

Berlin Perspectives

Analysing German European Policy

How to break the downward spiral and double standards in the EU's migration policy

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To safeguard the values of the European project, Germany's government can do more to protect migrants crossing into the EU. A values-based approach by a few countries to circumvent veto-positions among EU member states can counteract double standards and a dysfunctional EU migration and asylum policy.

Asylum as an international obligation is one of the fundamental values that the member states of the European Union have committed to. The migratory flows from Ukraine since March 2022 as well as from Africa and the Middle East via Belarus since August 2021, although different in context, required the same values-based response from the EU. However, a dysfunctional EU migration and asylum policy as well as double standards among member states have led to unprecedented solidarity in the Ukrainian case but an inhuman response in the Belarusian one.

The EU member states and institutions have acted unexpectedly quickly and un-bureaucratically to support people fleeing Ukraine. They unanimously agreed on 3 March 2022 to activate for the first time the 2001 Council Directive 2001/55/EC on dealing with a mass influx of displaced persons. Since 2017, Ukrainians had already been able to travel to Schengen Area countries visa-free for up to 90 days. The use of the directive guarantees now temporary protection for up to three years without individual assessment for either Ukrainians or third-country nationals who have a valid residence permit in Ukraine. This solidarity from the EU is right and necessary. Nevertheless, the fact that the EU did not activate the

directive in 2015-2016, when Syrians fled war in their country, indicates that its asylum and migration policy is dependent on several aspects. The case of Ukraine makes clear there are a temporal one (an extremely rapid wave of one million people fleeing after only one week of war), a geographical one (proximity to the EU), a legal one (status of visa facilitation) and a cultural-religious one (similar cultural identity and a common sense of belonging to the Western world).

Millions of migrants from Ukraine have crossed into the EU since March 2022, and they have been welcomed with open arms, including by countries such as Poland that have always had strong anti-migration policies. At the same time, an opposite reality is unfolding not far to the north. In a 3km area in Poland along the border with Belarus, thousands of migrants, who have been trying to enter the EU irregularly since August 2021, are trapped without food, shelter or the certainty to be able to file an asylum application. This is the result of what the EU has called a 'hybrid attack' that Belarus's President Alexander Lukashenko started in the summer of 2021 using migrants from Africa and the Middle East (their main country of origin was Iraq, followed by Afghanistan, Syria and Congo-Brazzaville). He deliberately encouraged people from these two regions to travel to Belarus by promising them an easy entrance into the EU through the border with Poland. This instrumentalization of vulnerable people was in retaliation against EU sanctions on Lukashenko's regime due to massive human-rights violations in the country. Poland does not consider this situation as a humanitarian emergency as it does the Ukrainian one but rather as an 'invasion'. It accordingly has closed the border

with Belarus, deployed military troops – which have used water cannons and teargas against unarmed people – and ignored rightful asylum requests. Thousands of women, children, and men remain stuck in this border limbo as they are neither allowed to go back to Minsk nor forward to enter EU territory. More than 20 of them have died since August 2021.

While many political figures have argued that the EU should not give in to Lukashenko's blackmail, Poland's response is not justifiable. The authorities have refused to process asylum applications and to allow humanitarian organizations and EU observers to enter the border zone. This violates EU and international law – specifically the Geneva Refugee Convention, the European Convention on Human Rights and applicable EU asylum law. Instead of requesting EU support as Latvia and Lithuania did in dealing with the same emergency, Poland has refused any help from the two agencies that are in charge of supporting member states in EU border and asylum issues, namely the European Border and Coast Guard Agency (Frontex) and the European Asylum Support Office (EASO). While it welcomes more than two million people from Ukraine, Poland's nationalist Law and Justice governing party, which has a long history of fuelling anti-EU and anti-migrant sentiments, breaks EU values when it comes to other refugees.

