

ETUC RESOLUTION FOR A MORE EFFECTIVE PROTECTION OF MIGRANTS AND REFUGEES, THEIR LIVES AND THEIR RIGHTS ON THE EU'S BORDERS

Adopted at the Meeting of the Executive Committee of 3-4 December 2013

SUMMARY

- The dramatic events in Lampedusa provoked a wave of indignation throughout Europe and worldwide. It is one of the recurrent tragedies involving migrants on the border of Europe, notably in the Mediterranean Sea.
- The Southern routes of migration will be fed by wars and persecutions and natural events hitting the population in Africa and in the Middle East. The political instability of such areas reduces margins of cooperation with origin/transit countries.
- The EU Asylum and Migration Policy has progressed in recent years, but it still reveals domains in which EU instruments are not appropriate to effectively tackle current emergencies in a spirit of solidarity. Member States are less cooperative, legislation is fragmented and poorly enforced, resources for EU operations insufficient.

The ETUC:

Calls Member States to show greater cooperation for international protection of refugees as a long-standing feature of EU migration policy;

Calls for more legal channels for migrants, especially for refugees and people in need of international protection. Calls for the respect of human rights of migrants as enshrined in EU fundamental law and international conventions;

Denounces the unjustified criminalisation of undocumented migrants and disproportionate use of illegitimate detention, often in inhuman conditions.

The EU needs a solid anti-trafficking policy in which smugglers, traffickers and facilitators can be firmly persecuted. Cooperation with origin and transit countries cannot be limited to police operations but must be aimed at social and economic development of the less developed areas of the world.

The ETUC supports the European Parliament's proposals for a reformed asylum and migration framework at EU level. At the same time, the ETUC advances 4 urgent measures to tackle the current emergency:

EU institutions and agencies must be empowered to implement a genuine common policy for asylum and migration based on the respect of EU fundamental rights and international standards for the protection of migrants. EU institutions and agencies should be supported by adequate resources.

The refoulement of boat people should be replaced with the duty of search-and-rescue.

An EU Regulation shall remove any national legislation allowing prosecutions against those who provide assistance to people in need.

In areas exposed to disproportionate inflows, welcoming structures must be established under the EU umbrella, to help a more effective resettlement of migrants in compliance

with the Dublin II Regulation and in respect of fundamental rights as enshrined in EU law.

BACKGROUND

A European emergency

On 3rd October 2013, 366 migrants died after having crossed the Mediterranean on a precarious boat and a few meters from the coast of Lampedusa. It provoked a wave of indignation everywhere and threw a shadow of shame on the EU. Some national legislations do not make a definitive distinction between those providing humanitarian assistance or rescue at sea and “facilitators of unauthorized entries”. It creates further stress on the local population providing assistance to people in distress. Such wide solidarity shown by the local populations is at odds with the attempts of the institutions to criminalise people on their arrival without differentiating their status.

The Lampedusa event is one of the recurrent tragedies involving migrants on the borders of Europe, notably in the Mediterranean Sea. From Greece to Spain. New walls are created to impede people to circulate. The walls separating Spain from Morocco are equipped with blades which wound people (sometimes fatally), when attempting to climb over, exactly like the wall of a prison. Two kilometres of wall separate the Greek and Turkish borders in Evros. Thousands of migrants die attempting to reach Europe and are often depicted as criminals and treated as such. Migrants are too often deprived of their right to apply for international protection in a safe place¹. In many Member States asylum seekers are treated as criminals, and subject to long detention² often in inhuman conditions, whatever their status is. Operations of border patrolling run under the FRONTEX coordination are alleged not to do enough to abide by the European Fundamental Rights.³

Migration flows will not stop

Despite a sharp reduction in detection of undocumented migrants between 2011 and 2012, the risks associated with illegal border-crossing along land and sea borders remain among the highest, in particular in the southern part of the EU. FRONTEX alerts that “crisis situations are still likely to arise at the southern border, with thousands of people trying to cross the border illegally in the span of several weeks or months. Past experiences also show that these crises take their toll on human lives, and are very difficult to predict and quell without a coordinated response”⁴.

But Europe is not new in challenging mass influx of displaced persons, as seen in the wars in former Yugoslavia in 1992 and Kosovo in 1998/1999. It resulted in European Council decisions aimed at sharing the burden for giving protection to displaced people by providing solidarity mechanisms that were then defined in the Directive 2001/55/EC on the temporary protection of displaced persons in the event of mass influx. Unfortunately, in recent times Member States have not made use of this instrument⁵.

