
The European Council and migration: any progress?

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Theme

The European Council has come up with a vague agreement, but it has avoided a political crisis and at the same time made more visible the seriousness of the migration challenge to the EU.

Summary

The results of the European Council of June 28, 2016 on migration were weak for their vagueness, but at least they avoided a break with Italy and defined much more clearly the battle lines. Many expected that the Council would reform the European asylum system, but the issue of irregular economic migration via the Mediterranean and the decision of the Italian government to not accept on its soil migrants rescued at sea by international NGOs upset the anticipated agenda.

Analysis

The European Council of 28 June 2018 faced a difficult political puzzle to resolve with little prospects for concrete results: to reach an agreement between the three different parts of Europe that are opposed on the migration issue and the two large currents of opinion that support opposing policies. On the one hand, Eastern Europe is in large part nationalist and Islamophobic; it is against any imposition requiring countries to accept refugees, especially from Arab countries; on the other hand, Southern Europe has become the front line of what is basically economic immigration, much influenced by the economic crisis –which Italy has not yet left behind– and the port of entry for immigrants who are difficult to fit into existing Southern European labour markets. Finally, the countries of Central and Northern Europe –once generous with refugees in the past but now in a restrictive phase, driven by a change in public opinion– now also receive ‘secondary migration’ flows. To this geographic divide must be added another more diffuse and cross-cutting divide (but no less influential for that) that pits those who see migration from the perspective of human rights and solidarity with the developing world and countries trapped in war, against those who prefer a perspective centred on the defence of a way of life, the Welfare State and the European labour markets. In the end, there was no way to reach an agreement which satisfied everyone.

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Let us take these issues one at a time. In the European Council, two political aspirations –not just different, but also antithetical– confront each other. Germany was planning to reach an agreement at the meeting on the reform of the European asylum system that, among other things, would reduce the continuing arrival to its territory of asylum petitioners who entered the EU through another country and who move on to yet another

country, whether or not they receive asylum in the first country of entry. Germany is the main destination of these so-called 'secondary movements' for a number of reasons (but especially because migrants prefer to live where a community of the same origin is already located). In this way, Germany's significant generosity in the past has made it a pole of attraction for such 'secondary movements'. Around 70,000 people arrived in Germany in 2017 in this way, crossing the Austrian border from the south and east. European asylum norms (ie, the Dublin rule) already anticipate that they will be returned to the first country where they were registered, and there is a fingerprint database (EURODAC) which allows the country to be identified. Nevertheless, the procedures are long and complex. The result is that Germany has only been able to return around 15% of the immigrants/refugees who should not be on German soil. What Germany achieved at the European Council meeting was some bilateral accords with various countries to make the process of returning 'secondary' migrants easier. It has already formalised agreements with Spain and Greece but has not yet done so with Italy, which is the main country of origin of close to 35% of the secondary entries reaching Germany. In any case, this is not an achievement of the European Council but rather of Germany's foreign policy: the only reference in the conclusions of the European Council in this regard is that the Member States should do everything possible to halt these movements (something which they supposedly already by applying the Dublin Rule).

Germany's need to halt secondary migratory movements is the result of the rise in the polls of the xenophobic Alliance for Germany party (AfG), which is now threatening the comfortable majority of the Christian Social Union (CSU) in the upcoming elections in Bavaria in October. Bavaria is the principal *Land* through which migrants enter Germany from the south and the leader of the CSU, Horst Seehofer, has threatened to return to the Austrian border all asylum seekers who enter Germany through this route. In response, the Austrian Chancellor, Sebastian Kurz, has said that his country will reintroduce border controls along the Brenner, the principal transport route for the heavy lorry-borne trade across the Alps between Italy and Austria and thence to Germany. The economic impact of such a slow-down in the transport flow of goods in the heart Europe would be worse than in any of the other cases where border controls have been reintroduced in the Schengen Area.

