercussions of the Plan in the context of Serbia.

The humanitarian failings of the 17-point plan

According to the European Commission President Jean-Claude Juncker, [the Plan](#) is a set of “pragmatic and operational measures to ensure people are not left to fend for themselves in the rain and cold.” Sadly, we would argue that the measures in the Plan can be described as anything but *pragmatic* and *operational*. In reality, the measures are vague and actually threaten to leave people to fend for themselves, only somewhere the EU can't see them.

By focusing merely on shelter and rest, the Plan downplays the corpus of rights legally accorded to refugees. Moreover, measures concerning reception capacities are the only aspects addressing humanitarian needs related to the influx, while most of the points target border management.

The first set of issues of the Plan are related to the overall lack of clarity, detail, and acknowledgment of full refugee rights. One of the major proposals of the Plan is the increase in reception capacities along the Western Balkans (WB) route by 100,000, where 50,000 places will be located in Greece, while the other half would be placed in non-specified locations in the region. The Plan does not elaborate on the nature of these capacities, for example, whether they are meant to provide shelter and rest on a temporary or permanent basis, and whether the EU Member States, namely Slovenia and Croatia, will participate in this reception arrangement. Furthermore, by focusing merely on shelter and rest, the Plan downplays the corpus of rights legally accorded to refugees, such as access to safety, protection, education, and employment. In addition, given Greece's past and its [exemption from transfers under the Dublin system](#) in 2011,¹ it is inexplicable how it could be expected to treat these new arrivals adequately with regards to their basic human rights. Moreover, considering the current influx trends, these capacities of 100,000 places could be filled within two weeks. The Plan does not indicate why and how these numbers were chosen, nor how they will contribute to a “more predictable management of the flow.”² In fact, these measures concerning reception capacities are the only aspects addressing humanitarian needs related to the current influx, while most of the points target border management.

¹ M.S.S. v. Belgium and Greece, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011, available at: <http://www.refworld.org/docid/4d39bc7f2.html> [accessed 3 November 2015].

² Leaders' Statement, Leader's Meeting on refugee flows along the Western Balkans Route, 25 October 2015, 1.

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Border management: the problem, not the solution

The focus on border management is surprising, considering that it has clearly not yielded results, namely stopping the influx. [According to most recent data](#), over 724,000 people this year have entered the EU via irregular channels, avoiding all fences, borders, and walls. These numbers prove that borders are inherently porous and that people, in lack of safe, legal means of crossing them, are actually forced to, and not dissuaded from, taking desperate steps. As a recent [European Parliament study](#) explained: “the introduction of mandatory visas, carrier sanctions, and other border control measures, establish the conditions under which people engage in irregular, unsafe journeys, often using the services of smugglers.”³ Therefore, the part of the plan which proposes increased Frontex involvement at the Bulgaria-Turkey border, Croatia-Serbia border, and in Slovenia and Greece, as well as strengthening the external land borders of Albania and Macedonia, could be counterproductive. The same can be said about the focus placed on readmission agreements and the overall *management* of the migration flows. In fact, all of these points converge to make an ideal situation for smugglers and human traffickers, whom the plan ironically intends to tackle. In other words, through the Plan, the EU might be spending funds to heavily intensify problems related to irregular crossings and perilous journeys, and even more funds to combat the consequences of these counterproductive measures.

Frontex deployment to borders and the insistence on readmission agreements imply that the underlying intention of this plan is to attempt to enforce the Dublin system. Considering that the current mass influx transformed into a crisis due to the EU's expectation that peripheral Member States should deal with the influx, despite early warning signs that they could not (lower than average recognition rates in peripheral states despite the increase in *bona fide* refugees), the Dublin system is the main culprit for the lack of a coherent EU response. It is therefore inexplicable why the EU keeps insisting on a system which has clearly not achieved its goals and leads to human rights abuses.⁴

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An additional issue with the Plan is the EU's reliance on Turkey to act as a buffer zone between the EU and conflict areas. Currently, the [UNHCR states](#) that the number of registered Syrian refugees in Turkey has exceeded 2.1 million. Given this high number and the fact that refugees [cannot work outside of the refugee communities](#), which pushes them to take illegal jobs and expands the informal labour market, there have been instances of hostility between the local and the refugee populations. This state of play, as well as the fact that Turkey is not a safe third country,⁵ make the EU's intentions for Turkey a matter which can be detrimental to basic refugee rights. An additional argument could be made that it is hypocritical of the EU to insist on the [EU-Turkey Action Plan](#) given that Turkey accommodated over 2 million refugees, or 2.7% of its population. The EU, in comparison, with a population of around 503 million, would have to accommodate over 13 million people to be on par with Turkey.

Considering the lack of respect for refugee rights and the vagueness of the language and the solutions it offers, the 17-point plan of action can hardly be called a *solution*. Rough numbers indicate that the [expenditure estimates for 2014-2020](#) foresee 3.1 billion to be spent on the Asylum, Migration and Integration Fund, while 3.8 billion are intended for the Internal Security Fund. In sum, if so much of the EU's financial resources did not go into maintaining the Dublin system, with its borders and security

³ E. Guild et. al., Enhancing the Common European Asylum System and alternatives to Dublin, Study on a request by the LIBE committee, Policy Department C (2015), 8.

⁴ Eva-Maria Poptcheva, “EU legal framework on asylum and irregular immigration ‘on arrival’: State of play,” European Parliament Research Service (2015), 4.

