ReSOMA: Research Social Platform On Migration and Asylum

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D3.1 - Synthetic report on EU-level policy perceptions and responses

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2 INTRODUCTION

The Task Force Consultation “Identifying Priorities and Assessing Policy Options in EU Migration, Asylum and Integration policy” took place on the 21/11/2018 at the CEPS premises in Brussels. The Task Force Consultation saw the participation of a total of 23 participants from relevant EU institutions and agencies, international organizations and Civil society organizations that are part of the ReSOMA Consortium.

Following the Task Force Consultation CEPS and MPG drafted three Task Force Synthetic Reports (D.3.1) summarising the main conclusions emerged during the Task Force Consultation.
3 DESCRIPTION OF ACTION

In line with objectives of WP3, the ReSOMA Task Force Consultation was organised on 21/11/2018 and aimed to discuss the underlying assumptions and perceived trade-offs that underpin EU decision-making process in the areas migration, asylum and integration.

The Task Force Consultation ensured a structured and closed-doors dialogue supported by independent research conducted by CEPS and MPG. It was implemented in the form of three parallel Thematic sessions on identified topic (see below) and allowed for participative, in-depth discussions between a selected group of EU policy actors. The Task Force Consultation saw the participation of a total of 23 participants from relevant EU institutions - including relevant European Commission services, EEAS, Frontex, EASO, EU LISA, representatives from relevant international organizations, UNHCR, IOM, Council of Europe, international organizations and Civil society organizations that are part of the ReSOMA Consortium (ECRE, PICUM and EUROCITIES).

Specifically, the three Task Force Thematic sessions addressed the following topics, identified by CEPS-MPG researchers as particularly relevant in light of ReSOMA priorities and considering latest policy developments at the EU level:

1. The external dimension of EU asylum policy
2. The effects of anti-smuggling policy on civil society actors in Europe
3. The future of EU funding for the integration of migrants

The structured discussion among TF participants was centred on assessing the assumptions, trade-offs and expected added-value of policy options identified in the preliminary research conducted by the CEPS-MPG research team. At the end of the parallel sessions, a Plenary discussion allowed the participants to exchange ideas and perspectives on the key issues and conclusions emerged during the debate on the three above-mentioned topics.

This method provided additional qualitative data and served as an exercise to evaluate the assumptions, feasibility, and consequences of different policy options. Research conducted in the framework of ReSOMA benefitted greatly from this ‘reality check’ among the key institutional actors at the EU level.
4 ANNEXES

1. Introduction to the ReSOMA Task Force & methodology
2. Synthetic Report 1: The external dimension of EU asylum policy
3. Synthetic Report 2: The effects of anti-smuggling policy on civil society actors in Europe
4. Synthetic Report 3: The future of EU funding for the integration of migrants
5. List of Task Force Participants
This project has received funding from the European Union's Horizon 2020 research and innovation program under the grant agreement 770730.
Introduction

During the past few years, EU policymakers had to react quickly in the face of a sudden and unexpected increase in the number of migrants and refugees arriving in Europe. While migration and asylum policies (including at the EU level) are generally slow to change and path dependent, the unfolding of the ‘European refugee humanitarian crisis’ during 2015-2016 dramatically accelerated the pace of EU action. Over a very short timeframe, several new initiatives were launched, including a set of emergency measures in a number of priority areas. At the same time, however, the ‘crisis’ also highlighted structural gaps in EU migration and asylum governance, underlying the need for comprehensive and evidence-based policy responses.

Against this backdrop, the key objective of the ReSOMA Task Force Consultation was to discuss the underlying assumptions and perceived trade-offs that underpinned EU decision-making in the aftermath of the ‘refugee crisis’. More specifically, the Task Force addressed the following main questions: a) what have been the impacts of the crisis on EU policy priorities? b) what has been the role of scientific evidence and data in supporting key policy decisions? c) on which long-term priorities should EU action be based to address the recognised gaps in EU migration and asylum governance?

The Task Force addressed the above questions in relation to three key topics identified by the ReSOMA research team as particularly salient in light of current policy developments at the EU and national levels:

1) The external dimension of EU asylum policy
2) The effects of anti-smuggling policy on civil society actors in Europe
3) The future of EU funding for the integration of migrants

The Task Force Consultation took place on 21 November 2018 at CEPS headquarters in Brussels. It was implemented in the form of three parallel thematic sessions on the identified topics, moderated by CEPS and MPG researchers. One Co-rapporteur for each of the three thematic sessions was appointed. Co-rapporteurs were selected
among members of the ReSOMA research team and tasked with presenting the key conclusions of the thematic sessions during the concluding plenary discussion.