Avoiding such secondary movements is also important for France. In 2011 the first disputes between France and Italy were prompted by the entry into France from Italy of irregular migrants from Africa. There is a continual tension between the two countries over the issue and the conflict exploded politically with the Aquarius case. While French the French President, Emmanuel Macron, accused Italy of cynicism for rejecting the landing on its coasts of those rescued from the ship, the Italian Minister of the Interior, Matteo Salvini, reminded Macron that the French government was doing everything possible to prevent the migrants rescued from the Mediterranean and taken in by Italy from reaching French soil. In fact, due to French vigilance of the usual public transport entering France from Italy (mainly trains), many migrants choose a more dangerous crossing through the Alps on foot.

There are no European norms for regulating the internal management of irregular economic migration. There has been no attempt to 'communitarise' the issue of dealing with irregular economic immigrants that Member States cannot send back to their country

of origin because of the lack of readmission agreements with them. The EU only manages to deport 38% of those who are under expulsion orders, so that more than 60% of those arriving irregularly and not being granted asylum end up staying in Europe. There is nothing similar to the asylum system, so each Member State is expected to deal with this type of migrants as best it can once they are on its soil. Nevertheless, the norms regulating free circulation within the Schengen area do allow each Member State to reinstate border controls with any other country if there is evidence that irregular immigration has increased from any particular country. The EU, for its part, is increasingly active in foreign migration policy: its final objective is to secure the support of States of origin or of transit (basically African countries) to combat human trafficking and to facilitate the return of irregular immigrants who reach European soil and their readmission to their countries of origin. So far, bilateral agreements have been more successful in this regard: the much criticised accord between Italy and Libya reduced arrivals in Italy from that country by more than half, while Spain has agreements with Morocco, Senegal, Mauritania and other coastal countries of West Africa.

Despite knowing that the issue of deportation/return is the biggest obstacle preventing an effective control of economic migrant flows, the conclusions of the European Council ignore the fact and propose instead the creation of closed classification centres on European soil where those potentially to receive protection (asylum or refugee status) would be separated from the economic immigrants who should be returned to their countries of origin. But who will offer to host one of these centres knowing that more than half of the economic immigrants will remain free on their soil even with an unenforceable expulsion order in their hands. It is no surprise that no country has yet offered to do so. On the other hand, what is the difference between the proposed type of centre and the foreign internment centres that operate in Spain and in the rest of the countries of Europe and where immigrants remain for a maximum of only a few months in line with European regulations? Is someone in the EU thinking of changing the rules to lengthen the maximum length of stay at these centres?

Nor did the European Council give rise to any novelty regarding the possibility of making progress in the internal distribution of those who are given asylum. The Commission decision to impose quotas –widely disregarded and nearly impossible to manage because of the weakness of the so-called ‘hot spots’ and due to the shortcomings of European asylum rules– are not even mentioned in the Council’s conclusions. The word ‘quota’ has simply disappeared. Now they speak of voluntary distribution, which satisfies the demands of the Eastern Europeans but clarifies nothing with respect to how it is to be managed. The conclusions refer to progress in asylum reform, with no precise details, to be submitted to the next European Council in October.

On the other hand, the European Council proposed something that the Commission had already suggested in the past: the creation of receiving centres beyond European soil where the separation between individuals with the right to asylum and those without would be made. Before the European Council, two Member-states, Austria and Denmark, had announced their cooperation with a third country in Eastern Europe to set up a similar centre there, but the proposal now seems to have been ruled out. This model has an advantage from the EU’s perspective: those who do not receive the right to asylum but cannot be returned will not be on European soil, but rather in Egypt, Tunisia

or Morocco... which it is assumed will significantly reduce the incentive to migrate irregularly. In the past, the possibility was even suggested of opening up such a centre on a large passenger ship that would always be in international waters, beyond European jurisdiction. Australia has done something similar for many years, and although it has been heavily criticised from the human rights perspective, it appears not to be in contravention of international standards. Asylum seekers arriving irregularly by sea are diverted to the island of Nauru or towards Papua New Guinea where they can be held for years while their petitions are being processed.

