ReSOMA:
Research Social platform On Migration and Asylum

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1 LIST OF ABBREVIATIONS AND DEFINITIONS

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<tr>
<td>DoA</td>
<td>Description of Action</td>
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2 INTRODUCTION

Ask the expert analyses (AEA) aim at better identify and address with relevant evidence the possible concerns for national level implementation at the earliest stage. As part of WP3, they are embedded in the series of tools used to test the evidence gathered around policy options through WP2. In particular, the AEA complement data on perceptions and responses at national level provided by the Social Research Panel Survey (D3.3) and data on the EU-level provided by the Task Force Meeting (i.e. the D3.1 Synthetic report on EU-level policy perceptions and responses).

Generally speaking, the WP3 exercise allows to identify the most significant similarities and discrepancies between the different level approaches through the following questions:

1.) Are all these policy issues present at the national level with the same high-level importance as at the EU level?

2.) What evidence exists to confirm or correct these perceptions?

The AEA are meant to be a desk research either correcting or confirming policy perceptions and perceived trade-offs. Differently from the public 'Ask the expert' in WP1 (@M2 and @M5) and from the contribution asked in WP2 for the POBs production, that was not a formal deliverable itself, the AEA in WP3 is a confidential deliverable aiming at providing evidence confirming or correcting policy perceptions. The evidence collected in the AEA by the lead experts should come mainly from the national level and the academic field.
3 The implementation of the Ask the Expert Analyses

Despite being originally foreseen at M10, AEA were affected by the overall rescheduling of WP2 and WP3 deadlines that resulted in the WP2-WP3 Implementation Plan MPG and CEPS presented in December 2018.

Once policy options on a number of topics emerged through WP2 activities, in mid-February WP3 leader CEPS wrote an email to the Consortium providing the input of CEPS/MPG for the AEA structured upon the three cross-cutting themes that had been identified as part of the WP2-WP3 Implementation Plan (the GCR/external dimension of EU asylum policy; Crackdown on NGOs; MFF/EU funding for integration). In addition to that, CEPS attached the draft D3.1 Synthetic report on EU-level policy perceptions and responses (i.e. the report of the ReSOMA Task Force Consultation) which addressed the same topics and which could be of interest for the work of lead experts.

3.1 Clarifying the role of lead experts in WP3

The role of the lead experts in WP3 had to be defined in practical terms within the Consortium. Right after CEPS’ email, lead experts from EUR and ISMU asked for more information on what kind of input they should provide, for instance the sources to be reviewed (academic material or other types of sources), the form and the size of their work. CEPS made clear that lead experts could chose on which of policy options they wished to focus on, also in light of their expertise and research interests.

Regarding the sources to be consulted, CEPS suggested focusing on both academic materials and reports from international institutions, NGOs, and other entities.

The Lead Expert Coordinator from EUR voiced some other concerns on the depth of the research exercise. Unlike WP1, where the feedback from lead experts was meant through new literature review or consultation with third parties and experts on the topic, WP3 involved much less resources allocated to these activities. In addition, D3.4 is confidential and aims to feed into the Final Synthetic Reports D3.6. In this perspective, lead experts should be expected to make a simple contribution to the ongoing debate across the points that had come up in the Task force meeting.

ISMU was consulted on the latest and most accurate interpretation of Lead experts’ input for WP3 and made clear that differently from the public ‘ask the expert’ in WP1 and from the contribution asked in WP2 for the POBs production, that was not a formal deliverable itself, the ‘ask the expert’ in WP3 was meant to be a confidential deliverable aiming at providing evidence confirming or correcting policy perceptions. The evidence collected by lead experts should come mainly from the national level. As a result, each lead expert should contribute on her/his specific area of expertise.

With regard to the effort needed for the AEA, ISMU said that in order to ensure the highest quality of research input lead experts could eventually reshuffle the efforts across WPs.
3.2 The Ask the Expert Analyses from WP3

Asylum

At the request of CEPS, the lead expert on asylum (ISMU) focused on the Global Compact on Refugees and its non legally-binding set of new mechanisms and commitments to improve burden- and responsibility sharing for refugee protection among states, including the convening of Global Refugee Forums and solidarity conferences to address complex refugee situations.

In particular, the analyses focused on the conditions and the policy priorities through which the EU and its Member states can effectively implement the commitments included in the Compact. The questions that guided the AEA were: 1) On which main priorities should the EU and its member states focus in order to effectively implement the Global Compact on Refugees (GCR)?; 2) Based on lessons learnt in the last few years, how could EU external and internal funding be deployed to achieve the objectives included in the GCR? What funding priorities should be included in the next MFF (2021-2027)? 3) Based on current experiences and initiatives already implemented, how could the EU and its member states contribute to expand safe and legal routes for people in need of protection? What is the value added of EU action in this area?