The chosen format allowed for a process of structured dialogue among a selected group of EU policy actors, representing relevant EU institutions and agencies, International Organisations and NGOs that are members of the ReSOMA consortium. The thematic sessions examined the motivations for adopting specific policy choices, the linkages between policy priorities, and the evidence base upon which adopted policy measures were built.

The ensuing plenary session allowed Task Force participants to comment and exchange ideas on the key findings emerged during the three thematic sessions.

The three Synthetic Task Force Reports draw on the debate that took place during the Thematic Sessions, and present the key findings highlighted by Co-rapporteurs in their interventions during the plenary session. A full list of participants to the Task Force Consultation can be found in the Appendix.
I. The External Dimension of EU Asylum Policy

1.1 The impact of the ‘refugee crisis’ on EU policymaking

There was general agreement among Task Force participants that policy priorities have not changed that much as a result of the ‘refugee crisis’. Few new ideas emerged and some of the participants alluded to “old wine in new bottles” to describe EU policy responses adopted in that context. In fact, the key pillars on which the EU response to the crisis was based are the same as those already included in the European Agenda on Migration, presented by the Commission in May 2015. In some cases, however, the ‘crisis’ injected urgency into EU action, allowing for pre-crisis policy ideas to move forward and be formally adopted.

While the overall level of policy change has been limited, participants acknowledged that the crisis has dominated and in some cases overshadowed the EU policy agenda during the last three years. There is no doubt that migration and asylum have become increasingly salient issues across the EU institutional arena. European Council meetings devoted to migration and asylum issues proliferated at a rapid pace, while Justice and Home Affairs (JHA) Council and SCIFA (Strategic Committee on Immigration, Frontiers and Asylum) – composed of ministries of the interior and senior officials of EU Member States – played a central role in setting priorities and devising policy responses. At the same time, the relevance acquired by migration and asylum issues multiplied the number of actors dealing with those issues. For example, in the aftermath of the crisis, more than 19 different Commission Directorates-General (DGs) were dealing in one way or another with migration and/or asylum issues, including the Directorate-General for Economic and Financial Affairs (DG ECFIN). In parallel, migration and asylum issues also moved ‘vertically’ to the highest levels of the European Commission, including its President and Vice-Presidents, and the High Representative of the Union for Foreign Affairs and Security Policy.

Several participants underlined how the ‘crisis’ increased the politicisation of asylum and migration issues, fostering nationalist and populist narratives across member states. Some participants observed provocatively that the only way to move beyond the current polarised debate would be to have another ‘crisis’ on a completely different matter, so as to turn public attention away from migration issues. Other participants stressed that the time has come for EU institutions to critically engage in a process of self-examination, asking to what extent current EU policies are ‘fit for purpose’ and on what main pillars should EU action on migration and asylum be based so as to effectively respond to future crises. In particular, the discussion underlined how the refugee

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1 Rapporteur: Sergio Carrera, CEPS; Session moderator: Roberto Cortinovis, CEPS.
crisis clearly exposed the need to ground EU asylum policies on a common understanding of the principle of solidarity and a fair sharing of responsibility, both among member states and in relation to third countries.

Participants critically discussed some of the main initiatives that have been adopted by the EU and its member states during the last four years. In addition to measures aimed at reinforcing external border controls and the reform of Frontex through the establishment of a European Border and Coast Guard (EBCG) Agency, the EU has supported and contributed to the implementation of the so-called EU-Turkey Statement, agreed by EU Heads of State and their Turkish counterpart in March 2016.

Similarly, the European Commission has called for a reform of EU asylum procedures that foresees the introduction of common EU rules on the use of ‘safe third country’ concepts. Specifically, a key provision of the proposed Asylum Procedures Regulation is to make the application of safe third country criteria mandatory as grounds for declaring an application inadmissible, instead of leaving this to the discretion of Member States as is the case under current EU rules. Moreover, the Commission proposes to move progressively towards increased harmonisation in this area, through the designation of safe third countries at the EU level.