The conclusions of the European Council mention the possibility, but with no further details being provided. In which country or countries will these 'regional landing platforms' be installed? All North African countries, along with Albania, have already announced that they are unwilling to take part. Should one of them prove willing in the future, depending on what the EU might offer, under what rules and with what staff would the centres operate? More importantly, from the perspective of the North African countries, what guarantee is there that the economic migrants –those whose asylum requests in Europe are denied– will be returned to their countries of origin or of transit? Will they not have the same legal problems as European states when trying to deport their irregular immigrants?

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The political fuse that made the European Council meeting so explosive, requiring 16 hours of negotiation to reach an outcome, was the political decision of the new Italian government to not accept the landing on its coasts of NGO ships devoted to rescuing immigrants close to Libya's territorial waters. None of the ships were sailing under Italian colours. The decision, implemented for the first time in the case of the ship Aquarius, posed the stark European dilemma: the Schengen free-movement area cannot be maintained if one State, applying European asylum rules, is obliged to retain on its soil many more immigrants than its population is willing to accept. Some elements in the equation will need to be modified, be it entry or distribution mechanisms or the general rules regulating the destination of those rescued at sea.

To start with, the European Council has given its explicit support to the Italian government, declaring that 'All ships operating in the Mediterranean must respect the applicable laws and must not interfere with the operations of the Libyan coast guard'. In other words, NGO ships must allow the Libyans to undertake the rescue, regardless of the fate of those rescued and returned to Libya. The result will be a clear decline in the number of arrivals in Italy, while the latter is supplying more patrol boats, reinforcing the Libyan government's capacity to better control its territorial waters. In turn, in reaction to news of the ill treatment and systematic violence to which migrants are subjected, the EU is trying to organise the voluntary repatriation of immigrants in Libya back to their countries of origin through two UN organisations: the International Organisation for Migration (IOM) and the UN High Commission for Refugees (UNHCR).

Conclusion

What the European Council has produced is a vague agreement, more declarative or rhetorical than executive in nature, but it does have two virtues: it has prevented a very troubling political crisis –the Italian government’s threat to veto all agreements– and it has brought to the fore more clearly than ever the seriousness of the migration challenge and its impact on the EU. The European Council has achieved this without making any substantial progress on anything, but rather by making statements that have allowed Italy’s Prime Minister, Giuseppe Conte, to claim that ‘Italy is no longer alone’ in the face of irregular immigration from the sea. Whether progress can be made from now on will depend on the Member States because although the pending asylum system reform is the responsibility of the Commission and European Parliament, everything related to irregular economic immigration –once migrants arrive in Europe– continues in practice to be in the hands of the Member States. Nevertheless, neither the European Council nor the agreements achieved with Germany’s Chancellor have been able to convince the CSU that secondary migration will be substantially reduced.

The ongoing confusion in the public debate and the media between economic migrants and asylum seekers makes it difficult to move ahead in finding a European solution. But the distinction is necessary to maintain some sort of coherence in the Member States’ and the EU’s migration management policies and to have some sort of long-term perspective on the issue. What makes the distinction difficult is that economic migrants might request asylum, which if accepted can guarantee them a certain period of legal residence while their cases are processed; on the other hand, all those who seek asylum fall under the Dublin rule, which is why they will not make the request in Italy if, for instance, their intended destination is Sweden or Germany.

While the number of refugees worldwide remains more or less constant –and there is no reason to expect a substantial increase–, the number of young Africans in need of opportunities keeps growing and will continue to do so until the end of the century for demographic reasons. It is clear that Europe does not have the capacity to resolve the problems that cause waves of refugees or poverty in Africa, but the people of Europe and their intellectual and political elites are increasingly conscious that Europe will be affected by the consequences of what occurs in Africa, a continent that for decades, since the end of decolonisation, seemed distant and far removed from their concerns. Point eight of the conclusions of the European Council reflects the need to have a greater presence in Africa, more effectively influence its economic growth and intensify contact in all fields. It remains to be seen if the conclusions translate into a financial and political commitment.