

Italy's Newest Immigration Crisis?

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From the food, the culture, and the weather, who would not want to visit Italy? That is precisely the problem that the country is facing right now. Migrants crossing the Mediterranean Sea, many from Tunisia and Northern Africa, are setting their sights on the Italian coast.¹ Most of the EU's immigration this year has come from the sea, with Italy being the most popular destination.² In the wake of this influx of migrants, Italy has implemented a new law that does not come without its fair share of criticism.³ This report will compare this new law to the current immigration guidelines of the European Union (EU), and analyze whether or not Italy is within the bounds of the EU policy.

Background

There have been many migrants, mainly from west Africa, fleeing Tunisia with the hopes of reaching the Italian coast.⁴ These migrants made the original decision to migrate to Tunisia because of the lack of visa requirements to enter the country.⁵ However, this was not a warm welcome, as many of these people now seeking refuge have decided to leave Tunisia over the intense discrimination and harsh conditions that they are facing.⁶ This treatment has forced many to take the dangerous risk of crossing the Mediterranean, in hopes of a better life in Europe.⁷

Since the beginning of the year, almost 120,000 migrants have found their way to the shores of Italy, which is comparable to the record number of migrants seen during 2016.⁸ These dangerous journeys have cost many lives, with rescuing charities not being able to provide as much help as one would hope.⁹ The Italian government has restricted the ability of people to aid these migrants through, new laws that have resulted in rescue charities having boats impounded, being restricted from making multiple trips, and being forced to travel longer distances to disembark passengers.¹⁰ Italy is trying to make it more difficult for smugglers to bring people to the country illegally, and these charities are being caught up in this effort.¹¹

Anyone seeking protection can apply for asylum in Italy, where they would then be placed in a reception center.¹² There are four main outcomes of an asylum application: refugee status, subsidiary protection, special protection, or rejection.¹³ Refugee status is for people that have fled a country due to facing persecution on the basis of race, nationality, religion, political opinion, or being a member of a particular social group.¹⁴ Those who do not need the criteria for refugee status but would suffer serious harm if they were to go back to their original country can qualify for subsidiary protection.¹⁵ One is still eligible for special protection if they do not qualify for either of the other two protections, which is what migrants are hopeful for.¹⁶ If one is

unfortunate enough to fail to qualify for any of the three protections their application will be denied.¹⁷

EU Guidelines

The Common European Asylum System (CEAS) is a policy framework designed to make asylum seekers' experience relatively the same, no matter what country they arrive in.¹⁸ This sets out common standards and minimum conditions that must be met when dealing with those seeking asylum.¹⁹ There are three relevant legislative instruments that apply to this situation: the Asylum Procedures Directive, The Reception Conditions Directive, and the Qualification Directive.²⁰ While these are extensive pieces of legislation, I will be highlighting certain provisions that I believe are most relevant to Italy's current issue.

The Asylum Procedures Directive is aimed at establishing the conditions for "fair, quick and quality asylum decisions."²¹ This directive applies to all member states of the EU, including at their borders and territorial waters.²² The member state needs to provide migrants with the necessary information to apply for asylum if they wish to, and provide interpretation necessary to facilitate the procedures.²³ They also must allow for aid organizations and persons to have access to applicants, in order to provide them with advice and aid, and only may be limited for reasons that are objectively necessary for national security, or other safety concerns.²⁴ However, these limiting laws cannot severely restrict or render impossible access to applicants.²⁵

The Reception Conditions Directive safeguards that reception conditions for asylum seekers meet common standards, which ensure an acceptable standard of living that is in accordance with the Charter of fundamental rights.²⁶ While priority can be given to citizens and other legal residents, member states must provide asylum applicants access to the labor market,

no later than nine months after the application was filed.²⁷ Their access to the labor market also cannot be denied until a final negative decision has been made, which provides applicants a right to the labor market during the appeal process.²⁸

The Qualification Directive provides clarity to the circumstances for granting international protection, thus making asylum decisions more consistent.²⁹ A person qualifies for refugee status if they are seeking protection from acts of persecution³⁰, which is defined as “sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms”³¹ or “be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in point (a).”³² Applicants who do not qualify for refugee protection can still qualify for subsidiary protection if they are at risk of serious harm³³, which is (a) “the death penalty or execution;” or (b) “torture or inhumane or degrading treatment or punishment of an applicant in the country of origin;” or (c) “serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.”³⁴

Cutro Decree

The Italian government has increased their quota for non-EU migrant workers to 452,000 from around 83,000.³⁵ They have also simplified the process for legal entry into the country for those people.³⁶ While this may sound like a positive for addressing the immigration crisis, that law has been coupled with others that greatly reduce the amount of people qualified for special protection status.³⁷ As discussed above, this is the protection that most migrants hope to receive

when deciding to flee to Italy. Nicola Molteni, a right-winged politician, states that “[s]pecial protection creates attractive conditions for immigration and we will eliminate it.”³⁸

The Cutro decree makes it more difficult to qualify for this status, as people cannot use the right to private and family life as the basis of their application.³⁹ Only those that are at risk of torture, inhumane treatment, or systemic rights violations will qualify for special protection.⁴⁰ Asylum seekers will also no longer be sent to the SAI reception center, and are now instead being sent to the Extraordinary Reception Centers (CAS).⁴¹ This change strips migrants of many helpful social programs, such as language classes and legal advice.⁴²

While these laws are aimed at resolving the problem of irregular migration, history is not on their side.⁴³ Migrants have routinely been able to acquire special protection status in Italy, except from 2018-2020 when the then government severely restricted the ability to use this status.⁴⁴ This resulted in even more irregularity and it was subsequently reintroduced in 2020.⁴⁵ So, if history is anything to go off of, then it does not seem that this measure will have the desired result for the Italians. Moreover, increased irregularity only provides more strain to local governments and on the social system.⁴⁶ There is a lack of confidence from asylum seekers in being able to receive a work permit.⁴⁷

Compliance with EU Guidelines

Unfortunately for many asylum seekers, the EU guidelines are the floor, not the ceiling. So, many of the provisions of the guidelines do provide all of the protections that one might hope for. While member states are free to establish laws that raise the level of protections offered, there is nothing that mandates this behavior. In the case of Italy, they seem to be compliant in most areas, but there are some areas where their behavior should be questioned.