⁵ In short, a safe third country is one the asylum seeker has a connection with, where their life and liberty are not threatened, which respects the principle of *non-refoulement* and presents a fair chance for the asylum seeker to apply for protection. A more comprehensive definition is available at: <http://goo.gl/0IT3A7>.

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costs, they could be devoted to assuring proper respect of refugee rights, not only shelter and rest, but also access to papers, employment, education, psychological services, and other rights accorded to refugees under the EU's asylum package.

EU's forgotten directive and potential solution

Possibly for the first time in recent history, some states competed to receive refugees under an evacuation programme... Even reluctant states signed on to sharing schemes. The refugees, in a sense, became too important to be left to UNHCR.⁶

While we would like to say this quote relates to the current refugee influx, it dates to fifteen years ago and the Kosovo refugee crisis when, in nine weeks, around 860,000 people, who were expelled from their homes and fled into neighbouring countries, were taken care of by the international community. Supposedly, lessons were learned since. In 2001, the Council of the European Union passed the Temporary Protection Directive (TPD), where “[the Council calls] on the Commission and the Member States to learn the lessons of their response to the Kosovo crisis [...]”⁷

In case of a mass influx of displaced persons fleeing areas of armed conflict or endemic violence, who are unable to return to their homes, the TPD provides immediate and temporary protection. It also alleviates pressure on the asylum systems of receiving states, because, unlike asylum protection, it applies immediately to all members of a specific group coming from the affected area. In the current situation, the TPD as a legal instrument could apply perfectly to Syrians seeking asylum in the EU.

Institutions such as the European Parliamentary Research Service have stated that, considering that more than 340,000 people have entered the EU from January to July 2015, compared to around 280,000 in all of 2014, it can be argued that the necessary conditions apply to trigger the TPD.⁸ Put simply, it would provide immediate refugee rights to Syrians who would benefit from them in any case and who make up [more than 50%](#) of the current asylum claims, while eliminating the time consuming asylum procedure. More importantly for host states, this would lighten the pressure which the

influx places on their asylum system and allow it to focus on processing claims from non-Syrian applicants. For the TPD to be activated, the Council would have to adopt a proposal from the Commission by a qualified majority, while the Commission also has to examine any such request by a Member State. A qualified majority in the EU means 55% of EU countries, representing 65% of the population. If we consider the [European vote on refugee quotas](#), where only the Czech Republic, Slovakia, Hungary and Romania directly opposed the quota system, it is possible to relate this situation to a hypothetical vote on the TPD. As these opposing countries constitute only around 9.1% of the EU population, it would not be a wild guess, but an educated assumption, to argue that a qualified majority could be achieved to trigger the TPD.

We would like to emphasise that, even though the TPD would alleviate the pressures of the current influx and is the most effective measure available within the EU, it is by no means a durable solution. While there are plenty of suggestions for reforming the Dublin system [coming from EU institutions themselves](#), they require time and analysis that the EU and refugees do not have. Consequently, in the current situation, where an immediate and efficient measure is necessary, the TPD would allow all stakeholders to gain time, while also providing protection to those who most require it.

⁶ “The Kosovo Refugee Crisis,” UNHCR (2000), 10.

⁷ European Union: Council of the European Union, Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof, 7 August 2001, OJ L212/12-212/23; 7.8.2001, 2001/55/EC, available at: <http://www.refworld.org/docid/3ddcee2e4.html> [accessed 5 November 2015].

⁸ “EU Migratory Challenge: Possible Responses to the Refugee Crisis,” European Parliamentary Research Service (2015), 8.

In the current situation, the Temporary Protection Directive would allow all stakeholders to gain time, while also providing protection to those who most require it.

The Plan's implications for Serbia

As addressed in our [previous piece](#), the response of Serbian authorities to the influx has been commendable in terms of open borders, police activity, and political discourse, as well as the civil society's response to the humanitarian needs of the refugees. Unfortunately, the Plan brings about new levels of uncertainty for Serbia and the refugees. Additionally, it cannot be disregarded that Serbia still has a refugee population from previous wars. Thus, even though the response of the local population has been mainly positive for migrants and refugees, given Serbia's lack of resources and infrastructure to provide for [refugees already in its country for twenty years](#), it is hard to see how Serbia could properly accommodate and give even temporary protection to potentially tens of thousands of people. Nonetheless, Serbian authorities are in the process of increasing Serbia's reception capacities to 3,000 and preparing a new law on asylum. Considering the vague and flawed nature of the Plan, it is difficult to give specific recommendations for Serbia. Serbian authorities should continue their collaboration with UNHCR, other international humanitarian organisations, and Serbia's own civil society organisations, in order to enhance the humanitarian response. Efforts should be put into mobilising volunteers on a national and possibly systematically on a regional level, considering volunteer input has proven crucial so far. Additionally, potential communities hosting refugees should be sensitised to their diversity and needs, while police and administrative authorities should be adequately trained to deal with vulnerable groups. This way, Serbia will be able to provide better protection to even those refugees and migrants simply transiting its territory in less than a day.

For the past decades, Serbia has had the EU to look up to regarding best practices and specific policies. Conversely, it seems now that the EU might be forcing Serbia to do something it itself is failing to accomplish. If playing the devil's advocate, one could argue that it would be better for Serbia and other WB states to remain non-safe third countries, rather than to risk, under the Plan, the readmission of hundreds of thousands of refugees they cannot adequately protect. In sum, while Serbia had a successful strategy while migrants were merely transiting its territory, finding a solution now to the complex situation created by the Plan might prove to be too hard to handle. As an EU candidate country, Serbia might well find itself in a similar position to that of the refugees: behind a wall and compelled to take dangerous steps to reach safety.

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