Despite good intentions, there is much work to do

The EU still lacks a collective stance on migration. The reform proposals in the pact on migration and asylum presented by the European Commission in 2020 miss their goals of strengthening solidarity towards all migrants and of responsibility among member states. The 2020 proposals uphold the controversial Dublin System – according to which the country of first entry is responsible for processing asylum applications – and avoid binding redistribution quotas. Member states can choose to take in asylum seekers (redistribution) or to commit to return irregular migrants from the EU country of first entry to their country of origin. The flexibility attached to this silo approach can lead to a downward spiral of more division and uneven sharing of responsibility in which the majority of member states choose to conduct returns rather than taking in asylum seekers. The Ukrainian case remains exceptional. And, even here, the welcome policies of member states might change quickly if they are no longer confronted only with war refugees but also with increasing flows of economic migrants as a result of the conflict's consequences for Ukraine.

Against the backdrop of Poland's double standards and of the long-standing dysfunctionality in the EU's migration and asylum policy, it is essential that influential member states take a strong stance. As one of them, Germany can do more to protect migrants and thus to safeguard the values of the European project.

In January 2022, when the tragic humanitarian situation at the border between the EU and Belarus was still unfolding, Germany's Interior Minister Nancy Faeser backed the initiative by France and the European Commission to move towards a common, functioning EU asylum system. This would entail a coalition of member states being willing to take in refugees beyond ad hoc agreements in emergencies. In the context of the border crisis with Belarus, Faeser announced her plan to forge a 'coalition of welcoming' member states taking in asylum applicants and tackling the shortcomings of the EU's asylum and migration policy. Such a coalition would guarantee the protection of migrants and human rights. Despite Faeser stating that her first talks with France and Italy on the issue were promising, challenges lie ahead as such negotiations are a lengthy endeavour.

A values-based EU approach for all migrants and asylum seekers

The juxtaposition of the Ukrainian and the Belarusian case has exposed once more the dysfunctionality of the EU's migration and asylum policy. While there is unanimity on supporting refugees from Ukraine, it is unlikely that there will be an EU-wide agreement for processing asylum applications and redistributing refugees from Africa or the Middle East. Germany can contribute in three ways to counteracting double standards and breaking the downward spiral of the EU's migration and asylum policy caused by the uneven sharing of responsibility, which have led to breaches of EU values.

First, Faeser's proposal for a coalition of welcoming member states is the right way to go to guarantee humanitarian solutions and the protection of EU values in the short term. Germany's Interior Ministry should advance its talks on a possible future agreement on such a coalition with other member states, especially France and Italy, both of which are strongly affected by migration, as well as Sweden, which reacted promptly to the 2015-2016 migration governance crisis by taking in thousands of migrants. This agreement would be legally concluded outside the EU treaties and would need to have an open character. Any member state could join such a coalition at any point in time in the future. Germany is showing solidarity with Ukrainian refugees and has already welcomed more than 300,000 of them. It also took in numerous asylum applicants and granted them their lawful right in 2015-2016. Hence, Germany should continue to lead in the EU by example, in order to achieve an overall values-based approach for all migrants and asylum seekers.

On 7 April 2022, the federal government agreed to provide €2 billion for Germany's states to support and integrate refugees fleeing the war in Ukraine. It could also develop an overall support mechanism for local immigration authorities in cities and municipalities that are willing to take in migrants. Moreover, anti-migrant sentiments among Eurosceptic political actors and citizens can be

counteracted by dropping the inaccurate and disproportionate 'war' terminology used in Germany and other EU countries during the EU-Belarus border conflict. Russia's aggression against Ukraine has shown what 'war' actually means. In that case, terms such as attack, invasion and war have been deployed rightfully so. Conversely, vulnerable unarmed human beings trying to pass the EU border should not be referred to as an instance of 'hybrid' warfare or attack.

Finally, Bundestag members as well as German members of the European Parliament should ensure the independent and effective monitoring of the situation at the border between Belarus and Poland while also taking a clear diplomatic stand towards the government in Warsaw when it comes to breaches of EU values and humanitarian law. Germany could also use its influence within the EU institutions to ensure that member states immediately accept the support of Frontex and the EASO, as well as of humanitarian organizations, when confronted with an emergency situation at the EU's external borders. And, in case of violations of international and EU law by the member state involved, the EU institutions need to be fast and flexible in withdrawing or withholding budgetary support – for example, from the Integrated Border Management Fund or the Asylum, Migration and Integration Fund – to unlawful border-management operations.

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