



Analysis

EU/Italy

Commission requires large scale abuse of migrants for relocation to proceed

Yasha Maccanico
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On 15 December 2015, the Commission's [“Progress report on the implementation of hotspots in Italy”](#) was sent to the European Parliament and the Council, calling for further progress to be made in the fields of hotspots, relocation, returns, border management and reception capacity. Lamenting the slow progress in implementing “European Union Law” to build a “Common European Asylum System” in mid-October, the Commission called on Italy to “operationalise all hotspots”, make “full use of the existing detention capacity” while reforming norms on detention and ensuring “swift” transfers to either “second-line reception facilities” or “detention centres”.

The report notes a decline in arrivals based on Frontex data indicating that in November, less than half the number of migrants who arrived in October reached the Italian shores (down from 8,529 to 3,227), a limited number of whom were citizens of the nationalities eligible for relocation.

The report's “general overview” section highlights that only one hotspot (in Lampedusa) out of six which the Italian government designated in its roadmap is “fully operational”. Two others (Pozzallo and Porto Empedocle/Villa Sikanìa) are set to open shortly, while the remaining three (Taranto, Trapani and Augusta) require more work and will not be open before 2016. The decrease in arrivals is interpreted as an opportunity “to ensure that the hotspot concept is thoroughly rolled out and that any shortcomings identified so far are addressed”. This requires stepping up efforts regarding “infrastructure, equipment, staffing and the organisation of hotspots” to make them “as efficient as possible” for “screening, document checks, fingerprinting and registration” purposes. This should guarantee that “migrants are properly informed and channelled to either the asylum procedure (including relocation) or return procedures”. Member states are called upon to “deploy more experts to Italy”, while Italy is called upon to work “on the legal framework for hotspots”, with assistance from a three-person Commission team which is permanently stationed in Italy.

The only operating hotspot in Lampedusa includes a registration workflow enacted with support from Frontex and the opportunity to apply for asylum and relocation with support from EASO. The

Italian government has set up “coordination groups” to implement hotspots in November 2015, in which the European Commission, EU agencies and UNHCR are invited to participate. One such group is preparing “standard operating procedures” for hotspots. Frontex staff will increase with the deployment of 165 additional experts, notably for document screening, joining its 52 experts who are currently on location. Improvement of Europol’s role in the hotspots following the attacks in Paris is envisaged.

Systematic checks are only performed on the national Automated Fingerprint Identification System (AFIS) and the Commission notes the need for “interconnections between national and EU/international databases” to enable automated full checks of arriving migrants against the SIS II and Interpol’s Stolen and Lost Travel Documents (SLTD) databases. Emergency interior ministry applications are expected to fund cameras, fingerprinting machines and interpretation capacity, to increase “the screening and fingerprinting capacity”. Italian authorities are also updating software to increase efficiency and avoid double fingerprinting. A new IT system connecting state police departments to enable an integrated workflow to handle migrants will be rolled out as of February 2016, making the photograph and fingerprint data collected by the scientific police available to the border/immigration police. Disembarkation procedures are being updated “to further develop the hotspot concept”, while Frontex is testing solutions to “ensure swifter processing in hotspot areas”. Italy and Frontex are monitoring developments in the Adriatic Sea with a view to expanding the operational area of JO Triton if there are any spill overs from the Adriatic coast. The Commission issued a Letter of Formal Notice against Italy for failure to correctly implement the EUODAC Regulation on 10 December 2015, due to “discrepancies” between the number of migrants who arrived (65,050 according to Frontex from 20 July to the end of November) and new entries in the database (29,176).

Actions that the Commission expects Italy to undertake in the short term include opening the two hotspots in Pozzallo and Porto Empedocle/Villa Sikanìa by the end of 2015 and refurbishment work in the other hotspot sites with a view to them opening by the end of February 2016. Medical presence in hotspots should be increased to “enable a multiplication of screening and fingerprinting lines, streamlining the overall time it takes for a migrant to complete all steps/formalities in the hotspot”. It is worth noting that this medical presence is described in terms of improving processing times rather than avoiding cases of contagion or contributing to improving the health care provided to migrants. Legislative efforts are needed to “provide a more solid legal framework to perform hotspot activities and in particular to allow the use of force for fingerprinting and to include provisions on longer term retention [sic] for those migrants that resist fingerprinting”, to make it possible to reach the “100% fingerprinting rate” target which should be achieved “without delay”. The extension, improvement and clarification of the role played by Europol is envisaged “to step up investigations against migrant smugglers”, including standard provisions for the Italian police and judicial authorities to exchange data in real-time with Europol staff deployed in Italy and its headquarters in The Hague through the SIENA system. The updating of existing IT systems is envisaged to enable the interconnection between national, EU and international databases to fully check arriving migrants against the SIS II and Interpol STLD databases. A system of air transportation should be established for transfers from hotspots to the Italian mainland, which could receive support from the Asylum, Migration and Integration Fund (AMIF).