1 The shooting of migrants in Greece this year (2013) tragically follows similar events in Naples and in Calabria in previous years. We all remember the 500 migrants rejected at Spanish border and dispersed in the Sahara desert. The buffer zones of Ceuta and Melilla are used to push back migrants, denying many of them the right to seek asylum or international protection.

2 In this document the word detention means all measures that are restrictive of the individual freedoms and aimed at forced retention or permanence of people in migrants' centres,

3 <http://www.ombudsman.europa.eu/en/press/release.faces/en/52487/html.bookmark>

4 See Frontex Annual report 2012 and the Annual Risk Analysis Report 2013.

5 Directive 2001/55 establishes minimum standards for giving temporary protection in the event of a mass influx of displaced persons and to take measures to promote a balance of efforts between the Member States in receiving them and bearing the consequences of receiving such persons. Such burden sharing mechanisms are activated on a Council Decision at the request of the European Commission or Member States.

The shame to which Europe is subject today seems to be due to the impoverishment of a genuine cooperation rather than a scaling up of the migration phenomenon. Considering the instability on the Southern Mediterranean coasts and in the Middle East, as well as the dramatic effects of the global economic and political crisis and environmental changes, mass influxes are expected to happen but remain rather unpredictable. However, there is and there will still be a huge number of people legitimately seeking protection in the EU, and the Union has the responsibility to open its area of freedom to people in need of protection⁶. For these reasons the European Commission is advancing common patterns for asylum, temporary protection of migrants and the opening of legal channels.

The EU's Southern borders are fragile. The patrolling and control of the sea borders is a burdensome exercise often exacerbated by the capacity of criminal organisations to redirect migrant flows there where they detect loopholes in the frontiers' control. FRONTEX's figures on detected irregular entries show how irregular flows change routes year on year in the attempt to dodge controls⁷.

Political instability at origin and transit countries, also as consequence of the series of Arab Springs, makes cooperation with such countries as necessary as it is uncertain in the time span needed to deliver concrete results. More urgent measures are needed to make the Mediterranean area a safe place (both for EU countries and for migrants) while implementing a global approach to migration and mobility⁸.

An enhanced EU policy for asylum

EU Asylum Policy has progressed fast in recent years. The EU acquis provides a legal framework in which Member States can operate in a spirit of cooperation and fairness toward third country nationals in full respect of the EU Charter of Human Rights and international conventions. EU agencies and programmes ensure an operative arm to the common policy⁹.

Such progress clashes with the attitude of national governments, which jealously guard their competences on a matter to which their citizens are quite sensitive. The European

6 See considerandum 2 of the Dublin Regulation II (REGULATION (EU) No 604/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast))

7 An example of this is the Greek border. In 2008, considerable numbers of migrants were detected crossing illegally the border between Turkey and Greece. The situation changed significantly in August 2012 when the Greek authorities mobilised unprecedented resources at their land border with Turkey. The enhanced controls along the Greek-Turkish land border led to a moderate increase in detections of illegal border-crossing in the Aegean Sea and between Bulgaria and Turkey. Many migrants move on to other Member States, mostly through the land route across the Western Balkans (6 390, +37%) (FRONTEX)

8 The Global Approach to Migration and Mobility (GAMM) is, since 2005, the EU's framework for dialogue and cooperation with non-EU countries of origin, transit and destination (COM 2011(743) final).

9 The Dublin Regulation provides rules and criteria to allow a sharing of the burden for refugees. European Directives set common standards for dealing with asylum and protection of migrants and set rights of refugees and their families or third-country nationals entitled to international protection.

The Common European Asylum System (CEAS) in the short-term sets a clear and workable method for determining the Member State responsible for the examination of an asylum application. In the longer term CEAS will bring to a common procedure and a uniform status, valid throughout the Union, for those granted international protection.

The European Asylum Support Office (EASO) established in 2010, should provide solidarity measures, such as the Asylum Intervention Pool with asylum support teams, to assist those Member States which are faced with particular pressure and where applicants for international protection ('applicants') cannot benefit from adequate standards, in particular as regards reception and protection.

The EU Agency FRONTEX promotes, coordinates and develops European border management in line with the EU fundamental rights charter applying the concept of Integrated Border Management.

institutions are called in only when Member States are in clear difficulty, offering the loathsome prospect of a discharge of responsibilities.

The will of Europe is the will of national governments. The scope of action granted to the European Commission and EU agencies is the scope assigned to them by the Member States. For a common policy releasing its full potential, the European Commission should be empowered with a clear mandate and adequate resources.