The AEA on asylum is available in Annex 1.

Migration

In the area of migration, by the end of WP3 MPG aimed to present viable alternatives and reform paths scenarios to address the ongoing crackdown of NGOs assisting migrants and refugees. As a result, the lead expert on migration (ISMU) was asked to provide some input to draft the guidelines on the Facilitation Directive and build an observatory of cases. More specifically, the lead expert collected the new cases of criminalisation of solidarity and the available legal/policy recommendations, which were based on academic sources, peer reviewed journals, research projects, studies of the EU institutions and think-tanks. The lead expert focused also provided descriptions on how to implement the Facilitation Directive in compliance with international and EU law.

The AEA on migration is available in Annex 2.

Integration

In the area of integration and at the request of MPG, the lead expert from EUR focused on the future of EU funding and programme support for migrant integration, namely on the Partnership Principle, with its notion of multi-stakeholder and multi-level governance in the programming, implementation and monitoring of EU funds like AMIF and ESF. Having touched upon this topic to a certain extent in the WP1 Discussion Briefs, MPG pointed out that while available literature only evaluated the extent to which partnership-led programme implementation takes place in different countries, no evaluation had been performed on whether this specific form of policy-making has led to measurably, or arguably, better policies and outcomes.
The main research question that guided the lead expert analyses was: Are there any research results which tell us something about the impact of the Partnership Principle on the effectiveness, coherence, completeness, sustainability etc. of migrant integration policies implemented with the help of EU programme support in Member States? Another direction that the lead expert looked at was to see whether regardless of EU funds there had been any evaluation of multi-stakeholder/multi-level policy-making in national migrant integration policies in terms of its actual impact on the effectiveness of policies.

The AEA on integration was strongly centred around evaluation/impact assessment research, as opposed to being an academic inquiry that risked replicating the stakeholder exercise of looking into whether the Partnership Principle and its rules have been implemented properly.

The AEA on integration was annexed to D3.6 @M10, that will be submitted at M16.
4 CONCLUSIONS

Despite being originally foreseen at M10, AEA were affected by the overall rescheduling of WP2 and WP3 deadlines that resulted in the WP2-WP3 Implementation Plan MPG and CEPS presented in December 2018. After clarifying the role of the lead experts in WP3 in practical terms within the Consortium, MPG and CEPS provided lead experts from EUR and ISMU with their preliminary input. As a result, lead experts successfully produced the three AEA that underpinned the drafting of the WP3 final reports.
5 ANNEXES

5.1 ANNEX 1 – LEAD EXPERT’S INPUT ON ASYLUM

LEAD EXPERT INPUT EXTERNAL DIMENSION OF EU ASYLUM POLICY

Since its launch in December 2018, the Global Compact on Refugees has been commented by stakeholders and scholars across the globe.

Most of the comments, remarks and concerns are related to the not binding nature of the Compact. However, the potential to both making collective responses to future situations more predictable (Durieux, 2019) and pushing States to re-evaluate their policies and laws is appreciable. Indeed, even in lack of compulsory commitments, the GCR provides a timely and much-needed impetus to re-energize local strategies aimed at filling the normative legal gaps through regional, rather than international, agreements. Some experiences occurred in the last period: for instance, the regional (Arab) and Islamic agreements such as the Arab Charter on Human Rights, the Organization of the Islamic Conference’s (OIC) Covenant on the Rights of the Child in Islam, and the Protocol for the Treatment of Palestinians in Arab States (Casablanca Protocol) have been re-evaluated through the Global Compact processes, while most of the parallel international treaties continued to lack credibility in the region (Akram, 2019).

The GCR’s success nonetheless depends upon the engagement of a wide range of actors. In this regard, partnerships are pivotal to developing equitable responsibility sharing processes. In concrete, development actors can support local communities in host countries by properly equipped them to receive and integrate refugees. For instance, the private sectors can increase the number of initiatives to stimulate job creation and economic growth by benefiting of refugees and their hosts. At the same time, Türk highlights the priority to strengthen national and local infrastructures to meet the needs of both refugees and host communities so that they can live together in dignity. Last but not least, economic inclusion of refugees should be increased and supported in order to make them “benefit from and contribute to the social and economic well-being of the communities where they are living” (Türk, 2019:4).