The state of play section concerning “relocation” notes that relocation flights began on 9 October, carrying 19 asylum seekers to Sweden. It was followed by flights carrying 125 asylum seekers to

Finland, France, Germany, Spain and Sweden, with support from the IOM. Further flights were scheduled to transfer asylum seekers to Belgium, Portugal, Spain, France and Latvia, 186 relocation candidates have been identified, and 171 requests by the Italian authorities have been addressed to member states. Twelve member states have made 1,041 places available for relocation and nineteen member states have appointed liaison officers for this purpose. Information is provided to refugees in hotspots (Lampedusa) and disembarkation points and hubs, EASO has deployed four experts and a grant has been signed with UNHCR to support relocation, particularly as regards the provision of information to asylum-seekers. Extraordinarily, considering that very few places have been made available by member states and even fewer have been carried out, point 5 of the section on relocation claims that:

“The relocation process from Italy is currently affected by a lack of potential candidates due to a low level of arrivals concentrated on nationalities not eligible for relocation.”

The Commission will support the relocation procedure and related transfers by making 500 euros available for every relocated person through the national AMIF for Italy, which has reached an agreement with the IOM to cover the cost of such transfers. IOM involvement includes pre-financing transfers while awaiting signature of the formal grant agreement and putting forward an emergency application for actions including “pre-departure orientations and health checks to ensure safe and dignified travel” to support the relocation procedure. The Italian authorities are coordinating a working group involving the European Commission, EU agencies, IOM and UNHCR which meets regularly to optimise the relocation process. Three European Commission officials in Rome are providing targeted legal support, with legal clarifications provided in “several cases”, “most importantly to facilitate the exchange of fingerprinting among Member States”. A Relocation Forum was planned for 16 December 2015 in Brussels.

As for “what still needs to be done”, six points are listed, including production of “a common narrative to inform migrants” in the hotspot and relocation procedure, which is underway; “a dedicated workflow to allow the transfer of unaccompanied children” in the context of relocation, to be developed by the Italian authorities by early 2016; EASO is to “swiftly deploy cultural mediators alongside its teams” to increase its impact and “not rely on national authorities”; response time to relocation applications by Italy should be reduced by member states, which should also “further increase their pledges and “extend the validity of their pledges” in view of decreasing levels of arrivals; and further optimisation should be undertaken in line with the working group’s recommendations and those of the 16 December 2015 Relocation Forum.

The “state of play” regarding returns (section 3) cites Italian data claiming that 14,113 persons were returned from Italy in 2015, many of them “before the start of the rollout of the hotspot approach”, and that Italy participated in 11 joint return flights coordinated by Frontex. This section points to bilateral operational agreements which are in place with Egypt and Tunisia enabling “48 hour return procedures” as positive examples, with Italy working to secure similar agreements with key African states such as Senegal, Nigeria and the Ivory Coast. The Commission is an observer in the process, seeking to assist Italy. There have been no assisted voluntary returns (AVRs) from Italy since July 2015 following expiry of its grant agreement with IOM, and a new AVR programme should be in place “only as of spring next year”, due to delays in national procurement procedures. The final point is chilling, in view of its implications in terms of involving officials from refugees’ home countries in the identification process in hotspots:

“Consular liaison officers from several African countries will be posted in Italian hotspots in order to support the screening and the re-documentation in order to ensure swift returns.”

The Italian authorities “still need to” strengthen their dialogue with main countries of origin and streamline their administrative procedures to ensure “swift forced returns”. Further, the decrease in the “proportion of migrants that are not in need of international protection” by over 50% according to Italian authorities (based on exclusion from relocation of any nationality other than Syrians, Iraqis and Eritreans) means that the Italian detention capacity (604 places) is deemed “insufficient”. The document calls for “full use of the existing detention capacity” and for consideration of “(urgent) planning for (temporary) enlargement of Italy’s detention capacity”. A tender issued by Italy should enable resumption of the AVR programme “to reduce the significant caseload of people ready to return”. Engagement by the Commission with third countries to secure readmission agreements affecting migrants “which are not entitled to international protection” is envisaged, with support from MSs and “targeted use of the Trust Fund for Africa”.

