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ReSOMA:  
Research Social platform On Migration and Asylum

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# LIST OF ABBREVIATIONS AND DEFINITIONS

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

The Ask the expert policy briefs are highly informative tools embedded in the WP1 “Setting and Responding to the Policy Agenda” that aim at facilitating knowledge sharing and social capital development. By reacting to current events and developments that shape the European migration and integration debate during the duration of the project, these policy briefs will provide timely, evidence-based input to public debates as they unfold and feed in the overall process of identifying the unmet needs and defining policy trends.

An overall of 6 policy briefs (2 each for migration, asylum and integration) per year will be sourced and drafted by lead experts (ISMU on asylum and migration and EUR on integration), with additional assistance by MPG and CEPS. The expert database will be used to identify and access leading expertise for the topic at hand. Also, via IMISCOE/ EUR access can be obtained to a broader network of scholars on all three topics, including possible collaborations with the H2020 CROSS-MIGRATION project.

These tools are designed to work in complementarity with the other tasks from WP1. Along with data collected through the Social Research Panel Survey and consultations with the Steering Group and the Advisory Board, the Ask the expert policy briefs will feed into 9 annual Synthetic state-of-the-art policy briefs. These reports will be the major impetus for the first part of the first annual project cycle.
3  THE ASK THE EXPERT POLICY BRIEFS

3.1  SIMILARITIES AND DIFFERENCES TO THE ASK THE EXPERT POLICY BRIEFS @M2

The timeframe where the AE @M5 were drafted differed considerably from the one of the previous round. In March 2018 the topic selection process made it clear that partners would need to rethink the purpose of the first round. As a result, instead of looking at individual topics in depth, they agreed that experts would write their first briefs on the list of 9 topics and that these would be further investigated through desk research by MPG and CEPS in the framework of the other deliverables of WP1.

The different methodologies adopted by the two rounds of publications resulted in a different design. While the first round of policy briefs featured a section on the topic outline and a section on policy recommendations, the second round provided an overview of the academic debate, with recommendations being only the summary of the academic arguments collected. This choice was made to ensure complementarity with other project deliverables, as partners knew the Synthetic state-of-the-art policy briefs (D1.3) would already provide policy recommendations. As a result, partners decided the AE @M5 would underpin the policy briefs and, more broadly, the debate in Y1 through empirical evidence coming from the academia.

In line with these differences, MPG and CEPS contacted lead experts to ask some key policy question that would help them structure their policy briefs. Questions included issues and criticalities that were not completely addressed in the first round of AE, where authors decided to narrow down the focus to a handful of points.

3.2  DRAFTING AND PUBLISHING OF THE POLICY BRIEFS

The drafting of the policy briefs occurred without any specific issues. The three lead experts drafted their respective briefs independently following the template that was used in the first round.

As for the quality review, authors sent the Quality Manager a first draft at the end of M5 (May) to collect his input. As highlighted by the Quality Manager, the structure of the three briefs was not entirely coherent especially in terms of length and organization of sections. After deciding that briefs should continue to be short, Lead experts adapted their own publication.

The final drafts of the briefs were then sent to the Quality Manager who approved them as a whole. In line with what was decided for the Synthetic state-of-the-art policy briefs (D1.3), partners took care of the proofreading internally based on the authorship (ISMU or EUR).

Editing built on the material that had been designed for the previous publications, with an opening cover page presenting the type of publication and the date, the authors and the area as well as a closing page outlining ReSOMA and showing the social media handles and partners’ logo.
CONCLUSIONS

The AE @M5 differed from the AE @M2 in terms of timeframe, as topics were already defined when the drafting started and there was no simplification of WP1, and in terms of methodology, as these briefs provided solely an overview of the academic debate.

The drafting of the policy briefs occurred without any specific issues. Briefs were revised by the Quality Manager and edited according to the format developed @M2.
4 ANNEXES

4.1 FINAL VERSION OF THE ASK-THE-EXPERT POLICY BRIEFS

ReSOMA
RESEARCH SOCIAL PLATFORM ON MIGRATION AND ASYLUM

ASK THE EXPERT
July 2018

Marina D’Odorico
ASYLUM
The **Ask the expert policy briefs** are highly informative tools proposed in the framework of the ReSOMA project that aim at **facilitating knowledge sharing** and **social capital development**. By reacting to current events and developments that shape the European migration and integration debate during the duration of the project, these policy briefs will provide timely, evidence-based input to public debates as they unfold and feed in the overall process of identifying the unmet needs and defining policy trends.

An overall of 6 **policy briefs** (2 each for migration, asylum and integration) **per year** will be sourced and drafted by lead experts from project partners with additional assistance by leading European think-tanks. In addition, the project will access leading expertise for the topic at hand through collaboration with research networks and other EU-funded research projects.

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**LINGUISTIC VERSION**

**Original:** EN  
**Author:** Marina D’Odorico, ISMU  
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TOPIC 1

Impossibility and hardship of family reunion for beneficiaries of international protection

This policy brief aims to report on the current academic debate relating to family reunification policies addressed to refugees and holders of the subsidiary protection status across the European Union. Specifically, the attention is put on the main barriers hampering the possibility to enjoy this right by beneficiaries of international protection.

Current trends among Member States

Most of the Member States accord the same rights to refugees and beneficiaries of subsidiary protection as far as the family reunification is concerned (Belgium, Bulgaria, Croatia, Estonia, France, Italy, Lithuania, Luxembourg, The Netherlands, Poland, Portugal, Spain, Romania and The United Kingdom). Nonetheless, in some other EU Countries, holders of subsidiary protection status have been facing more challenges compared to refugees for a long time. For example, they have to wait for a specific period of time before being allowed to submit the request (one year in Slovenia, two years in Latvia and three years in Switzerland) or, unlike refugees, they do not benefit from the same preferential treatments relating to income, sickness insurance and accommodation requirements (The Czech Republic, Hungary and Slovakia). Only recently have the other Member States introduced amendments to their laws such as Denmark in 2015 and Austria, Finland, Germany, and Sweden in 2016. Actually, beneficiaries of subsidiary protection are the main subjects of the restrictive policies put in place in the last period.

Barriers to family reunification to reduce the Country’s attractiveness

Indeed, whilst the crucial role of the family in fostering integration is a shared opinion, because of the rising number of asylum seekers some Member States have been recently implementing strategies to reduce their attractiveness as countries of refuge. Restricting the right to family reunification for refugees and, mainly, for beneficiaries of subsidiary protection is one of the policies adopted at a national level in this regard. The objective is to reduce the number of arrivals to avoid the collapse of reception facilities or slowing down the integration processes. In parallel, this kind of measure is considered useful to prevent negative attitude against migrants, asylum seekers and beneficiaries of international protection. National authorities also highlight that the temporary nature of the permanence of the later target groups within the territory is another aspect at the basis of the decision to limit the family reunification rights (Czech, 2016; Slominski and Trauner, 2018; Nicholson, 2018, Halleskov Storgaard, 2016).
Scholars highlight the controversy behind the fact that beneficiaries of subsidiary protection do have access to family reunification under national laws. Actually, what emerges from the academic analysis is that beneficiaries of subsidiary protection should enjoy the same favourable conditions granted to refugees because of the similar push factors at the basis of their decision to flee from the country of origin and leaving their families behind (Halleskov Storgaard, 2016, Rohan, 2014). The European Court on Human Rights (ECHR) developed a balancing test to determine whether family reunification is required by the ECHR (article 8). Therefore, the right of each State to manage flows should counterbalance the individual rights to be reunited with their families.

As the ECHR highlights, it is important also to take into account the push factors forcing people to leave the country of origin and their family as well. Unlike people who choose to migrate, asylum seekers escape from dangerous situations unwillingly leaving behind their relatives. Academics stress this concept by widening the analysis on beneficiaries of subsidiary protection (Halleskov Storgaard, 2016). This statement draws the attention to another aspect related to the family unity and reunification concepts: the limit or impossibility to “develop family life elsewhere”. In this regard, if family reunification can take place in the country of origin (or in a different territory) there is no violation of article 8 ECHR (Gül v. Switzerland and Ahmut v. The Netherlands). Therefore, the weight of the “insurmountable obstacles” criterion is crucial to either accept or reject an application for family reunification as demonstrated in two different judgments: Kimfe v Switzerland, and I.A.A. & others v the United Kingdom.

At the same time, the assessment of applications for family reunification to beneficiaries of international protection needs to be carried out by taking into account the likelihood of risks for family members left behind. The Tuquabo-Tekle v. The Netherlands is a milestone case in this respect because it highlights the dangerous conditions experienced for example by older children who stay in the country of origin and the consequent necessity to proceed with the reunification procedure besides the parents’ status.

Judgments also take into account the difficulties faced by beneficiaries of international protection because of delays from authorities in assessing the family reunification applications. In two cases, the Court stated that article 8 of the ECHR was violated (Mugenzi v. France, and Tanda-Muzinga v. France). Finally, the Hode and Abdi vs the UK concerns discrimination against a refugee and his post-flight wife in the enjoyment of their right to family life because she was not allowed to join him in the UK. This was owed to more restrictive rules for the reunification of refugees’ spouses in comparison to workers or students, or to refugees married before fleeing from the Country. In this case, there was a violation of article 14 of ECHR in conjunction with article 8 ECHR.