Regarding the local level, some experts (Dick, Kuhnt, 2019) consider a priority to support and acknowledge cities and municipalities globally, nationally and locally in order to implement sustainable policies on refugees. What is worthy to be stressed is the paradigm shift included in the GCR that proposes to improve the refugees’ perspective by integrating them into local societies and promoting their self-reliance. Working in such a way makes possible watching a future where refugee camps will be an exception rather than a rule. The role of cities is also
crucial when people return in their home countries because they tend to resettle in urban areas after the migration experience. Urban networks have also an important role in providing informal protection and supporting people in their integration paths. Said that cities and municipalities should be supported at several levels by increasing the participation of mayors and urban networks in global policymaking. Moreover, municipalities need to have more powers to make policy and financial decisions at the national level. Finally, local authorities should be more aware of the potential that integrating refugees has from an economic and social point of view (Dick, Kuhnt, 2019).

Last but not least, the proposal to create a global academic network on refugee is more than welcome even if there are some considerations worthy to be taken into account. The Global Compact on Refugee stresses the significant role of academia and suggests to create a network able to provide inputs to face the global refugee challenge in the best way. However, Chimni highlights the priority to go beyond the specific deliverables in support of the aims of the Compact by looking at the wider constellation of complex factors that underlie the hostility towards asylum seekers instead (Chimni, 2019:4). This aspect reminds us of the first Common Basic Principle that defined integration as a two-way process asking migrants and receiving societies to collaborate to develop social cohesion. Considering this is more than fundamental, as reported by Mason-Bish and Trickett (2019) at a time of increasingly uncertain global politics whereby concerns about hate crime and prejudice are a pressing social and political issue.

To sum up, the Refugee Compact has been developed in a context of major political constraint, with growing populist nationalism accompanied by widespread anti-immigration politics. On the other hand, though, the Refugee Compact is based on a whole-of-society approach that gives the floor to new actors like the business and the World Bank, and new processes like innovative financial mechanisms (Beths, 2019).

Durable solutions is another aspect widely considered by scholars and stakeholders to properly implementing the GCR at the national level with benefits at the international level. This aim asks for more research and further innovation activities focused on creating an inclusive space for refugees in the international community. This includes the effort to identify various points in the cycle of displacement. Some strategies have been tested already as reported by

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Goodwin-Gill (2019)⁴: an example is “the Global Concessional Financing Facility established by the World Bank, the Islamic Development Bank Group, and others in 2016, and in what’s known as the World Bank’s IDA18 replenishment, which provides up to US$2 billion in grants and concessional loans to low-income countries to help meet the development needs of refugees and host communities. Within this initiative, parties agree on a set of mutually reinforcing commitments (resources, policy changes, projects), with an eye on outcomes and under host country leadership. The essential idea, in a refugee context, is to bridge the longstanding gap between humanitarian assistance and development assistance” (Goodwin-Gill, 2019)⁵.

The Refugee Compact suggests alternatives in this field by shifting the attention to the development assistance model instead of the humanitarian assistance one. This aspect, as highlighted in the analysis of Goodwin-Gill (2019), is crucial because ‘development assistance’ involves national and local governments following a long term approach that is integrated with national plans and systems, and aims to reduce poverty through job creation, education, and the development of health and related infrastructure. Humanitarian assistance, instead, foresees short-term plans that consist of self-contained, life-saving operations (providing food, water, medication, and shelter).

Strengthening and building on African regional migration and refugee frameworks must be a key goal for the implementation of the Global Compacts in the region. More attention should also be given to the role that wealthier African States could play in promoting safe, orderly, and dignified migration in Africa (Ndonga Githinji, Wood, 2019)⁶.

The trend toward compacts encourages overburdened host states to treat refugee populations as sources of economic rent. Many experiences exist in this regard. The most famous deal is the one signed with Turkey in March 2016 to stop the flow of irregular migration into the European Union in return for 6 billion euros in economic relief. Another example is the ‘jobs compact’ in Ethiopia consisting of 500 million dollars programs aimed to create 100.000 jobs for both Ethiopians and refugees. This type of “win-win” arrangement has been characterized as “one of the most important economic experiments in the world today.” Similarly, the World Bank promised to “transform the [Syrian refugee] crisis into new opportunities” for Lebanon. It put forth similar statements with regard to the Ethiopian Jobs Compact (G. Tsourapas, 2019)⁷.

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Calls for alternative policies to admit refugees

Most of the debates on reception of refugees is based on the unequal distribution across the world of people in need of protection. Said that, there is the urgent need to identify alternatives.