Part of the EU acquis can be improved to better fit with the changing characteristics of migration flows. Despite the Temporary Protection Directive 2001/55/EC, and Qualification Directive 2004/83/EC (on Refugees and Subsidiary Protection) at least 60 different non-harmonised forms of protection status exist, making it more difficult to examine the situation in each country or to ensure the respect of minimum protection standards for migrants¹⁰.

The EU mechanism to resettle asylum-seekers is far from optimal. This deprives migrants of the chance to reach their desired final destination, where they may have a family member, a friend, a sponsor or a job opportunity. Moreover, the lack of an effective resettlement mechanism for refugees is seen as a loophole in the common management of the Southern external borders of the Member States.

Displacement of refugees is still possible under the Dublin Regulation scheme, but statistics prove that the resettlement of asylum seekers is limited to a handful of cases. Closer cooperation between national authorities and the EU institutions can trigger mechanisms of mutual support, through a balanced approach taking into account the population and the labour market availability of each country and also alleviating the situation of member states subject to disproportionate influx.

The EUREMA programme shows that current rules can already be a sufficient legal basis for triggering burden-sharing programmes in full respect of migrants' rights¹¹. FRONTEX-coordinated operations in Greece have offered EU support to the Greek authorities to enhance patrolling and control of land and sea frontiers, also helping them to start restoring respect of human rights in the detention centres¹².

Facing the emergency in the Mediterranean area

In the aftermath of Lampedusa, both the European Council and the European Parliament took a position to give new impetus to the EU policies while calling the Member States to assume their responsibilities.

The EU Council, in the conclusions of the summit (European Council Conclusions 24/25 October 2013 Point V: Migration Flows), recognises it is crucial to help detect vessels and illegal entries, contributing to protecting and saving lives at the EU's external borders. The European Council invites the newly established Task Force for the Mediterranean, led by the European Commission and involving Member States, EU agencies and the European External Action Service (EEAS), to identify - based on the principles of prevention, protection and solidarity - priority actions for a more efficient short term use of European policies and tools.

Once again the European Parliament goes further and urges the European Union and the Member States to do more to prevent further loss of life at sea. Assisting migrants in

¹⁰ EMN Study on "The different national practices concerning granting of non-EU harmonised protection statuses (2010)

¹¹ EUREMA (Pilot Project for Intra-EU Relocation from Malta) provides an organised framework for preparing and implementing relocation. The projects also provided funding for participating countries. In phase I and II, about 600 migrants have been relocated in 20 (EU and non-EU) European Countries.

¹² Frontex-Coordinated JOs (Aeneas, Hermes and Poseidon Sea)

distress and rescue at sea are among the key priorities of the implementation of the newly adopted EUROSUR system¹³.

The European Economic and Social Committee stresses a duty to guarantee immigrants' human rights, be it in detention or whilst on the high seas

Despite this progress achieved, the EU policy on migration and asylum suffers from evident shortages. The previous two chapters reveal domains in which EU instruments (legislation, policy measures and operational programmes) are not appropriate to effectively tackle the current problems and emergencies.

It can be attributed to some factors, inter alia:

- The attitude of Member States which show little interest in cooperating at European level. The commitments adopted in the above mentioned Council Conclusions appear more formal than substantial;
- The EU acquis is still too fragmented to produce satisfactory levels of harmonization or establishment of common standards. But most of all, the current EU legislation is formally transposed but barely enforced;
- Resources for operative actions at European level are insufficient compared to the size of the challenges that the EU commission and its agencies have to cope with.

ETUC RESOLUTION

Due to the inadequacies mentioned above, an ETUC resolution is needed on the specific topic addressed by the background analysis and on the basis of the general principles set by the ETUC Action Plan on Migration (adopted in March 2013).

The Action Plan affirms that in recent years we have witnessed an indiscriminate disregard of the fundamental international rules for asylum seekers and refugees as well as violations of the UN Geneva Convention. Member States cannot waive their responsibility vis-à-vis the international community and even more importantly vis-à-vis the obligation to respect human lives for those seeking protection or asylum.

The ETUC asks the EU to act as an example at global level and encourages Member States to ratify and enforce international standards protecting migrants and their families

The following points are for adoption by the Executive Committee.

ETUC POSITIONS

The ETUC affirms that greater cooperation among Member States on the international protection of refugees is a long-standing feature of migration policy. Member States cannot waive their responsibility vis-à-vis the international community and even more importantly vis-à-vis the obligation to respect human lives and human rights for those seeking protection. These objectives can be better achieved through the revision of the Dublin 2 Regulation¹⁴. Current procedures for resettlement under the Dublin II Regulation do not provide sufficient grounds for asylum-seekers to have his/her application for resettlement re-examined. Furthermore, the Regulation does not provide a solid basis for solidarity and mutual trust among Member States.