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1 ECHR, 2005, above fn. 74, para. 47-50
2 Requête no. 52701/09, ECHR, 10 July 2014
3 ECHR, 2014, above fn. 20
4 Application No. 22341/09
When national sovereignty forgot human rights

Therefore, it is possible to shed light on the necessity to monitor the national sovereignty in implementing different kinds of policies addressed to refugees and beneficiaries of subsidiary protection (Nicholson, 2018).

Indeed, although the European Court of Human Rights has always shown respect for the state sovereignty when it comes to immigration matters, case law points out that the national legislation should take the law governing human rights into account also when family reunification is concerned, which is even more pertinent in cases involving refugees and beneficiaries of subsidiary protection. Examples regard situations in which insurmountable obstacles hindering the return to the country of origin to be together with other family members, but it is even more evident in cases in which the prohibition of discrimination binds national legislation. This means that, when certain categories of individuals enjoy more favourable family reunification conditions than other people, the difference in treatment needs to be reasonably justified. Therefore, the Strasbourg case law has the potential to influence the harmonisation in EU law also by requiring the Member States to provide objective and reasonable justifications, in case of differences in treatments between refugees and beneficiaries of subsidiary protection (Hode and Habdi v UK5; Niedzwiecki v. Germany6; Biao vs Denmark7).

The role of the Court is also to determine whether the strategies put in place are compatible with obligations at a national level under international and regional human rights and refugee law. The European Court of Human Rights plays a crucial role in this regard. Recently, the approach has shifted from a wide recognition for national prerogatives in the migration area to strengthened migrants’ human rights. Specifically, as scholars point out, attention is paid to articles 8 and 14 of European Convention on Human Rights (Czech, 2016, Halleskov Storgaard, 2016).

Article 148ECHR, is often invoked when differences between refugees and beneficiaries of subsidiary protection occur. In this regard, commentators give rise to concerns on the choice, for example, of subjecting beneficiaries of subsidiary protection to three-year waiting periods when the Family Reunification Directive forbids such restriction as regards refugees, on the one hand, and prescribes only two years in the case of other non-vulnerable Third Country Nationals (i.e. workers and students), on the other hand.

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5 Application no. 22341/09, ECtHR, 6 November 2012
6 Application No. 58453/00, ECtHR, 25 October 2005
7 ECtHR Grand Chamber, 2016, above fn. 51
8 Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 177) is an anti-discrimination treaty of the Council of Europe. It was adopted on November 4, 2000, in Rome and entered into force on April 1, 2005, after ratification. Unlike Article 14 of the Convention itself, the prohibition of discrimination in Protocol 12 is not limited to enjoying only those rights provided by the Convention. Protocol12, Article1 “General prohibition of discrimination” states that: 1 - The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. 2 - No one shall be discriminated against by any public authority. On any ground such as those mentioned in paragraph 1".
Conditions to avoid differences among beneficiaries of international protection

Family is important for migrants’ inclusion and well-being, even more so for beneficiaries of international protection. The impossibility for this category of migrants to build a family life elsewhere needs to be considered when restrictions are put in place by the Member States. In this regards, scholars highlight the necessity to implement a holistic approach to regulate refugee and family matters. At the same time, the widespread academics’ opinion asks for more harmonised conditions for refugees and beneficiaries of subsidiary protection.

Summarising the main analyses in this domain, the conditions for harmonised procedures comprise of, but are not limited to, the following elements:

- Increasing the effectiveness of family reunification procedures by:
  i) claiming requests that beneficiaries of international protection can meet as far as the documents to be produced are concerned;
  ii) avoiding delays in carrying out the assessment;
  iii) foreseeing a sufficient time frame to apply the request.

- Avoiding discriminations between:
  i) refugees and beneficiaries of subsidiary protection;
  ii) family members specifically when they are dependent on the sponsor;
  iii) the so-called pre-and-post flight families.

- Giving a concrete follow-up to the Court’s Case Law.
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TOPIC 2
Responsibility-sharing for asylum decision-making

The need of a structural rethinking of the Dublin system has become essential since 2015 when the massive migrants’ flows exacerbated the system’s limits expressed by the uneven distribution of responsibilities between Member States thus jeopardising asylum seekers’ fundamental rights (Progin-Theuerkauf, 2017). Among others, the unwillingness and the refusal of some Member States to register people entering the territory, the shortage in properly implementing EU dispositions and the deep gap in national provisions have also fed the academic debate (Beirens, 2018).

On this point, it should be noted that even the Court of Justice has contributed to maintain the structural shortcomings of the Dublin system (Di Stasio, 2017). Indeed, the Court seized of determining the responsible Member States, stated the non-derogation of the State of first entry criteria without considering the exceptional nature of the situation caused by massive migration influx in some Member States (C-490/16, A.S. / Republika Slovenija; C-646/16, Khadija Jafari e Zainab Jafari).

However, as Francesco Maiani points out, the aim to build a sustainable and fair system to overcome the limits of the previous regulation can be achieved only taking into account the negative results arisen. In this respect, it would be necessary to enhance the asylum seekers cooperation by taking into account their needs and their choices, to adopt measures that can mitigate the defensive behaviour of some Member States and to simplify and streamline the entire system (Maiani, 2016).

The Recast of the Dublin Regulation

In view of the recast of the Dublin Regulation, many academics have commented on the proposals suggested by the Commission, the European Parliament and the Visegrad Group9 by analysing the alternatives of solidarity adduced. The shared criticism on each proposed mechanism highlights a general reluctance in the effectiveness of the reform as it has been thought (Progin-Theuerkauf, 2017, Maiani, 2017, Den Heijer, 2017, Tubakovic, 2017, Thielemann, 2018).

The Commission Proposal

Relating to the Commission proposal, most of the comments regard the shortage in providing more structural changes (Progin-Theuerkauf, 2017). In this respect, beyond the still limited attention addressed to international protection seekers’ needs and wills, the retention of some substantial elements of the previous system such as the responsibility criteria has been mainly criticised (Maiani, 2017). Indeed, the

9 See the Joint Statement of the Heads of Governments of the V4 Countries in which a flexible solidarity was proposed (https://www.euractiv.com/wp-content/uploads/sites/2/2016/09/Bratislava-V4-Joint-Statement-final.docx.pdf)
responsibility seems to remain substantially disproportionate on some Member States without effective changes in the current position of Italy and Greece (Den Heijer, 2017).

Moreover, attention is put on the current limited implementation of fair and equal share-responsibility because of the proposed corrective allocation mechanism that may be triggered only in times of crisis (if the number of applications in a Member State exceeds the percentage of 150%).

Indeed, the drafted allocation scheme has been criticised with regard to some crucial aspects such as the lack of harmonised procedures and a central authority (Hruschka, 2016) or the unduly high threshold that even in an emergency may be not triggered with the consequence to accentuate the unbalanced distributive effects (Maiani, 2017). Therefore, academics and experts ask for more long-term strategies able to face the migration crisis and to comply with the solidarity principle stated in art. 80 (Tubakovic, 2017).

Another element that gave rise to concerns as to the observance of the principle of solidarity is the optional payment of 250,000 euros instead of allocating asylum seekers. First of all, the fact that it could be considered as a fine seems to be in contrast with the idea of cooperation among Member States with the opposite result of reducing solidarity. Additionally, the amount is considered by scholars arbitrary and economically unfeasible (Peers, 2016).

From the point of view of the asylum seekers’ protection, a lower level of safeguards has been argued: the shorter and non-mandatory time limits will cause infringements of individual rights and the problem of “asylum seekers in orbit” will increase. Moreover, the limitation of discretionary clauses (humanitarian and cultural grounds) that may be used only after the responsibility determination procedure and the fact that families might remain separated for a long period will reduce the protection of fundamental rights (Progin-Theuerkauf, 2016).

Moreover, it is worth highlighting that the unwillingness of Member States and the reluctance of asylum seekers to be transferred is to result in the increase of secondary movements. To sum up, the scholars’ shared concerns regarding the limits of the relocation system that seem to remain in the proposal (Den Heijer, M., Rijpma, J. and Spijkerboer, T., 2016). As a matter of fact, more attention to the international protection seekers’ will in the relocation system is more than welcome in order to increase solidarity, also in respect of these subjects (Peers, 2015). This strategy will enhance both the effectiveness of the system and the effective integration in the host country (Thielemann, 2018).

The Wikstrom Report

Whereas the Commission proposal retains unchanged the default allocation rule of the responsibility of the State of the first entry, the European Parliament Report provides for a structural change by proposing a default mandatory allocation scheme. Many measures such as the hierarchy of criteria based on the genuine links, the expansion of family criteria, the introduction of former studies in Member States criteria and automatic quota-based allocation have been positively assessed by commentators. However, many doubts have arisen about the possibility of an effective implementation (Maiani, 2017).
In particular, the mandatory quotas will widely increase transfers among Member States with significant consequences in terms of costs (a considerable expenditure would be left on the State of application) and protection of asylum seekers. Indeed, without the contextual strengthening of Member States’ capacities “in a limbo” situations would increment and the time limits effect would be nullified (Maiani, 2017).