The “state of play” concerning “improving border management” (section 4) refers to Frontex operation Triton deployed in the central Mediterranean with 4 Offshore Patrol Vehicles, 2 Fixed Wing Airplanes, 2 Helicopters, 5 Coastal Patrol Vessels, 1 Coastal Patrol Boat and 2 mobile Offices. It has “contributed to saving” 56,163 lives at sea since its deployment began, “improvements are being tested ... to facilitate disembarkation in the context of hotspots” and extension of its operational area is being discussed by Italy and Frontex in the light of “possible spill overs from the Western Balkans route”. The EUNAVFOR MED military operation against smugglers entered Phase 2 (Operational/Seizure of Smugglers’ Vessels) on 7 October 2015, deploying 7 surface naval units and 6 air assets.

As for what needs to be done, considering the risk of an increase in “arrivals on the Slovenian-Italian border”, Italian authorities are called upon to “develop contingency plans including the possibility of requesting additional help from Frontex/EASO”. Member States should ensure assets for both the Triton and EUNAVFOR MED operations are made available.

In terms “reception capacity” (section 5), the Commission document cites Italian data indicating a “reception capacity for asylum seekers of 101,933 places including hotspot areas” comprising 19,715 in the local council-managed SPRAR network (System for the Protection of Asylum Seekers and Refugees), 7,663 in Reception Centres for Asylum Seekers (CARAs) and 74,555 in Centres of Special Reception (CAS). The Commission deems it adequate. Dedicated reception facilities for reception have been identified (in Villa Sikania, Crotone, Bari and Castelnuovo di Porto, near Rome), Italian asylum processing capacity has been upgraded (with 41 territorial commissions now operational) leading to a reduction in its backlog “in the past months”, and an overhaul of the system is being considered by Italian authorities with a view to “increasing efficiency” and “streamlining procedures” for appeals.

The Commission argues that Italy should continue reforming its asylum system and reception system towards achieving “a leaner asylum procedure in particular concerning the appeal process” and “reduce the fragmentation in the quality of decision making across the country”. Enhancing monitoring to reduce differences in reception conditions and to avoid risks of corruption in the management of reception is encouraged, while “a single database” should be developed to link the “asylum and reception processes” to help manage the flow. Tender concerning flights for the

transfer of migrants should be concluded “without delays” and the Commission may support it “as a stopgap measure and for a limited period” until the tender is in place.

Comment: Fingerprinting as the new imperative at the frontier

Greece and Italy are being pushed to develop mechanisms which undermine their sovereignty and have played an important role in creating the crisis which the EU has recognised as existing in the two countries by seeking to enact an emergency relocation procedure. The failure to include a suspension of any “Dublin returns” to Italy and Greece in general, or at least as regards citizens of the nationalities eligible for relocation, is a demonstration of “bad faith”. Fingerprinting is an important clog in servicing the Eurodac database on which the system for assigning responsibility for processing asylum applications set up under the Dublin Regulation and its successors relies. The system’s key purpose is to ensure frontline states such as Greece and Italy’s long-term responsibility for any asylum seekers who entered the EU through their borders regardless of their wish to remain there. It reflects unrealistic policy approaches whose structural features appear to set them up for failure, resulting in the routinisation of resorting to operational measures and practices which transgress legality, sometimes after emergencies are declared. It is in this context that the role played by this system as a crisis-generating mechanism to enable an expansion in the role of EU institutions and agencies becomes apparent, all the more so as attempts to enable Frontex and the Commission to assume a commandeering role in reception procedures is now apparent.