13 EUROSUR is the European Border Surveillance System, which establishes a mechanism whereby Member States' carrying out border surveillance can cooperate and share operational information with one other and with FRONTEX.

14 REGULATION (EU) No 604/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 establishing criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)

The ETUC stresses that progress achieved so far in terms of solidarity between Member States and fairness toward migrants has progressed at a slower pace compared to the magnitude of events on the opposite shores of the Mediterranean.

The ETUC calls for an enhanced policy on economic and social development with the sending countries in order to create the conditions for proper human development in less developed areas of the world thereby eliminating the reasons for forced migration.

The fight against human trafficking should be pursued without hesitation. Directive 2011/36/EU¹⁵ must be implemented and enforced in all Member States. A proper enforcement of the Employers' Sanction Directive¹⁶ should be a deterrent for traffickers, and a shelter protecting victims from exploitation at work. Employers must ensure appropriate remuneration and migrants should have the right to be assisted to effectively claim their rights.

The ETUC calls for greater transparency in ensuring legal channels for those in need of protection. In 2012, only 20% of applications for international protection submitted resulted in a positive decision. Too often Member States deny the right to international protection (ex. asylum permits) on a discretionary basis and for reasons other than the individual position of the applicant (for instance, when requests outnumber the permits they planned to release in any given year). Delivery of permits for reasons of international protection cannot be capped or subject to quotas but based on objective assessment of the situation of the person seeking international protection and the situation in his/her country of origin.

Furthermore the ETUC deplors criminalization of undocumented migrants, especially when exposed to degrading treatment or illegitimate detention. Undocumented migration, especially with the purpose of asylum seeking, can never be considered as a criminal offence and treated as such. Member States that adopted legal provisions in this sense should modify them and the EU Commission should monitor the process.

Within the context of the problems linked to third-country migration control, the ETUC strongly condemns every measure or means used which endangers human dignity or people physical integrity. We are particularly opposed to the means used today by the Spanish government – for ex. the use of blades to prevent immigration of people from the African continent.

Asylum applications should be processed within a limited and proportionate period of time and such a procedure should never imply illegitimate detention. Right of appeal against refoulement should be guaranteed.

The ETUC calls on all Member States to assume their responsibilities and show greater cooperation with EU institutions. EU initiatives and programmes should provide support and additional resources, and not replace responsibilities incumbent on member states. EU programmes and agencies should be made accountable to stakeholders to be sure they abide by fundamental rights of migrants when performing their tasks.

The ETUC maintains that any action implemented either in the framework of EU asylum and migration policies or by single Member States must be always respectful of human rights as enshrined in international law. The ETUC reiterates the call for the ratification of the UN Convention on protection of the rights of migrants and their families.

¹⁵ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

¹⁶ Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals

Cooperation with origin or transit countries is necessary in the framework of the global approach to migration in order to prevent irregular flows and tackle trafficking of human beings. Partnerships or agreements, concluded by either the EU or a Member State, should be conditional to the fact that the concerned third-country adheres to the international convention on human rights and fundamental rights of migrants and is in a position to ensure their enforcement. Euro-Mediterranean cooperation can be a platform enabling better management of migration flows and more effective tackling of humanitarian emergencies.

Member States should facilitate beneficiaries of temporary protection tools to obtain a different migration status when their protection scheme arrives to an end. Thus Directive 2011/51/UE must be transposed and enforced in all member states.¹⁷

The common migration asylum and migration policy is recent and therefore the scope of action of the European institutions has not been exploited to its full potential yet. The community method should prevail and the European Parliament should find a new centrality. It will allow a more transparent governance and greater involvement of stakeholders.

The ETUC supports the European Parliament resolution when it:

- Underlines the importance of responsibility-sharing to reduce the pressure on those Member States receiving higher numbers of asylum seekers and beneficiaries of international protection, in either absolute or proportional terms
- Supports the Commission's proposals to deploy a search-and-rescue operation from Cyprus to Spain and to strengthen FRONTEX by increasing its budget and capabilities;
- Calls for the Union and its Member States to consider the possibility of establishing mechanisms for identifying places of safety for the disembarkation of rescued refugees and migrants where disembarkation does not necessarily imply sole responsibility on the part of the state on whose territory people rescued at sea are disembarked;
- Recalls that EU solidarity should go hand in hand with responsibility and that the Member States have a legal obligation to come to the assistance of migrants at sea;
- Calls for the EU and the Member States to amend or review any legislation sanctioning people assisting migrants in distress at sea to clarify that the provision of humanitarian assistance to migrants at sea who are in distress is to be welcomed, and is not an action which should ever lead to any form of sanction;
- Calls on the Member States to respect the principle of non-refoulement, in compliance with existing international and EU law and put an immediate end to any improper and extended detention practices in violation of international and European law, and points out that measures to detain migrants must always be subject to an administrative decision, and must be duly substantiated and temporary.