Hence, due to the mandatory nature, the proposed mechanism reproduces many drawbacks highlighted above regarding the Commission Proposal. Frequently due to the Member States’ unwillingness to cooperate, the system will depend on coercion and weighty administrative procedures.

The Visegrad Group Opinion

The European Parliament proposal has been strongly rejected in the Council by the Visegrad Group which opposed the mandatory relocation option. Whereas commentators have pointed out the absence of unity and homogeneity among the four Member States (Nagy, 2017), the Visegrad Group seems to be firm in regard to the adoption of the responsibility scheme. The aim to counter any mandatory relocation scheme has been stressed at first through the refusal to comply with the relocation decision of 22nd September 2015 (Di Filippo, 2017) against which Hungary and Slovakia have filed two actions for an annulment from the CJEU. The Court dismissed both and stated the legality of the decision (Vikarska, 2015). The involvement of the Court allowed clarifying its role on this issue due to the power to enforce the principle of solidarity that will have a strong impact on the future case law (Ovádek, 2017). The recognition of the effect utile to the principle persuaded many commentators of the inadequacy of the adoption of the voluntary allocation mechanism as proposed by Visegrad countries (Obradovic, 2017).

The so-called “flexible or effective solidarity” provided for a voluntary mechanism based on a three-pillar system graduated on the crisis level (normal, deteriorating and severe). As in the Commission proposal, the emergency situation allows triggering the solidarity mechanism. The main observations regard the risk that the proposal is still unsuitable to form the basis of a comprehensive migration plan. Indeed, the percentage to determine a deteriorating or severe situation is not identified and the option to intervene with financial solidarity measure is considered insufficient (Grabusnigh M.A., 2017).

Despite criticisms of the flexible solidarity proposal, some remarkable and positive issues have been highlighted. First of all, the possibility to take over responsibility for returning rejected asylum-seekers is provided. Moreover, flexible solidarity is not necessarily a negative mechanism especially considering that the same principles are adopted in several international treaties in order to promote substantive equality between States. By contrast, the mandatory allocation system may lead to the risk of more inefficiency because of the reluctance of asylum seekers to cooperate and to abstain from secondary movements. In addition, the absence of the limit of the excessive threshold may ensure more favourable effects on the Member States bearing disproportionate responsibilities (Den Heijer, 2017).

Conditions for an effective responsibility-sharing approach
Summarising the main findings in this domain, several conditions would allow for a fairer and more effective responsibility-sharing mechanism:

- Cooperation among Member States by considering other solutions: as long as the Member States do not cooperate and do not act jointly for a greater responsibility-sharing approach, any allocation mechanism will not effectively succeed (Cimina, 2017). Taking into account that the general lack of consent among Member States and the unwillingness to collaborate have been the main factors of weakness that contributed to the migration crisis, many academics suggest a structural rethinking of the solidarity system bearing in mind that art. 80 does not impose any obligation with regard to the specific measures to adopt and that also financial measures should be adopted. (Peers, 2015).

- International protection seekers’ needs and wishes: taking into account the international protection seekers’ needs and wishes, in particular, their family links, has been considered fundamental in order to enhance cooperation not only among Member States but also in their respect. This approach will reduce the risk of secondary movements from a Member State to another. Moreover, it will support the integration of beneficiaries of international protection (Den Heijer, M., Rijpma, J. and Spijkervoor, T., 2016).

- The effect of the corrective allocation mechanism: whilst the establishment of a corrective allocation mechanism\(^\text{10}\) in order to alleviate the responsibility of some Member States in time of crisis has been considered as a positive solution, many commentators doubt its effectiveness since the threshold to trigger it is extremely high. It has been pointed out that the reference of 150% proposed by the Commission allows intervention only when the Member State is already under high pressure (Maiani, 2017). Such a criticism suggests that a possible solution could be establishing a lower threshold so as to trigger the mechanism before the crisis is rooted.

- The financial burden of relocations: academics suggest the re-opening of the debate on the establishment of a default mandatory allocation mechanism. Such a criticism arises due to the extremely high costs on Member States that could result from the frequent relocations that are necessary to respect the mandatory quota system. In this regard, it has already been underlined that in the current mechanism, due to the financial aspect, relocations are extremely rare. In this

\(^\text{10}\) https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0270(01)&from=EN
respect, a system based on mandatory relocations is unlikely to be sustainable in practice (Maiani, 2017).
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As many commentators have pointed out, the limits of European internal measures adopted in order to tackle the migration crisis have led to strengthening external solutions able to shift the responsibility onto third countries and to reduce the excessive burden on the Member States (Tubakovic, 2017).

The aim of this report is to examine how the new trends adopted by many Member States in the interpretation of the concept of “safe third country” in a broad way, risks to jeopardise the effective protection of international protection seekers’ human rights. In this regard, the brief highlights the main relevant stances adopted by Greece, Hungary and Italy and points out the serious consequences that such an interpretation could trigger.

**The Safe Third Country concept and the new trends**

This aim, enhanced by the Commission’s list of safe countries and the broadening of the safety concept (Lavenex 2018), has been implemented through the relocation of asylum seekers into third countries following a pre-admissibility procedure (Slominski and Trauner, 2018). However, the objective to speed up and streamline the procedures, shifting the responsibility onto other countries to relieve pressure from the Member States has immediately risked undermining the effective protection of asylum seekers’ rights and producing a “legal barrier to protection in the EU” (Peers, 2015). Indeed, as Peers emphasised, among others, “there is a need to balance efficiency with humanity” (Den Heijer, Rijpma, and Spijkerb, 2016).

As far as more efficient procedures are desirable, this goal shall be implemented in compliance with the minimum standard of protection provided by European law (Grigonis, 2016).

The safe third country concept raises serious concerns among academics who have highlighted existing shortcomings such as the timeframe for the examination of the asylum application and the reduced possibility to rebut the presumption of safety; the access to information and to a legal representative is limited and the possibility to appeal is restricted. In more general terms, some experts think that a broader and non-harmonised concept of the safe third country coupled with accelerated procedures risks to impair the protection of human rights and undermine the integrity of the non-refoulement principle (Niemann and Zaun, 2018).

**Member States’ interpretation**

This issue has arisen in particular in Greece’s and Hungary’s interpretation of the “safety concept” with respect to which many commentators have criticised the validity of the relocation decisions as well as the abrupt change in the admissibility assessment currently based on a presumption of sufficient
safeguards of human rights in Turkey and Serbia.

**The Greek’s turnaround**

As it concerns the Greek position, it has been highlighted that the recent reorganisation of the Committees competent for the assessment of asylum application entailed a radical increase of inadmissibility decisions based on the assumption that Turkey is a safe country (Gkliati, 2017).

Although Greek authorities justified the reform with the need to reinforce the independence of the Committees in order to ensure the right to achieve an effective remedy, many commentators doubt the possibility to achieve these purposes due to the fact that the main and real aim is to be found in avoiding the risk of jeopardising the implementation of the EU-Turkey refugee agreement. Although the European Law leaves Member States sufficient room to manoeuvre in the asylum application assessment, this shall be done in compliance with the right to an effective remedy (Tsiliou, 2018).

This premise seems not to be complying with the latter right and raises serious doubts arise on the effective level of safeguards granted in Turkey: the exceptional access to international protection, the frequent violations of the principle of non-refoulement, the lack of protection equivalent to that provided by the Refugee Convention, the many cases of arbitrary detention and the risk of resettlement to the origin country without a judicial review (Ulusoy Hemme Battjes, 2017).

More generally, even though Turkey’s asylum system is generally compatible with EU law, there are still serious shortcomings and problems in the practical implementation, and the presumption of safety adopted by the Independent Committees may lead to Greece being responsible for violating the ECHR decisions and the EU Charter of Fundamental Rights (Gkliati, 2017).

**Serbia as a Safe Third Country**

With regard to Hungary’s stance, the recent legislative reforms and the abrupt change in the relocation practice have risen questions among commentators in relation to their compatibility with EU law and with the effective protection of the refugees’ rights (Gil-Bazo, 2017). The amendments adopted in 2015 have entailed the automatic application of the safe third country concept to Serbia and the acceleration of the procedures that are currently conducted directly at the border with the consequence that the merit assessment of the applications is often avoided. Similarly to the Greek’s practice, almost all asylum applications have been declared inadmissible on safe third country grounds and people have been relocated to Serbia. However, many commentators do not consider that Serbia met the criteria to be identified as a safe third country as provided for by art. 38 of the Procedures Directive. In this respect, it has been highlighted that in Serbia applicants do not have an effective chance to request refugee status and to receive protection in accordance with the Geneva Convention. Moreover, the fact to consider is that the mere transfer from Serbia to Hungary able to establish a connection with the former is highly questionable (Nagy, 2016).

This controversial practice has also been brought also to the ECHR that in the Ilias and Ahmed v Hungary case has given important issues on the interpretation of the safe third country concept (Kilibarda, 2017). Although
the Court refrained to define Serbia as an unsafe country, the ruling represents an important step forward due to the relevant explanations given: the inclusion in the list of safe third countries is not enough to define a third country as a safe one.