The new quotas and streamlined approval process for legal residency are definitely compliant with EU legislation. Moreover, the new special protection qualifications also seem to be compliant. EU guidelines only state that there has to be some form of subsidiary protection offered for those that do not meet refugee standards, which Italy still has. Their status has not been taken away, only restricted, and the new criteria still encompasses the ones that are listed in EU legislation. While it is disappointing for applicants, Italy is under no authority to consider familial ties for reason to grant special protection. That is an area where Italy has the right to legislate on their own.

However, there are concerns over the fact that people are not receiving language classes, legal aid, and are fearful over not being able to work. These are three things that the EU explicitly guarantees. Unless a final decision is made, all adult applicants should have access to the labor market, as provided in EU directives. Also, language help and legal advice are two services that are also explicitly mentioned in the EU guidelines, as services that need to be allowed. While they can be restricted in certain circumstances, they cannot be wholly denied to applicants. We will need to continue to monitor the situation to determine whether applicants are able to receive these services, and it will be interesting to see if Italy uses their state of emergency status to justify continued suspension of these services.

¹ See Emma Wallis, *Why are so many migrants arriving on Italy's shores?*, INFOMIGRANTS (May 9, 2023), <https://www.infomigrants.net/en/post/48784/why-are-so-many-migrants-arriving-on-italys-shores>.

² See Alvis Armellini, *Factbox-What lies behind Italy's immigration crisis?*, TODAY (Sept. 13, 2023) <https://www.todayonline.com/world/factbox-what-lies-behind-italys-immigration-crisis-2254241> (other EU countries are facing higher overall immigration numbers, Italy has the most coming by sea).

³ Crispian Balmer, *Italy narrows asylum rights in new clampdown on immigration*, REUTERS (Apr. 20, 2023) <https://www.reuters.com/world/europe/italy-narrows-asylum-rights-new-clampdown-immigration-2023-04-20/>.

⁴ Wallis, *supra* note 1.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Armellini, *supra* note 2 (there have been around 118,500 sea migrants this year, as of September 13, 2023).

⁹ *See id.*

¹⁰ *See id.*

¹¹ *See id.*

¹² *See Applying for asylum*, REFUGEE.INFO ITALY, <https://italy.refugee.info/hc/en-us/articles/5388907955863-Applying-for-asylum#:~:text=Italian%20law%20states%20that%20you,the%20help%20of%20an%20interpreter> (last visited Sept. 13, 2023).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *How the EU manages migration flow*, EUROPEAN COUNCIL OF THE EUROPEAN UNION (Sept. 21, 2023), <https://www.consilium.europa.eu/en/policies/eu-migration-policy/managing-migration-flows/>.

¹⁹ *Common European Asylum System*, EUROPEAN COMMISSION, https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en#:~:text=The%20European%20Union%20is%20an,on%20the%20protection%20of%20refugees. (last visited Oct. 10, 2023).

²⁰ *See id.*

²¹ *Id.*

²² Council Directive 2013/32, art. 3, 2013 O.J. (L 180) 1 (EU).

²³ Council Directive 2013/32, art. 8, 2013 O.J. (L 180) 1 (EU).

²⁴ *Id.* at ¶ 2.

²⁵ *Id.*

²⁶ *Common European Asylum System*, *supra* note 19.

²⁷ Council Directive 2013/33, art. 15, 2013 O.J. (L 180) 1, 1-2 (EU).

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²⁹ *Common European Asylum System*, *supra* note 19.

³⁰ Chapter 3

³¹ Article 9 (1)(a)

³² *Id.* (b)

³³ Chapter V

³⁴ Article 15

³⁵ Armellini, *supra* note 2.

³⁶ *Italy – Entry Flows and New Rules for Working and Residing in Italy*, KPMG (Apr. 13, 2023), <https://kpmg.com/xx/en/home/insights/2023/04/flash-alert-2023-082.html#:~:text=The%20Council%20of%20Ministers%20has,foreign%20nationals%20for%20work%20reasons.>

³⁷ Marta Silvia Viganò, *Italy: New Law curtails migrants' rights*, DW (May 9, 2023), <https://www.dw.com/en/italy-new-law-curtails-migrants-rights/a-65552219>.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Short Overview of the Reception System*, AIDA (May 31, 2023), <https://asylumineurope.org/reports/country/italy/reception-conditions/short-overview-italian-reception-system/>.

⁴² Viganò, *supra* note 36.

⁴³ *See* Daniel Verdú, *Is Italy really in a migration emergency? Increase in arrivals and lack of resources strain the situation*, EL PAÍS (Apr. 14, 2023), <https://english.elpais.com/international/2023-04-14/is-italy-really-in-a-migration-emergency-increase-in-arrivals-and-lack-of-resources-strain-the-situation.html>.

⁴⁴ *See id.*

⁴⁵ *See id.*

⁴⁶ *See* Armellini, *supra* note 2.

⁴⁷ Vigano, *supra* note 36.