1) The hotspot approach promotes approaches including the wholesale discrimination of migrants who arrive based on nationality, using acknowledgement of the likelihood of certain nationalities being genuine asylum seekers to exclude all others, on the basis of statistical indicators and contravening refugee law. Thus, in Italy, the criteria of people in “evident need of international protection” for admission to relocation procedures applies to citizens of countries which Eurostat data indicates as having their requests for international protection granted in at least 75% of cases (Siryans, Iraqis and Eritreans). This means that all other nationalities are subjected to procedures whose ultimate goal is their return to their country of origin or to so-called “transit” countries which they have travelled through. The process of nationality screening on which the hotspot system is based was criticised in November by UN Secretary General Ban Ki-Moon: “Profiling asylum seekers on the basis of their alleged nationality infringes the human right of all people to seek asylum, irrespective of their nationality and to have their individual cases heard”.* Ban Ki-Moon also argued that the “collective expulsion and return of asylum seekers were strictly prohibited under international law”. Yet it is the course of action that the EU has decided upon, considering that the bilateral operational agreements Italy has struck with Egypt and Tunisia enabling summary returns (in 48 hours) are considered a model to be pursued with other sub-Saharan African countries.

2) The emphasis on fingerprinting, with a view to achieving a target of “100% fingerprinting rate for arriving migrants ... without delay” conceals the violence that this approach requires, with the explicit call for the use of force appearing in official documents. The Commission calls for Italy to introduce “a more solid legal framework ... to allow the use of force for fingerprinting and to include provisions on longer term retention for those migrants that resist fingerprinting”. Such explicit calls for Italy to pass unlawful legislation which explicitly countenances large-scale human rights violations is stunning, all the more so as its purpose is to feed a system whose dysfunctional nature has played a key role in producing the “crisis” which emergency procedures are seeking to

resolve. The positions of Italy and Greece are undermined by the system they are called upon to develop and implement, which makes a lack of enthusiasm in implementing them understandable, particularly in view of the slow progress being made in terms of relocations, with exceedingly low numbers of places made available (1,041 out of a total of 160,000).

3) The recent emphasis on developing the EU's asylum system reflected an imbalance between the development of justice and home affairs aspects of immigration policy and those to ensure respect for human rights, in particular through a working asylum system. Yet, it has been used to justify a parallel intensification of the EU's border management system, particularly through attempts to expand the role played by Frontex and the EU institutions (notably the Commission). This "state of play" document reveals an attempt by the EU Commission and agencies (Frontex and Europol) to commandeer reception operations in parts of European Union member states which their restrictive approaches have turned into deposits of human misery where death has become customary. Italy and Greece are now experiencing comparable pressure and tactics to those enacted towards neighbouring third countries, involving the EU committing to assist them in resolving emergency situations its policies have caused in exchange for their engagement in abusing third-country nationals. The working method is to exchange EU funding and relocations to other Member States in exchange for the large-scale violation of rights, expansion in the capacity of detention centres and in the length of detention, alongside summary returns which in some cases may result in violations of the non-refoulement principle (as the *Khlaifia vs. Italy* case of September 2015 in the European Court of Human Rights indicates). Operative bilateral readmission agreements based on the Italian-Egyptian and Italian-Tunisian are the chosen path for doing so, demonstrating how human rights violations are steadily being converted into best practices in both European Commission and Frontex documents.

4) The emphasis on fingerprinting, including a Letter of Formal Notice issued to Italy on 10 December 2015 shows how, once again, security and policy concerns are being placed ahead of the humanitarian needs of migrants and refugees. This reflects a drive towards the assertion of authority and coercion towards both migrants and frontline states, disregarding that the dysfunctional system created by the Dublin Regulation is in urgent need of reform. Italy and Greece are facing situations produced by this system which make them liable to suffer blackmail and coercion and their only means to comply with requirements are the implementation of widespread human rights violations and a Dublin-system compliant approach which undermines their position. Absolute policy goals (such as the "100% fingerprinting rate") are being used as an excuse to undermine their sovereignty and expand the EU's immigration policy enforcement infrastructure.

5) There is scant mention of the ridiculously low level of support which member states are offering in the context of the relocation procedure which has been developed "for the benefit of Greece and Italy", in terms of both places for relocation and funding. These should reach an acceptable level before the two countries are required to adopt further measures and any Dublin returns to these two countries, particularly of the nationalities recognised as eligible for relocation, should be suspended. The present crisis is clear evidence of the need to reassess and either reform or abandon the Dublin system, so advances in the humanitarian dimension of the crisis should prevail over concerns over the effectiveness of its implementation, particularly as regards fingerprinting.

* UN decries stopping refugees at borders, Euractiv.com 25.11.2015

<http://www.euractiv.com/sections/justice-home-affairs/un-decries-stopping-refugees-borders-319802>

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