Thus, a simple presumption of safety is not sufficient and the government shall prove its decision through data analysis or reports (Venturi, 2017). Furthermore, the serious and repeated infringements of human rights have driven many academics to underline that the European Commission should lodge infringement proceedings against Hungary (Gil-Bazo, 2017).

**The Italian agreement as a presumption of safety**

The problem of the lowering protection of migrants’ human rights as a consequence of a broader interpretation of the safe third country concept, occurs clearly in respect of the Memorandum of Understanding signed by Italy and Libya on February 2017. The deal is aimed at reducing the migratory flows and at curbing human trafficking by preventing departures from North Africa through financial and technical support to Libya (Palm, 2017). However, many commentators have expressed serious concerns on the legitimacy of the deal especially with regard to the effective protection of human rights in Libya.

Indeed, as the ECHR stated in Hirsi v. Italy case, Libya cannot be considered as a safe country, **Conditions for the effective protection of asylum seekers’ human rights**

Summarising the main findings, the balance between accelerated procedures, alleviating element which is absolutely required for the disembarkation after a rescue mission (Giuffre, 2017). Although Italy has the obligation to consider the condition of reception and treatment of rescued migrants in Libya, these factors seem to have been completely ignored. It has been highlighted that Libya is not a contracting party to the 1951 Refugee Convention and does not guarantee access to asylum. Moreover, there is a high level of corruption among Libyan Coast Guards and migrants who enter the country are “systematically harassed, forced into slavery, raped and in many cases killed (Toaldo, 2017) or unlawfully detained in inhuman conditions, subjected to ill-treatments, forced labour and exploitation (Nakache and Losier, 2017).

It should be noted that even if the Memorandum does not expressly provide a resettlement policy, it does not mean that Italy will not be found indirectly responsible under the European Convention of Human Rights (Nakache and Losier, 2017). In this regard, it is worth recalling the relevant European Court of Human Rights case law where the indirect violation of art. 3 of the ECHR was found. In those cases, the relocation in the first entry Member State, under the Dublin regulation, has been considered indirectly in breach with art. 3 due to the risk faced by the applicant to be transferred in the origin country considered as an unsafe country (M.S.S v. Belgium and Greece; Sharifi and Others v. Italy and Greece; Tarakhel v. Switzerland)

the burden and safeguarding human rights may be achieved under certain conditions.

- Relevance of the circumstances of the case: it has been underlined that, in order to ensure an effective protection
of protection seekers’ fundamental rights, it is absolutely necessary to take into account all circumstances of a specific case and, in particular, the effective link with the relocation Country (Nagy, 2016).

- Need for harmonised assessment procedures: the Commission’s list of safe third countries has been criticised due to the risk of fostering a broad interpretation of the concept. Indeed, the fact that each Member State does not have a national list could extend the risk of the presumption. For this reason, commentators have argued the need to contrast divergent practices in order to avoid the risk of lowering the minimum level of protection granted to asylum seekers (Slominski and Trauner, 2018). In addition, suggestions also regard the need to strengthen the role of the FRA and other EU agencies to ensure the protection of human rights (Grigonis, 2016).
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TOPIC 1

The crackdown on migration-support NGOs

To prevent and combat migrant smuggling is one of the EU priorities within common migration policy. This includes the so-called Facilitators Package which includes Directive 2002/90/EC according to which each EU MS is required to implement legislation introducing criminal sanctions against the facilitation of irregular entry, transit and residence, and Framework Decision 2002/946/JHA which reinforced the penal framework by setting out minimum rules for sanctions. Under the implemented law, any person who intentionally assists unauthorised entry, transit, or residence of a non-UE national in the EU, is to be sanctioned unless they are doing so for humanitarian reasons.

Apart from the Facilitators Package, there are other examples of restrictive law to civil society adopted by the states. One of the most recent examples is legislation implemented recently by the Hungarian government against civil society organisations working on migration and asylum (EC 2017; Alexe 2018). Under the adopted law, anyone could be jailed for working for or with non-governmental organisations that are involved in helping or campaigning for asylum seekers. Also in other countries (such as Greece, Poland and Croatia) the laws curtailing civil society activities and their funding have been proposed and enacted recently (Civicus 2016; FRA 2018).

The Growing political pressure and fear of sanctions among migration-support NGOs should be elaborated on in a broader context: as a part of state policy to combat irregular migration by strengthening not only external borders, but also internal controls, such as those related to access to certain public services and welfare state (Engbersen, Broeders 2009; van Meeteren 2014). In the background, there is also a powerful political narrative framing migration as a security problem which is a domain of the rightist parties and is currently widely present in many EU countries.

The arguments against implemented regulations

Despite the fact that EU law does not allow the criminalisation of the facilitation of irregular entry when it is conducted on humanitarian grounds, the Facilitators Package was criticised for its optional character, lack of clarity, coherence with international law and legal certainty (Allsopp 2016, Carrera et al. 2016). The Facilitation Directive does not provide a definition of the ‘humanitarian assistance’ concept, leaving considerable discretion to the member states. In this context, the danger of criminalisation of humanitarian assistance provided by civil society organisations working with irregular migrants at the MS territory and at the external could occur occurred. The
tension between the criminalisation of people smuggling and those providing humanitarian assistance is concerned as a by-product of the Facilitators Package because it enables MS to provide criminal sanctions for a broad range of behaviours including people smuggling on the one side and humanitarian assistance on the other (Carrera et al. 2016). Moreover, this issue is connected to much broader debate related to the process of migrants' smuggling and criminalisation of migration (Triandafyllidou 2018).

A study commissioned by the European Parliament highlights the tension between criminalizing people smuggling migrants and not those who provide humanitarian assistance to migrants in distress (Carrera et al. 2016:11, see also Allsopp 2016, Provera 2015). The study also finds variation in the way in which the Facilitators package is implemented at the national level. Such a variation bears an effect on irregular migrants and those who assist them. Namely, civil society organisations fear sanctions and experience intimidation in their work with irregular migrants. Moreover, as a result of the discretionary implementation of the Facilitators Package in the national legislation and variety of interpretation by member states, there is a limitation to access to Asylum, Migration and Integration Fund (AMIF) funding sources to projects providing humanitarian assistance to irregular migrants. As a consequence, a significant part of the support provided to irregular migrants by civil society organisations remains unreported and unmonitored, which should be recognised as a negative indirect effect of existing EU law.

**Indirect effects of crackdown on migration-support NGOs**

**Anxiety among NGOs working with irregular migrants**

This issue is especially important in member states at the common EU external border that have faced increased arrivals at various times, such as Italy, Spain, Greece or Hungary. The lifeguards, ship owners, fishermen and NGO workers could be charged with human smuggling after intervening to save peoples' lives at sea or offer help at the border zone. There are accusations of politicians and media that NGOs conducting lifesaving search and rescue operations (SAR) on the high seas and providing reception shelters across Europe indirectly encourage human smugglers and at the same time influence the migration crisis at the Mediterranean Sea (Cuttitta 2017). Lumping together irregular migrants and rejected asylum seekers as well as persons providing assistance to them in the same category as people who cause disorder or crime lead to undermine the work of civil society actors and growing distrust between national authorities, NGOs partners and public opinion.

**Restriction of civil society and rule of law**

Besides the direct side-effect of the crackdown on migration-support NGOs such as anxiety among these organisations, volunteers and supporters, it generated also an indirect effect by questioning the condition of civil society, human rights, democracy and rule of law. The process of increasing restrictions and delegitimisation of humanitarian emergency
relief has been described among others as “shrinking space for civil society” (EP 2017), “fundamental crisis of humanitarianism (Zavišek 2017), “criminalization of solidarity in the EU” (IRR 2017) or “reinforcing deterrence” (Fekete 2018).

It is worth noting the wide negative social consequences of the crackdown on migration-support NGOs. As Maurizo Ambosini (2015: 131) concluded in his research “the definition, regulation, and treatment of irregular immigrants constitute a “battlefield,” where exclusion and rejection are not the only possible outcomes”. One of the consequences is undermining the confidence in civic society organisations which leads to diminishing of social trust and social cohesion as well as shrinking of space for humanitarian activism at Europe’s borders (IRR 2017). The illusion that migration control is more effective that is nothing new and is well documented in history of European states (Behrman 2018).

The key role of civil society partners

Civil society actors’ role is manifold in the area of migration and asylum. They are providers of so-called “institutionalized compassion” (Portes at al. 2012) by delivering alternative services: food, psychological support, legal advice, and shelter. They are also protectors of fundamental rights of refugees and migrants by maintaining surveillance over the state and EU law and practices in the field of migration control, opposing stricter regulations, and making public opinion aware of the issue of migration (Spencer 2006). In times when official policies toward irregular migrants have hardened, the role of civil society organisations as key supportive actors with respect to the daily basic needs of irregular migrants and human rights defenders is essential (Ambrosini 2015). Under the recent political pressure, however, NGOs have to consider what kind of provided assistance is legal according to the national and EU rules. The research among NGOs in the Netherlands working with irregular migrants showed a constant uncertainty resulted from “a constant negotiation [which] is going on in the bureaucratic field of irregularity and it is at least partially modelled on the more restrictive structure of the national policy” (Van der Leun, Bouter 2015:151).