Resettlement is one of the main issue considered by policy makers, stakeholders and scholars to help people to avoid deadly journeys. In a view of sharing of responsibility approach, access to resettlement should be considered more seriously. As pointed out by Hathaway (2019) in his critical analysis on the GCR there is a huge need to overcome “the status quo ad hoc, State-by-State approach to implementing refugee protection obligations” (Hathaway, 2019:2).

Another interesting scenario is set up by Ruhs (2019). Based on the assumption that the labor immigration policies of high-income countries do not put attention on humanitarian considerations, he suggests to consider "whether an alternative pathway for refugees should be based on labor immigration policy objectives alone, which would subject refugees to the same criteria used for regulating the admission of migrant workers, or whether a new approach should have a humanitarian element [...]. Treating refugees purely as labor migrants without any recognition of their special status will not benefit many for the simple reason that refugees would need to compete for admission with other migrants from all around the world. So a more effective approach would be to design a program that is based, as much as possible, on the key features of labor immigration policies but also includes special measures for refugees" (Ruhs, 2019:23).

Funding

On 2 May 2018, the European Commission published its proposals for the Multiannual Financial Framework (MFF) 2021-27 with the title ‘A Modern Budget for a Union that Protects, Empowers and Defends’. The Commission’s MFF proposals is aligned with the Rome Agenda Declaration of 25 March 2017 and with the pledge to work towards (i) a safe and secure Europe; (ii) a prosperous and sustainable Europe; (iii) a social Europe and (iv) a stronger Europe on the global scene.

An interesting analysis carried out by D’Alfonso (2019) sheds light on the principle of solidarity and fair sharing of responsibility between the Member States by considering it as a way to

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better implement the common EU policies for asylum, migration and borders according to Article 80 TFEU. Nonetheless, he focuses the attention on the necessity that policies succeed in translating into practice the contribution coming from the EU “with a view to ensuring an appropriate level of provisions of the EU common goods that have emerged in the policy areas following the removal of internal borders across most of the European Union” (D’Alfonso, 2019: 49).

Other scholars (Bacthler, Mendez, Wishlade)\(^{11}\), by analysing the designing of the MFF proposal, use the experience from the 2014-2020 period to show that additional efforts to harmonize rules are still needed. In addition they highlighted that the synergies with sectoral policies and programs were not exploited to their full potential. In this vein the proposed suggestion is to make a more coherent use of EU funds to establish a more visible link between EU policies and the needs and realities at national and regional level.

Actually, since the MFF and its implementing programs have been developed for a multiannual period, other moves supporting fair sharing of responsibility could come from assigning the resources where they are most needed. To reach this aim, an efficient monitoring plan should be developed so that the budgetary allocations can meet specifically the evolving needs (D’Alfonso, 2019).

5.2 **ANNEX 2 – LEAD EXPERT’S INPUT ON MIGRATION**

**LEAD EXPERT INPUT TO THE FINAL SYNTHETIC REPORT**

**Cases of criminalisation of humanitarian assistance in the Member States**

The most updated information about criminalization of the NGOs operations (search and rescue) in the Mediterranean area in years 2015-2018 was collected by EU Agency for Fundamental Rights and issued in the report (FRA 2018). It provides an overview of cases of criminal investigations in three countries - Greece, Italy and Malta - against NGOs and individual crew members.

Also Institute of Race Relations’ report (2017, in Appendix 1) provides information about cases of criminalisation of sea rescuers and other individuals in 9 EU countries based on media releases and NGOs information. Some cases of state activities against NGOs assisting irregular migrants (undertaken in Italy, Belgium, France, Grece and Hungary) are described in Carrera et al. (2016).

The media and human rights organizations inform regularly about persons arrested and accused of assisting the illegal migrants. Few cases reported by media:

**Greece:**

The case of Sarah Mardini and Sean Binder, volunteers in search and rescue operations around Greek island Lesbos, were arrested in Greece and accused of facilitating people-smuggling through membership of a criminal organization and money laundering (August 2018).

**Malta:**

The captain of a German NGO ship named *Lifeline* Claus-Peter Reisch Reisch has been charged with entering Malta’s waters illegally with 234 migrants, whom the ship’s crew had picked up in waters off Libya (June 2018).

Recently, some of the countries implemented more radical measures to restrict policy against asylum seekers arriving by the Mediterranean sea and against organizations engaged in assisting the migrants. Italian government refused to take care of people drifting in boats in the Mediterranean Sea and induce other EU countries to take them instead, what violates international law. Hungary formulated a law making the aid of refugees in the country a punishable offense.