ETUC PROPOSALS: FOUR URGENT MEASURES TO TACKLE CURRENT EMERGENCY

Having drawn general principles and the long-term measures needed, some actions are more urgent because next year thousands more migrants will start crossing the

17 DIRECTIVE 2011/51/EU of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection

Mediterranean Sea again. The four proposals below are aimed at removing rigidities in the current policies which become reasons for not assisting people in distress or to accept deaths that can be actually avoided.

FIRST PROPOSAL: EU institutions and its agencies must be empowered to implement a genuine common policy for asylum and migration and resources must be adequate to the tasks charged on them. They must be bound and made accountable to respect fundamental human rights as enshrined in the European Treaties.

The Treaties and secondary legislation clarify responsibilities between Member States and the EU. More Europe means more material resources and autonomy in managing them. EU institutions and agencies work with the facilities made available by Member States but they must go along with a greater budget to be autonomously managed. It would also have greater impact on the accountability of different public and private stakeholders that operate in this specific domain.

SECOND PROPOSAL: Replacing the pushing back of people boats with the duty of search-and-rescue in the sea.

The EU principle of non-refoulement, even though enshrined in article 78 TFEU is too often disobeyed. It includes also the “duty of rescue”, which is often denied, pretending not to sight boats adrift. The supreme principle remains the protection of human lives. The fact that criminal organisations attempt to gain advantage from this fundamental value cannot be a reason for waiving it. We will continue to be the EU, if we are able to put victims’ protection at the forefront.

THIRD PROPOSAL: An EU Regulation shall remove any national legislation allowing prosecutions against those who provide assistance to people in need.

It is possible to discern traffickers and facilitators from those providing assistance to people in need. It is not acceptable that whoever assists a person in need could be at risk of criminal or administrative sanctions. Based on art. 78 of the TFEU and on the EU Charter of Fundamental Rights, an urgent legislative initiative has to be undertaken, in order to ban any form of persecution for those who provide rescue to migrants at risk of life or to remove them from a situation of danger.

FOURTH PROPOSAL: Implementation of a programme called FRONTAID aimed at creating welcoming structures under the EU umbrella in areas exposed to disproportionate inflows in compliance with the respect of fundamental rights as enshrined in the EU law.

Under a specific project run by a EU agency, a number of welcoming structures should be established in Member States along the most exposed areas as the European Mediterranean shores. Under the FRONTAID programme, disembarked migrants would fall under the responsibility of the EU until all the preliminary procedures have been processed and then assigned to the competent Member State. The disembarkation of migrants (whose actual status is not detectable at the initial stage) does not trigger the “sole responsibility” mechanism, which assigns the migrant (and consequently any kind of procedure including the concession of asylum) to the concerned country.

The setting up of such FRONTAID welcoming structures would encourage search-and-rescue actions and discourage refoulement of migrants at sea. It would assist factual solidarity enabling intra-EU resettlement of asylum seekers according to the Dublin II Regulation provisions. It would speed up all the procedures concerning asylum and will avoid cases of illegitimate detention of the applicants.

Such welcoming structures will:

- Provide first-aid assistance;
- Start and manage procedures concerning identification of migrants;
- Proceed to a preliminary examination of an asylum application in order to point out the competent member state according to the Dublin II Regulation
- Cooperate with the competent member state to instruct an application for other kind of permits;
- Supervise the triggering of return procedures, when needed.

Such structures should take in charge migrants and namely those who are rescued in international waters (or found to cross land borders under dangerous conditions) and should aim to alleviate the position of states facing disproportionate influxes. They can also be pre-alerted in situations of humanitarian emergencies to anticipate predictable difficulty. Such structures are coherent with the efforts made for a more integrated and reinforced administrative cooperation to manage migration policies as EASO and FRONTEX, and with the involvement of the UNCHR, the FRA and relevant stakeholders.

FOLLOW UP

The ETUC and its affiliates will submit the positions and proposals in this resolution to the EU Commission, the competent EU agencies, the EU Parliament and Council, the member states' governments and any other competent authorities, in order to achieve the objectives of trade unions' strategies in the fields of refugees' and asylum-seekers' migration.