Uncertain future of NGOs assisting irregular migrants

As it was summarised in EP report “The global clampdown on civil society has deepened and accelerated in very recent times. It may not be an entirely new problem, but it is one that has assumed an unprecedented depth and seriousness, and that is likely to continue for the foreseeable future” (EP 2017:9). As a response to deficiencies in the rule of law noticeable in some EU member states, the mechanism of making the EU budget allocation dependent on rule of law was recommended. Moreover, the EP acknowledges the fact that NGOs across the EU face serious financial shortages due to limited access to public funds at a national level. As a consequence, the European Values Instrument was proposed by the EP as a device to support civil society organisations which promote EU fundamental values within the
societies by creating a separate budget line for NGOs in post-2020 budgets (EP 2018).
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TOPIC 2

Migration-related conditionality in EU external funding

In response to the increasing number of migrants and asylum seekers arriving on the territory of the EU, several legal and political tools were adopted to target, in particular, the EU neighbourhood and African countries. Among others, EU Trust Funds (EUTF, for Central African Republic, Syria and recently Emergency Trust Fund for Africa), New Partnership Framework on Migration (2016), and EU Facility for Refugees in Turkey (2016) were launched. An additional supportive instrument is the proposal for the next Multiannual Financial Framework (2021-2027) which anticipates a serious increase in EU budget for the management of migration and asylum area creating a new flexible financial reserve to tackle unforeseen events and to respond to emergencies in areas such as security and migration. The aim of all mentioned tools is to address the root causes of irregular migration and displaced persons, better organisation of legal migration and well-managed mobility, fighting against human trafficking and smuggling, facilitating return and reintegration of irregular migrants. These instruments are based on conditionality approach regarding cooperation with third countries in the field of migration.

The conditionality model is not a new instrument and has already been used in the past; it has been identified by some scholars as the main mode of external governance in EU enlargement politics and promoting democracy and human rights in third countries (e.g. Grabbe 2005; Lavenex 2008; Pinelli 2004). The EU sets the adoption of democratic rules and practices as conditions that the third countries have to fulfil in order to receive financial assistance and institutional association or – ultimately - membership, and, in case of EU enlargement policy, it was widely perceived as a very successful approach. Currently, this already “tested” model is used for another purpose: to increase effectiveness of external dimension of EU migration policy. The EU partnerships with the third countries and transfer of EU aid and development funds may rely on conditionalties linked to migration control and cooperation with the EU in the field of returns and readmission (Lavenex, Panizzon 2013).

Critical overview of the conditionality approach

Although EU conditionality is mainly positive (“the EU offers and withholds carrots but does not carry a big stick”, Schimmelfennig, Scholtz 2008: 190), still there are several important
critical points underlined in academic debate to this approach as well as to EU re-distributive policies based on it (e.g. Killick 1997, Koch 2015, Kölling 2017). The conditionality approach is described as hierarchical in the sense that it works through a vertical process of command (where the EU transfers are predetermined) and control (where obedience is regularly monitored). Human rights violations and corruption were also pointed out as important negative outcomes of the conditionality approach (CONCORD 2018, ECRE 2017).

Another important point in the debate over the conditionality approach is an allegation of lack of ‘democratic’ basis, that political decisions on external funding based on conditionality neglect the fundamental elements and treaty objectives of economic and social cohesion policy, as well as promotion of development cooperation, rule of law and human rights principles (included, among others, in Lisbon Treaty) (FRA 2014). Other concerns are related to EUTF’s focus on quick-fix projects with the main aim to stem migratory flows to Europe while effective policy dealing with forced and irregular migration requires a long term and sustainable approach, and the fact that the geographic location of funded projects is based on the identification of places of origin of irregular migration to the EU rather than on analyses of the concrete needs of development aid (CONCORD 2018, Hauck et al. 2015).

Factors determining the effectiveness of the conditionality approach

As it was underlined in the conclusions based on analysis of the Mobility Partnerships, various factors determining the effectiveness of the conditionality approach (Reslow 2012). Among others, the resonance of the EU policy with national policy objectives, the administrative capacity of the target state, the domestic costs of adopting the EU policy and the credibility of the promises made has to be mentioned. The effectiveness of conditionality in EU external funding also requires a proper balance between clear definition of the terms of conditionality and certain flexibility; if conditions are too strict and narrow, this could become responsible for a low ratio of funds spent, if they are too wide – it could negatively impact the efficiency (Kölling 2017). Some studies show clearly, that the conditionality approach has its limits, it is more effective in countries when a degree of interdependency with the EU is higher, it also requires some flexibility (it is not a one-size-fits-all approach) and taking into account the adverse socio-economic and political contexts on the ground (Börzel, Hackenesch 2013).

Short term consequences approach prevails

The results of research done by Oxfam (2017:4) show that majority of EUTF funds was spent on everyday migration management, and only 3% of the budget was allocated to developing safe and regular routes of migration which is contrary to commitments under the Valletta Action Plan. Thus, the important question arises about the long-term consequences of the new EU approach for development, human rights and security of the partner countries,

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and stability in the whole African region. “The focus on short-term EU interests might jeopardize long term interests for African partners” (ECRE 2017). The concerns over EUTF transparency, accountability and effectiveness were also raised by the European Parliament in the evaluation report on EUTF (EP 2016) and European Court of Auditors (2016). It must bear in mind the cost-benefit balance: either stemming the flow of migrants and refugees into Europe or democratisation and human rights in neighbouring states since one may come at the cost of the other.

To conclude, there are serious concerns related to making EU external funding and development aid conditional on migration control by third countries. fundamental rights protection, coherence and effectiveness of EU external policy as such, long-term effects for the development of the third countries, and last but not least, the EU credibility and its role in the propagation of fundamental values and human rights. The question seems to be still open if migration-related conditionality in EU external funding would be a success or failure in the long-term/longtime perspective.

These concerns are varied and include: possible negative impact on migrants’
References


Every year around half a million foreign nationals are ordered to leave the territory of the EU because they have entered or they are staying there irregularly. According to Eurostat (2016), in 2015 only 36% of return decisions were effectively implemented, raising the question about the efficiency of return procedures. The EU attempts to tackle the issue of irregular migrants by seeking to set up a more effective policy of return and detention and increasing international cooperation in detecting people at the borders. The comprehensive legal and institutional framework was developed within the EU to deal with the issue of return and readmission including the Return Directive (2008) which introduced common standards. The dedicated EU Action Plan on Return (September 2015) was introduced to increase the return rate, its aim is to implement more effective return procedures and more operational returns by the EU and MS to remove legal and practical obstacles in return proceedings. It is an ambitious set of measures such as promoting best practices on voluntary returns and the concept of uniform EU Travel Document to develop a more coordinated approach in the area of return and to ensure the return rates increase. Additionally, the recently updated Return Handbook (2017) providing guidelines to national authorities, best practices and recommendations for carrying out returns in an effective and humane way as well as Commission recommendation on making returns more effective (EC 2017) has to be mentioned here. The role and budget of the institutional framework including EU Agencies FRONTEX and European Border and Coast Guard were also significantly strengthened as relevant bodies providing assistance for joint return operations and removal of irregular migrants from the EU territory.

**Readmission policy: towards more informal modes of cooperation with third countries**

A whole spectrum of formal and informal political tools addressing the return issue has emerged over the last decade or so. The readmission agreements are perceived as one of the most important instruments in this area (signed with countries of origin and transit countries) (Bouteillet-Paquet 2003, EC 2011b, Panizzon 2014). However, readmission policy is also severely criticised since readmission agreements are considered as a tool that does not sufficiently consider the interests of partner countries and the proper protection of human rights (Alpes et.al. 2017, Billet 2010, Carrera 2016). Following the international relations approach, it has to be highlighted that readmission agreements as a political tool are characterised by asymmetry (they involve two signatory parties that differ significantly in level of developmental and political power) and inequality (in term of structural institutional and legal capacity of both parties).
What is also important, the costs and benefits of readmission agreements differ substantially for both sides: while the EU member states’ advantage is related to effective removal of unwanted migrants, countries of origin interests’ are more varied and consider their economic and political interests (including remittances) (Coleman 2009).

Moreover, there is a policy gap between readmission agreements signed on paper and the practical implementation of their provisions. This could be a result of administrative obstacles and a lack of cooperation from the authorities of the signatory countries (Cornelius et al.). It leads to the emergence of informal patterns of bilateral cooperation on readmission which include less formalising forms of mutual cooperation, which are by their nature difficult to detect and monitored by civil society organisations. The development of informal patterns of cooperation on readmission (so-called gradual informalisation) is therefore portrayed in the literature by four characteristics: invisibility, flexibility, limited cost of defection and adaptability to security concerns (Cassarino 2007).