**Hungary:**
New legislation called "Stop Soros" bill criminalises the act of helping asylum-seekers, it is effective since 1 July 2018. The measures allow courts to pass criminal sentences including jail terms of up to one year on individuals for aiding asylum-seekers and illegal migrants. The bill introduces a new category of crime called “illicit assistance for immigration” meaning that a person cannot give any kind of assistance to people who entered the country illegally including offering assistance in applying for asylum to people not eligible for asylum.

Additionally, on 25 August 2018, the 25% “special tax on immigration” which has to be paid by organisations supporting migration entered into force. The new law mainly affects NGOs providing legal or other aid to asylum seekers (see also Carerra et al. 2016: 60-65).

Legal and policy recommendations related to implementation of the Facilitation Directive
(based on document: Policy Option Sheet)

The list of recommendations related to Facilitation Directive was presented in:


and


In other sources (also academic ones) I reviewed, there are any new recommendations which are substantially different from these provided in texts cited above.

The merit of recommendations provided by the authors (mentioned above and others) is a call to reform the current EU Facilitators’ Package framework towards more clarity and legal certainty.

The Facilitators’ Package was criticised for its optional character, lack of clarity and coherence with international law. It was underlined that the current EU legal framework should be evaluated in reference to compliance with international, regional and EU human rights standards, and to the actual social reality.

One of the critical remark about Facilitation Directive was about lack of definition of the ‘humanitarian assistance’ and “smuggling activities” concepts, leaving considerable discretion to the Member States. In this context, there is a high risk of criminalisation of humanitarian assistance provided by civil society organisations working with irregular migrants at the
Member States territory and at the external borders, what take place in practice (cases of Italy, Hungary and other countries presented in documents cited above).

It is recommended to provide a **practical guidance to support EU Member States in implementing the Facilitators Package**. The punishment for humanitarian assistance at entry and the provision of non-profit humanitarian assistance should be explicitly excluded to prevent unwarranted criminalisation. This step should ensure greater consistency in the criminal regulation of facilitation across EU Member States and limit unjustified criminalization of NGOs and individuals. T Aliverti (2012) conducted a study based on interviews with practitioners and officials in the UK and analysed court cases of immigration-crimes, including those of facilitation. The study shows that **smugglers were rarely prosecuted, contrary to individuals helping a friend or relative to enter the state or stay on its territory**.

The recommendation on the **guidance and monitoring of implementation of Facilitation Directive** by the Member States is supported by the academic studies. There are significant differences among the countries in transposition of Facilitators’ Package at the national level and moreover, there is a huge gap between the national legislations and urban practices in its practical implementation. This is a conclusion from the study of A. Van den Durpel (2017) who examines the implementation of the Facilitators’ Package on the domains of housing, healthcare and education in urban contexts in six countries (Belgium, Germany, Italy, the Netherlands, Spain, the UK) and six cities. The author distinguishes two groups of cities: inclusive (Ghent, Milan and Barcelona) and exclusive (Frankfurt, Rotterdam and London).

Another recommendation is **to make the humanitarian exception to assisting irregular migrants mandatory in the EU law**. This solution should contribute to make the work of city services and civil society organisations easier and safer. The recommended changes should allow to reduce the fear and intimidation of the social organizations in their work with irregular migrants and help to open more national and local funding resources for their assistance activities. Current legislation implemented at the EU and national level creates a confusion about the extent of assistance they can legally provide to irregular migrants among NGOs workers and volunteers. The present situation push NGOs to a kind of “grey zone” to find the way to provide services to migrants which often are in an uncertain or a dubious legal position.

One of the effects of the Facilitation Directive implementation at the national level are growing problems with application of funds by NGOs supporting irregulars migrants. Due to increasingly restrictive and cost-cutting state-level migration policies as well as strong exclusionary rhetoric from the national governments and media. To face this problem there is a recommendation **to support local and city authorities as well as civil society organizations by providing dedicated EU funds and other kinds of support** to them. Current political situation, legal rules and limited public funds strongly influence and limit activities of NGOs addressed to irregular migrants. As Ambrozini and Van der Leun (2015: 108) notice, “**it is a public secret that NGOs often step in**
where the state directly or indirectly refuses to provide essential services and basic rights” to migrants, also irregular ones.

Last but not least, some scholars and academics postulate to support independent research to counter the myths and misinformation from the EU and member states on migration and asylum and to promote EU-wide discourse on human rights, asylum and irregular migrants (Fekete 2018, Agustín 2012).

Sources:


