

BLOG POST 14.07.2017

The missing reflection paper on asylum policy

Marie Walter-Franke

Associate research fellow, Jacques Delors Institut – Berlin



cc Dennis Jarvis flickr.com

Under pressure after the shock of Brexit, the EU is seeking to reinvent itself. In March 2017, the Commission published a [White paper](#) outlining five scenarios for the future of the EU. [Five reflection papers](#) on individual policy areas followed. None was published on asylum and migration, although it figured prominently in the White paper. This blog post fleshes out what the five scenarios of (dis)integration could mean for the future of asylum policy in Europe.

The future of asylum policy: a blank sheet?

The [White paper on the future of the EU](#), published by the Commission in March 2017, pinpointed “Schengen, migration and security” as one of six building blocks of EU integration. Only the “doing less together” scenario foresees rolling back on asylum policy. Otherwise, deeper integration appears inescapable. As confirmed in the migration [factsheet](#) published after the Rome declaration: *“whatever scenario the Union decides to follow, migration and border policy will be crucial topics. [The] question [is whether] cooperation is systematic and effective, or not”*. The [Reflection paper on the Future of EU Finances](#) from June 2017 goes in the same direction, forecasting increased budgets for “defence, security and migration” in all scenarios except “doing less” (Table 1). It however gives little precisions on the respective weight of those three elements.

Scenario	Integration in ‘Schengen, migration & security’	Funding for ‘security, defence, migration’
1 Carrying on	Cooperation in the management of external borders stepped up gradually; progress towards a common asylum system; improved coordination on security matters	Higher share
2 Doing less together	No single migration or asylum policy; further coordination on security dealt with bilaterally; internal border controls are more systematic	No funding
3 Those who want more do more	As in “Carrying on” except for a group of countries who deepen cooperation on security and justice matters	Higher share partly covered by willing Member States
4 Radical redesign	Cooperation on border management, asylum policies and counter-terrorism matters are systematic	Significantly higher share
5 Doing much more together	As in “Doing less more efficiently”, cooperation on border management, asylum policies and counter-terrorism matters are systematic. Joint position on migration in common foreign policy.	Significantly higher share
Extracted from:	Commission White Paper on the future of Europe (March 2017)	Reflection paper on the Future of EU Finances (June 2017)

Considering the cruciality of asylum (and migration) policy, it is surprising that no reflection paper specifying cooperating and financing arrangements is foreseen. This blog post fills part of the gap by exploring the five integration scenarios for asylum policy.

1 'Doing less together': Unlikely, unworkable.

Contrary to what one might think intuitively, the Commission's scenario 2 is no easy option. For starters, it would require extensive treaty change. The end of Schengen would mean the return of border controls by 2025 with considerable impact on the single market. Human smuggling would likely get a mighty boost.

This scenario is unlikely. Member states cling on to the Dublin system, the only model they could ever agree on for the management of undocumented arrivals. We can thus expect a version of Dublin to remain, possibly outside the Treaties – which is where it started. If the rest of the asylum system is abandoned, this scenario appears rather unworkable. The variation in procedural rights and entitlements, already an issue due to defective compliance, would increase. This would annul the effectiveness of any Dublin arrangement. Indeed, states remain bound to their obligations under international and European human rights law. The European Court of Human Rights, from which a large body of provisions codified in EU law emanates, would continue to condemn restrictive human rights practices and, if necessary, stop Dublin transfers.

2 'Carrying on': Flexible, but arbitrary solidarity

“Carrying on” (scenario 1) is a slightly enhanced version of the status quo. The EU would agree on reformed directives allowing less flexibility in the implementation, the prerogative of member states. Whether this would close the compliance gap would depend on political will and a substantial strengthening of EU oversight. A compromise on an EU Asylum agency [was just reached](#) with the European Parliament by the Maltese presidency, which is a positive sign in this direction.

As can be derived from the Reflection paper on finances, the share of asylum – as part of a security package including defence – would increase. In the heat of the refugee crisis, the German development minister for instance proposed a tenfold increase of the Justice and Home Affairs budget to 10% of the overall EU budget.

Despite these improvements, fundamental issues are likely to remain due to the lack of built-in solidarity. In the most optimistic version of this scenario, member states would agree on a corrective mechanism in case of “mass influx” as proposed in the [Dublin IV recast proposal](#). This would entail the redistribution of applicants from the moment a member state faces the arrival of 150% of its national quota. Beyond that crisis mechanism, solidarity would remain voluntary

and thus often arbitrary. Ad hoc solutions such as the resettlement and relocation schemes may be agreed upon, but experience suggests that compliance would remain hard fought.

The minimum common denominator would remain the current focus on security and control, in particular securing external borders. Externalisation efforts would continue with the EU seeking partnerships abroad with neighbours and transit countries along the EU-Turkey Deal model.

3 ‘Doing much more together’: Integration to its full potential

If it materialises, scenario 5 would acknowledge that common challenges must be tackled together, opening the way for the full realisation of the Treaties. Many governments being opposed to further integration, it is not surprising that details on the outlook of that scenario remain scarce.

The [White paper](#) states that, by 2025, cooperation would be systematic on border management, asylum policy and counter-terrorism. What “systematic” means is only hinted at in the description of the “radical redesign” scenario that also applies for full integration. A single European Asylum Agency would process all asylum claims, a Counter-terrorism Agency would be created and external borders would be managed by the newly created European Border and Coast Guard. In addition, as stated in the Finance reflection paper, the budget would be significantly increased. The extra element in “doing much more together” is that EU27 would act as a block in foreign policy, with a reinforced joint approach on migration.

Should the EU27 commit to this scenario, existing arrangements would see a thorough transformation. How the centralised processing of asylum claims could look like was elaborated upon in the Commission’s Communication “[Towards a reform of the CEAS and enhancing legal avenues to Europe](#)” from April 2016. National asylum agencies would become ramifications of an EU-level first instance decision-making agency, complemented by an EU-level appeal system. The EU Agency would determine the geographical spread of refugees through a distribution key based on GDP, population, unemployment, and number of refugees previously welcomed.

The Agency would also oversee reception conditions in the member states, though no monitoring model is put forward. A possibility could be binding recommendation along a European Semester model. In addition, slackers would have to face swift infringement proceedings, and individual rights with direct effect would be enforced through national and EU Courts.

As specified in the [Reflection Paper on Finances](#), the budget allocated to JHA would be significantly increased. This would allow for a sustainable financial solidarity system to

mutualise the basic cost for each refugee. The budget should also provide for sufficient flexibility and reserves for fast, effective common action in future crises.

4 'Radical redesign': Asylum as a core policy?

Under Scenario 4, integration would deepen where the EU has added value, while all other fields would be renationalised within a few years. Besides innovation and trade, “security, migration, the management of borders and defence” are the areas pinpointed for deeper integration. The overall budget would decrease but the share dedicated to “security, defence and migration” would be significantly higher than in ‘carrying on’.

As in the full integration scenario, the [White paper](#) suggests that cooperation would be systematic on border management, asylum policy and counter-terrorism, and few details are provided. The big question under this scenario is whether some migratory matters would be fully renationalised, for instance visas and humanitarian policies. This would sit oddly with the ambition for the EU to speak as one in foreign policy including external aspects of migration. In negotiations with third countries, visa liberalisation is often the ‘carrot’ number one.

Would such a new division of labour be more in line with the principle of subsidiarity? This question is worth an argument and EU citizens and national parliaments deserve to be asked. But free movement means that migration is inevitably a pan-European issue. In light of this transnational character and the opportunity costs of fragmentation, this road is not advisable.

5 'Those who want more do more': Enhanced cooperation

A differentiated integration scenario would allow a smaller group to progress towards the Treaty’s ambitious goal of a common asylum policy. There are two possibilities. Based on Article 20 TEU, an enhanced cooperation could be set up. As Valentin Kreilinger [explains](#), this procedure is rarely used since many conditions must be fulfilled. A minimum of 9 member states must take part, the Council must confirm that it is a last resort measure and the European Parliament must approve. Informal enhanced cooperation would be the alternative. It would be more flexible, but would remain outside the EU framework and *acquis communautaire*.

The core group of participating member states could include frontline countries such as Greece, Italy and destination countries (Germany, Sweden, France) in addition to a critical mass of integration-friendly partners. Burden-sharing is an area where things could move forward. A year ago, the French and German foreign ministers [declared](#): “if necessary, Germany and France

stand ready to proceed on this matter with a group of like-minded partners”. After Italy’s call for help, Macron and Merkel [committed](#) on 6 July 2017 to increase the speed of relocation. The same day, the Tallinn JHA council failed to agree on concrete support measures. This demonstration of the EU28’s lack of solidarity is a further argument for (informal) enhanced cooperation. If they can harness sufficient political will, France, Germany and Italy could take the lead.

In theory, the level of ambition could even surpass the full integration scenario. One example could be an intergovernmental fund through which the cost of welcoming applicants could be mutualised. Another example could be a [preference-matching scheme](#) taking into account the needs of local communities and wishes of migrants as well as those of the member states. Such projects could become game changers for the future of EU asylum policy.

Conclusion: the way to go.

Tensions on EU asylum policy run deep between member states. At the moment, anything beyond a slightly enhanced status quo seems out of reach. But challenges remain and common solutions are needed. Full integration at 27 would be preferable to live up to the EU’s collective responsibility towards refugees and EU citizens. Politically, however, it is “Zukunftsmusik”. Policy-makers could change their minds through positive experience with stepwise integration.

As a middle way, we could thus imagine a combination of “carrying on” at 27 with elements of enhanced cooperation. The hope is that an avant-garde of member states would move ahead and that some of the laggards, notably the Visegrad countries, would join later. If the situation on the Italian shores continues to worsen, France and Germany might take action. Their [demonstration of solidarity](#) with Italy in Trieste on 12 July is a further step in that direction.

For this vision to materialise, we need serious incentives. As emphasised by the Commission reflection paper on finances, negotiations on the next multiannual financial framework will be key. A transnational challenge requires collective resources. Without proper funding within or outside the EU budget, deeper integration could well remain a distant dream.