The problem of non-returnable migrants

The evaluation of return procedures showed several important shortcomings, among others, the lack or limited cooperation between the EU with some third countries in identifying and readmitting their nationals; insufficient coordination among all the services and authorities involved in the return process at the each member state and the EU level; long-drawn appeal process; and inadequate information about voluntary return options among migrants (EC 2017). One of the most important challenges is related to third-country nationals who cannot be removed from the territory of the Member States and who are often repeatedly detained without any prospect of their case being resolved (so-called non-returnables). This problem is serious: it was estimated that almost 40% of detainees in the UK who spent more than three months in detention were eventually released with their cases still outstanding. The conclusion of the study is that early identification and timely release of these individuals would save the cost of their protracted and fruitless detention (which was projected as £377 million over a 5-year time period, Marsh et al. 2012). The situation of non-returnables migrants is one of those areas that is still mainly within national competence and is only marginally addressed by EU law (Cantor et al. 2017).

Return policy and human rights

The facilitation of the return of irregular migrants also entails important challenges for the protection of human rights at the EU and member states level. NGO partners and academics point out several faults related to the Return Directive and EU readmission policy implemented in practice (ACT Alliance EU et al. 2016, Baldaccini 2010, Caritas 2016). They underline the requirement of respecting the rights of the returnees and implementation of return procedures in line with fundamental and human rights and monitoring system of the removal process as well as impact assessments of reintegration programmes. The concerns include both legal aspects and practical issues such as arbitrariness of
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detention and return decisions which are issued at different points in the asylum procedure in different countries, as well as duration and conditions of detention (PICUM 2015). The experience related to return law and practices varies greatly amongst member states which are perceived primarily as transit countries and those seen as final destinations, what means that one-size-fits-all approach may be in practice less successful (EC 2011a).

The critics conclude that together with making higher return rates a primary aim of EU policy, there is a risk of a narrow focus on numbers at any cost, leaving aside the ethical, legal and political implications and negative side effects of implemented measures (ECRE 2017).

**Children involved in return procedures as a case requiring special attention**

The issue of longer detention of third-country nationals included in the Return Directive as a tool to achieve higher return rates is also highly discussed (FRA 2010). A number of medical and sociological studies have proved that experiencing detention seriously affects physical and psychological health of migrants regardless of its duration (Steel at al. 2008). Particular criticism has been addressed towards the possibility of detaining children and their families. Although children have always been part of migration flows (up to one third of migrants arriving in the EU since the summer of 2015 have been children, FRA 2017), there is a lack of official data of the number of children that are in immigration detention in the EU. It is difficult to obtain reliable figures also because the governments are rather reluctant to share these statistics with the public (Cornelisse 2010).

While the Return Directive allows for the detention of children during removal proceedings (as a last resort and the shortest appropriate period of time), the enforcement of such provisions depends significantly on their incorporation into domestic law (FRA 2017). There is a wide debate around how to balance the protection of migrants’ rights (including children) on the one hand, and the need for more effective implementation of migration policy, on the other. The conclusions from academic studies, which are policy-relevant, underline the need of promotion of stricter legal control over detention process taking place in practice and development of effective alternatives to detention (Amaral 2013; Biel 2017, Bloomfield 2016, Marsh et al. 2012; Flynn, Flynn 2017).
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TOPIC 1

Better regulation for support for social inclusion of the undocumented

Stricter migration policies of past decades and the concomitant rise in the number of migrants with irregular legal status have led to new policy dilemmas related to social inclusion in migrant “receiving” countries. This is more so for actors and institutions operating at the local level and having direct contact with the migrants who are in legal limbo.

The aim of this ask the expert policy brief is to examine the possibilities for and limitations of supporting the social inclusion of undocumented migrants. We focus mainly on the findings from the growing body of literature on changing legal entitlements and practices across different policy levels (especially national, regional and local) as well as across various European countries that have experienced major immigration within the past 30-50 years (e.g. France, UK, Belgium) and countries that have experienced newer waves, in the past 10-20 years (such as Bulgaria, Spain, Portugal).

State of affairs: Trends in support for undocumented

The following studies show a slow but positive trend in Europe member states in terms of access to public services for migrants with irregular legal status.

- Variation in legal entitlements. The COMPAS project on Service Provision to Irregular Migrants in Europe (2012-2015) shows the current situation in legal entitlements to the health care and education in 28 EU countries. The law in the following five Member States, Bulgaria, Finland, Hungary, Lithuania and to an extent in Latvia, does not entitle the children with irregular status to attend schools, due to a procedural requirement that pupils must be registered in the civil or municipal register or have a residence permit in order to register. On the other hand, in these eight Member States, Estonia, France, Greece, Italy, Portugal, Romania, Spain and Sweden, children with irregular status have the same entitlements to healthcare as the children who are nationals of that country (Spencer and Hughes 2015).
  - Gap between law and practice. This is best revealed in a recent study on access to health insurance coverage among Sub-Saharan African migrants in France. ANRS-PARCOURS study, funded by the French National Agency for Research, shows that even in France where there is universal health care since 2000 for all unemployed persons, administrative and social insecurities impede irregular migrants’ access to healthcare due to reasons such as lack
of knowledge of the French system and social assistance and fear of being arrested. The study also reveals various other administrative obstacles from missing an address in order to be able to access to rights, socioeconomic insecurities that cause shifts and laps between coverages, to the social security desks requesting unjustified documents in processing their requests (Vignier et al 2018).

- GDP is not a determining factor. The case of Portugal, one of the least restrictive Member States in regards to access to primary and secondary health care, proves that implementation is not completely dependent upon GDP per capita. The same goes for the healthcare provided to children with irregular legal status in Greece and Romania (Spencer and Hughes 2015:51).

**Strengthening of support: Cities as safe places**

Municipal competences and duties in the socio-economic area allow a lot of room for service provision at the city-level despite the fact that the legal and policy framework on how to address the presence of irregular migrants is set at the national and EU level (Art. 4 of the TFEU).

- Cities have various reasons for inclusion. There is a wide range of reasons why cities include irregular migrants, from legal duty resorting to national legislation or international human rights laws or agendas such as UN New Urban Agenda, to pragmatic reasons of ensuring social cohesion, public order and efficiency in management of service provisions, such as Florence and Barcelona registering migrants with no fixed address in order to plan services accordingly.

- The cities are able to provide different services. Aforementioned COMPAS project (2012-2015) shows that more cities in Europe have recently been offering services such as access to health care and education, issuance of identification documentation and birth certificate, shelter and support for the housing needs, legal counselling, support for regularisation procedures and voluntary return. Some of them find rather informal solutions to put firewalls between one’s legal status and access to public services by providing internal guidelines to avoid exclusions, as in the case of Athens municipality offering food distribution service. Another one is the current “free in, free out” policy in the Netherlands that favours undocumented migrants’ reporting of crimes. This was first initiated and implemented by the local police in Amsterdam and then formally approved by the Dutch State and extended throughout the country in 2016 in the context of the transposition into Dutch law of the EU victims Directive 2012/29/EU (Delvino 2017).
• Including NGOs or other societal actors in the process. Cities achieve their policies in different ways, e.g. involving NGOs subsidised by the municipal authorities in order to overcome limitations imposed by national legislation, for example on public shelter for irregular migrants. Seeking NGOs involvement is becoming a common practice in German cities and other places such as Oslo, Warsaw and Florence. Barcelona’s comprehensive Action Plan of 2017 is quite novel in the sense that the working group headed by the municipal Commissioner brought together different local state departments and consulting organizations on the ground and for the first time introduced a committee to monitor irregular migrants’ access to services, hence will be able to assess the effectiveness of the plan (Spencer 2018).

• Litigation as a strategy for extending entitlements to services. Recent examples include litigation brought before international and national courts by Italian regions of Puglia for health care, Campania for housing and Tuscany for welfare benefits (Delvino and Spencer 2014). Utrecht’s “win your case by losing it” is a strategy of losing in court in order to expose a violation of fundamental human rights in case of compliance with the national legislation (Delvino 2017:9-13).

• The convergence of international and local discourses. In Spencer’s City Initiative (C-MISE) report, she (2018) points at the timeliness of international actors’ endorsement of service provision for the undocumented. She argues that convergence between international and local level actors may give more legitimacy to cities to talk and act more openly about offering safe places for undocumented migrants. Examples include ECRI General Policy Recommendation No. 16, adopted on 16 March 2016, calling for a firewall between public services and immigrant enforcement and UN Secretary General’s call, on 12 December 2017, for national and subnational authorities to consider pragmatic and rights-based options for managing irregular migrants within their borders (Spencer 2018).

Limitations on effective firewalls

Firewall is a formalised separation between service provision and immigration control. Several factors help firewalls that may limit the implementation on the ground.

• Local authorities’ law enforcement capacity. According to Bauder and Gonzalez’s (2018) comparison of cities in Spain, Germany and Chile, absence or presence of cities’ own police forces and registries are key in determining the types of local policies enacted for support of migrants with irregular legal status. This is clearly observed in the
Spanish case where the locally administered census of the padrón municipal allowing registration for people with no fixed address. To the contrary, German municipal authorities have “stringent legal obligation to national authorities” since it is obligatory to register at the local registration office which reports to the municipal foreign office which then reports visa status violations to federal authorities. Although this is rare, it is observed in the case of Portugal and the city of Lisbon where extensive local assistance to irregular migrants does not contradict but is actually in line with the spirit of national policy shaped through its High Commission for Migration (Spencer 2018).

- Local political dynamics and the political vision of the local actors. For example, in Germany, despite the lack of firewall in the case of housing, civic and institutional context at the local level in many cities is supportive of accommodating the needs of undocumented migrants in the field of health and education services and other areas of public life (Bauder-Gonzalez 2018).

- Public acceptance for different groups of migrants. Practicalities do not necessarily explain low level of public support in some cases. Castaneda (2012) ethnographic research in Germany shows that public view on whether undocumented migrants “deserve” access to health care or not is shaped by many extrinsic factors, such as geopolitical considerations, the state of national labour markets and ideological views on what bodies count to be part of the “nation.” The distinction between who deserves access and who does not then has a negative impact on many areas of healthcare provision starting from clinical education (Castaneda 2012) to practitioners’ clinical conduct (Holmes 2012) and even the migrants’ assessment of themselves (as undeserving of care) (Larchanche 2012). A recent experiment conducted in Germany measuring participants’ views at the beginning of the so-called “migration crisis’ and after the sexual assaults of New Year’s Eve (2015/2016) shows that “immigrants fleeing from persecution” were consistently by far more easily accepted than the “immigrants who come for a better living but without a prospect for a job” (Czymara and Schmidt-Catran 2017). and even the migrants’ assessment of themselves (as undeserving of care) (Larchanche 2012). A recent experiment conducted in Germany measuring participants’ views at the beginning of the so-called “migration crisis’ and after the sexual assaults of New Year’s Eve (2015/2016) shows that “immigrants fleeing from persecution” were consistently by far more easily accepted than the “immigrants who
come for a better living but without a prospect for a job” (Czymara and Schmidt-Catran 2017).

**Conditions for better support of undocumented**

Taking stock of studies, several conditions emerge to achieve better support:

- Information, counselling and advice are crucial for access to rights. Neither the existence of legal entitlements nor the economic welfare guarantee access to rights for migrants with irregular legal status. Migrants need assistance to find their way in a system that is completely new to them.

- Monitoring will achieve better implementation. Barcelona’s monitoring committee, foreseen in the recent Action Plan, may offer a durable solution to overcome administrative barriers and achieve full compliance with the existing rules.

- Political support is key for sustainability. Locally initiated policies need the endorsement of local, national and international political actors.

- Further research needed on contextual factors. As Spencer and Hughes (2015) suggest, we still need to grasp better legal, demographic, economic, cultural or institutional factors, that may reveal procedural barriers to the implementation of the existing entitlements and help to identify certain patterns in irregular migrants’ access to these services on the ground.
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The increasing role of local governments in integration policy making and implementation is not only embraced by the local and national stakeholders but also reflected in the local component of migration studies. There are different views on to what extent cities can be considered as fully-fledged actors in integration policy-making and, in particular, in the provision of services for migrants.

The aim of this expert policy brief is to offer a summary of research findings on strengths and limitations of cities in being direct service providers vis-à-vis their national governments. Under what conditions are cities emerging as innovative actors with viable policy solutions? What are the limitations cities face in this process? This review of research on the cities’ involvement in service provision will be put in the perspective of recent trends and developments in the migration to Europe, including the refugee crisis.

**State of affairs: Three approaches to cities’ role in integration**

There are three distinct strands of thought through which the role of European cities in shaping integration policies is so far examined:

- **City-level policy frames:** Recent studies on urban integration policies that fall under multi-level governance of migration show conflicting results even for seemingly similar cases of Western and Northern Europe. On one side of the spectrum, there are studies underlining a growing incongruence between the national and local level. Scholars mainly argue that there is a specific local dimension of integration policies and that dimension is characterized by a greater tendency to solve integration problems in pragmatic ways (Caponio and Borkert 2010) or formulate policies in complex multilevel governance arrangements (Dekker et al 2015; Scholten 2013). On the other side of the spectrum, scholars look at the mechanisms behind this shift and argue that neoliberal turn and related decentralization attempts unintentionally opened up some policy areas to local interpretation as in the case of Denmark where decentralization in some cities led to the inclusion of new actors and interest holders, such as researchers, into municipal policy making (Jørgensen 2012) or that divergence is a result of a conscious choice to decentralize public policy responsibilities from the federal to regional and local governments as in the case of Germany (Schmidtke 2014). These studies share a common aim of understanding the reasons for
differences in integration policy frames at the city level and mostly agree on the fact that local governments are integration policymakers to a great extent. Less emphasis is given on the scope or the limits of local governments’ influence on policy-making on integration on a national scale.

- Centralization and autonomy debates: To understand the limits of the autonomy of local governance, we cannot ignore power relations, hence compliance with national policies. From this perspective, Emilsson (2015) examines Denmark and Sweden with similar welfare and local government structures, the two of the most decentralized countries in the world where governments have recently increased their control and local influence and thereby limited the possibilities for local governments to formulate their own integration policies. Franco-Guillén’s (2018) study on the Catalanian-Spanish intergovernmental relations (IGR) on integration policy shows similar results in a context where great autonomy in integration policies is expected. In 2014, the government of Catalonia, Generalitat, approved the implementing regulation of the reception law and set the so-called service of first reception and included a reception certificate which has a legal effect within the Generalitat’s competences. Whereas the Generalitat and the Spanish government share competencies in health, education, and employment, especially at the legislative level. In a nutshell, these studies urge the researchers and practitioners to complement frame analysis of local and national policymakers activities within their own jurisdiction with an analysis of power relations between central and local governments and a holistic look at the different instruments of compliance used by central governments.

- Politics of integration within cities: This strand of thought zooms in on the integration experiences of migrants in the cities and follows an inductive approach which highlights factors that are critical for the enactment of city integration policies. Existing scholarships then vary in terms of their approach to what counts as key components of political opportunity structures for integration at the local level and to what extent those structures are open to further change. Based on a four-city comparison of Berlin, Amsterdam, San Francisco and New York, De Graauw and Vermeulen (2016) argue that (1) the left-leaning policy-making elite (2) immigrants being part of city electorate and (3) existence of community-based organisations’ are key factors for inclusive cities even when the national context is not hospitable. This localist
view still needs to be complemented, on the one hand, with a macro level approach that positions cities in the global political and economic structures of power (Caglar and Glick-Schiller 2009), and, on the other hand, with a horizontal level that sees cities as part of larger transnational policy and knowledge networks (Jørgensen 2012; Caponio 2017). Moreover, studies that focus on everyday grassroots activities, from the perspective of urban citizenship, help to capture the diversity and the transformative power of political activities at the neighborhood level for example in Italy (Caponio and Donatiello 2018).

Limitations over cities’ role in integration

There are two main limitations that have been recently underlined in the scholarship.

- Centralization negatively effects especially the integration of newcomers in cities. Emilsson’s comparison of Denmark and Sweden shows a “transition from steering through softer instruments (governance) to more traditional command and control instruments (government)” (2015:13), has serious implications, especially for migrant newcomers. A city like Copenhagen, despite its intention to break out of the policy framework set by the central government, has to implement centralized integration measures and administer the integration requirements laid down in the Integration Act and other state legislation. This is echoed by Brännström et al (2018) in their examination of change in the Swedish case. The 2010 reform, the largest reform in this field in Sweden, the responsibility of introducing new immigrants into society was centralized, and authority was transferred from municipalities to the Public Employment Service (PES). Based on newcomers’ accounts, the authors argue that, PES’ policy for integration is oriented solely towards integration through work unlike the municipalities that were considering integration from a more holistic perspective that includes aspects of everyday living, such as childcare, housing, spare time and other aspects of life, Brännström et al (2018). While the opposite process is taking place in Catalonia with demands for further autonomy, the current implementation of integration policies also shows that integration of newcomers that is most severely affected from lack of autonomy (Franco- Guillén 2018).

- Limited power of local authorities over the use of EU funding. Though there are not yet many studies on this matter, Franco- Guillén (2018) highlights that even the relatively autonomous
Catalonian Generalitat has had no say over European initiatives, namely the European Integration Fund, the Anti-discrimination Directives, or the current Asylum, Migration and Integration Fund (AMIF), which is expected to have effects at all levels of government. According to Franco-Guillén, this is evident in the lack of any mention of European initiatives, in the minutes of IGR meetings between 2009–2016, on issues related to immigrant integration unlike the reports in other policy areas where efforts of real coordination and cooperation between Autonomous Communities (ACs) and the state are observed. On the contrary, it emerges as an additional source of conflict as all her Catalan interviewees make reference to the management of the AMIF and criticized the fact that the Spanish government is not giving information about this, despite the EU demands for collaborative agreements with the ACs and using the AMIF to fund NGOs (Franco-Guillén 2018:15). There are similar tensions between national and regional governments in Spain, as in Valencian Community’s and the Spanish government’s positions on irregular immigrants’ access to health services. Another research on Madrid and Andalusia also shows party incongruence between regional and national authorities may be a stronger predictor of conflicts regarding integration policies (Piccoli cited in Franco-Guillén 2018).

**Conditions for empowering cities**

- Taking stock of studies on cities’ role in integration, several conditions emerge to empower cities to reach the goals set in the 2016 Urban Agenda:
  - Europeanization still works for national authorities: Contrary to the expectations that certain European initiatives, with effects at all levels of government, would lead to more intergovernmental cooperation, one of the most autonomous local actors in Europe, namely the government of Catalonia, reveals that national government can easily invade local authorities’ competence when it comes to the allocation of funds.
  - Local level is resilient: In understanding change over time in reaction to external challenges such as the economic crisis, we must shift our focus away from municipalities’ general policy frames to studying the ‘policy action’ frames, i.e. the frames shaped by the everyday mobilisation of different actors around specific initiatives and measures (Caponio and Donatiello 2018: 14). Although this seems contradictory, it complements the call to focus on the interactions between local and national authorities of integration by giving room for analysis of power relations among old and new actors of integration.
What matters is not the name: As Bauder and Gonzalez (2018) argues, the most effective urban strategies for social inclusion of irregular migrants as well as refugees blend bottom-up and top-down approaches which then make less relevant the differences in naming these projects, such as “cities of refuge” (initiated by Barcelona), “human rights city” (as in Utrecht) “sanctuary city” (as in Sheffield) or “solidarity cities” (as in Eurocities initiative).

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Mainstreaming is an important trend in integration governance. It refers to a shift from integration policy as an institutionalized domain with policies targeted at specific groups, towards integration as a general policy priority that cuts across policy sectors and applies to the diverse population as a whole. This means that integration is embedded as a policy priority (similar to gender mainstreaming) in, for instance, education policies, labour market policies, welfare state reforms, organization of the housing sector, provision of various public services, and even in areas such as foreign policies.

The aim of this ‘Ask the expert policy brief’ is to examine the strengths and limitations of integration mainstreaming further. Under what conditions is mainstreaming a viable policy strategy, and when does it have certain limitations? This review of research on the practice of mainstreaming will be put in the perspective of recent trends and developments in migration to Europe, including the refugee crisis. Also, it will be put in a differentialist perspective, covering both the impact and relevance of mainstreaming across different policy levels (EU and national but also regional and local) as well as across various European countries (‘new’ as well as ‘old’ immigration countries).

State of affairs: trends in mainstreaming

First of all, it is important to sketch a number of key trends in mainstreaming. It will be against the background of these trends that an analysis can be made of the strengths, limitations and conditions for mainstreaming.

- Mainstreaming is applied in ‘new’ as well as ‘old’ migration countries. What research clearly shows, is that the trend towards mainstreaming does not apply only to cities that are already diverse or to so-called ‘old’ migration countries. As Jozwiak et al. (2018) show, principles of mainstreaming are reflected in many countries and cities, almost regardless of their migration history. However, the motives behind mainstreaming do vary (Jozwiak et al. 2018), as well as the more precise form that mainstreaming takes under specific circumstances (Scholten and Van Breugel 2017).

- The refugee crisis has not reverted the trend towards mainstreaming. Research on mainstreaming during and after the migration crisis is still scarce. But studies suggest that most European countries have responded to refugee migration with substantiating their mainstreamed approach rather
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than changing it (Scholten et al. 2017). In fact, in various countries, including Sweden, the Netherlands and Italy, the scale of refugee migration seems to have reinforced the mainstreaming into generic services. A notable exception is Germany where the refugee crisis was a key factor in the foundation of an institutional integration policy.

- The EU as a key actor in mainstreaming. EU policies play an important role in promoting the mainstreaming of integration governance. This was already visible in the inclusion of mainstreaming into the European Common Basic Principles of Integration, and more recently, in the important place of mainstreaming in the 2016 EU Action Plan on Integration of Third Country Nationals. Furthermore, studies show that EU funding instruments, such as the European Integration Fund, played a key role in bringing ideas on mainstreaming, which involves ‘old’ as well as ‘new’ migration countries (Pawlak 2015).

**Strengths of mainstreaming**

Several researchers have defined mainstreaming as ‘the future of immigrant integration in Europe’ (Collett and Petrovic 2014). In the literature, various strengths of mainstreaming are defined:

- Goodness of fit: A strength of mainstreaming would be the goodness of fit with the growing heterogeneity of diversity within increasingly diverse European populations. In the light of the structural levels of immigration and the growing scale of migration-related diversity (including an increasingly prominent second and even third generation of migrants), integration can no longer be seen as a stand-alone policy area. Migration and diversity have an impact on the whole diverse population and on generic policies and institutions. In this context, some scholars refer to ‘superdiversity’ as an important driver of mainstreaming (Crul 2016, Van Breugel and Scholten 2017).

- Inclusion within diverse societies. Rather than stressing where people come from (their ethnic or cultural background), mainstreaming has the potential of creating a new sense of belonging within diverse populations. Here lies an important connection between mainstreaming and what is defined in the literature as interculturalist approaches to migrant integration. It provides a way of averting the reification of migrant group identities that group-targeted measures can have (Scholten et al. 2017).

- Diversity and mobility proofing of generic institutions and policies. In the longer term, one of the strengths of mainstreaming would be that it promotes ‘diversity-proofing’ and
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‘mobility proofing’ of generic institutions and policies. This makes them better prepared not only for past and current migration but also for future migration (Collett and Petrovic 2014, Ahad and Benton 2018).

• An integral approach at the street-bureaucrat level. Finally, another strength of mainstreaming would be that it allows front-line workers to develop an integral approach to issues encountered by migrants as well as by others that find themselves in need of help. Frontline workers report that issues encountered by migrants need not always be linked to their migrant background and are often surprisingly similar to issues experienced by others (Gidley et al. 2017).

Limitations of mainstreaming

In spite of its obvious strengths, research has also identified clear limitations to what can be achieved by mainstreaming:

• Difficulties with reaching out to newcomers. Mainstreaming assumes not only that policies and institutions should be mobility- and diversity-proof, but also that migrants should be able to find their way to generic services and institutions. Especially with recent newcomers, and then in particular when new migrant groups are involved on whom there is little knowledge and who have little prior migration experience to a country, access to generic services and institutions can be problematic. Therefore, various scholars (such as Gidley et al. 2017) have argued that for newcomers there will always remain some need for (ad-hoc and temporary) specific policies.

• Difficulties with reaching out to particularly vulnerable groups. Mainstreaming can result in the exclusion of some vulnerable groups. Because of their vulnerability, some groups may fail to acquire access to generic institutions and services. This includes for instance undocumented migrants or migrants who are living under conditions of some form of repression. In these cases, mainstreaming often does not suffice, and ad-hoc specific measures may be required (Gidley et al. 2017).

• Incomplete mainstreaming. Mainstreaming means the deconstruction of integration as an institutional policy domain, but not the deconstruction of integration as a policy priority. However, research reports that the dilution of integration as a policy priority has been a frequent consequence of mainstreaming (Scholten and Van Breugel 2017). Just as with gender mainstreaming, integration mainstreaming requires an active approach towards raising awareness of the importance of migration-related diversity to generic institutions and policies. According to critics, in the absence of an active
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approach, mainstream may turn out in practice as a strategy towards assimilationism.

• Gap between EU, national and local interpretations. There is a clear difference in how mainstreaming is experienced and applied across levels. Overall, research shows greater resonance of mainstreaming at the urban level than at the national level (Jensen et al. 2017). This may reflect the more ‘superdiverse’ character of diversity in cities as compared to the national level. Also, mainstreaming at the national level more often involves incomplete forms of mainstreaming, sometimes even involving retrenchment of government out of the area of integration, and sometimes driven by austerity or by politicization.

• Mainstreaming does not fit everywhere. Finally, a limitation would involve the applicability of mainstreaming to different settings. While it is clear that mainstreaming does not necessarily involve a one-size-fits-all policy strategy, it may resonate more clearly in the somewhat ‘older’ migration countries and cities rather than in ‘new’ migration areas, and that it applies more to the extent that a city or a country is characterized by a more heterogeneous diversity (Scholten and Van Breugel 2017).

Conditions for mainstreaming

Taking stock of studies of mainstreaming integration governance, several conditions prove that mainstreaming can be an appropriate and effective approach;

• Mainstreaming requires an active approach. Mainstreaming does not only mean the deconstruction of integration policy as an institutional policy domain; it also means an active construction of integration as a policy priority that cuts across policy domains and affects the whole diverse population.

• Mainstreaming is not a one-size-fits-all approach. Mainstreaming may require very different actions in different settings. For instance, it matters whether a city or a country previously had an institutionalized and specific integration policy, or not (such as most new migration countries and cities). It also matters to what extent a city or a country is characterized by heterogenization of diversity (or superdiversity). Thus, there is a need for a more differentiated way of thinking of mainstreaming.

• Mainstreaming does not mean that there can be no ad-hoc, temporary and specific measures at all. In fact, research shows that in the context of mainstreaming, temporary and ad-hoc specific measures will often be required for newcomers as well as for particularly vulnerable groups. In order for mainstreaming to work, it should at least first warrant adequate levels of
access to generic services and institutions, as well as an adequate level of knowledge of newcomers and vulnerable groups.
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