The debate also focused on EU and Member State financial support to third countries for managing migration – often taking the form of crisis-led instruments. The EU Facility for Refugees in Turkey is managing a total €6 billion from 2016 until 2019, while a €4.1 billion EU Trust Fund (EUTF) to address the root causes of migration and forced displacement in Africa was set up to implement the 2015 Valletta Declaration, agreed upon by EU and African Heads of State in November 2015.

Some specific observations were made in relation to the 2016 EU-Turkey Statement. First, it was underlined how this ‘deal’ was presented in the form of a press release, that is as a non-binding document concluded by the Heads of State or Government of the Member States, acting outside the EU legal framework. According to some participants, the ambiguous legal nature of the EU-Turkey Statement is problematic as it excludes the EU in areas which now fall under the exclusive competence of the Union.

Second, some participants argued that using money as an incentive for achieving the return of asylum seekers entering the EU creates expectations among other third countries regarding the price tag that could be attached to their cooperation in this area. One participant also raised the question as to “who is going to pay the next bill of the EU Turkey Facility”, stressing the importance of developing sustainable partnerships (also from a financial point of view) with third countries.

Third, and related to the previous point, the capacity of the EU to ensure the effective implementation of the EU-Turkey
Statement was called into question by some participants. Available data, for example, show that only a limited number of returns from Greece to Turkey have been carried out so far, in spite of this being one of the key points included in the Statement. According to a participant, since the implementation of the Statement, Turkey has allowed the continuation of irregular entries into Greece, as testified by the critical humanitarian situation on some Greek islands, but not to a degree that would allow concluding that Turkish authorities are refraining from implementing the ‘deal’.

Fourth, the EU-Turkey statement is based on the implicit premise that Turkey is a safe third country for people in need of protection, despite the fact that Turkey maintains a geographical limitation to the 1951 Refugee Convention. In this regard, a participant underlined problems associated with applying the safe third country notion in the case of Turkey. This concern is confirmed by the fact that a set of guarantees had to be requested from Turkish authorities to ensure that Turkey was safe on the ground and not only ‘on paper’. The limited application of the safe third country concept as a ground for returning asylum seekers to Turkey is further proof of the legal obstacles associated with applying this notion in that specific context.

Beyond the crucial role it has played in ensuring the viability of the EU-Turkey Statement, the safe third country concept also features prominently in the reform of EU asylum procedures presented by the Commission in 2016. In this regard, some participants highlighted the need for having a more harmonised approach across the EU by adopting a common EU list of safe third countries. However, other participants expressed doubts about the value added of such a common EU list in light of already existing notions and practices across EU Member States.

In addition, one participant argued that the concept of ‘safe country’ is dependent on the idea that third countries, particularly North African states, can be supported by the EU in developing their domestic asylum systems and ratifying relevant UN refugee and non-refoulement protection instruments in a way that would make them qualify as ‘safe’. However, the implementation of the Dublin System inside the EU has demonstrated that the presumption of safety as a basis for transferring asylum seekers to other countries cannot be taken for granted even among the Member States of the EU. Considering the lack of functioning asylum systems in all the major transit countries to the EU (including North African countries), the ‘safe third country’ option should not be considered as legally and practically feasible in those contexts, at least in the short-term.

More broadly, the discussion revealed that the very premise on which the safe third country paradigm is based raises a number of open questions. In particular, it assumes perhaps too easily that these (non-EU) countries will accept being considered as ‘safe’ with everything that label implies. This assumption, however, often disregards
the interests of third country authorities and wider geopolitical implications. In this regard, some participants highlighted how some EU actors and Member State governments are not adequately taking into consideration the impact that a narrow focus on readmission may have on the broader framework of relations with third countries, which includes other strategic issues such as energy, trade, and diplomatic concerns.

The Valletta Summit on Migration held on the 11 and 12 November 2015 in Malta, and its difficult implementation, was referred as an example of the mismatch between EU and third country interests on asylum and migration. Several participants mentioned the long-standing refusal of African governments to meet EU and Member State expectations in the field of readmission and migration control. To this should be added that EU governments, including during recent high-level meetings with African countries, have largely disregarded requests from African partners to expand legal mobility channels to the EU for both refugees and other migrants.

1.2 The role of evidence and data in supporting policy decisions

Participants agreed on the key importance of reliable and timely evidence (including statistical data) for informing policy choices in the area of migration and asylum. While definite and incontrovertible evidence in support of policy choices will never be available, EU policies should nevertheless be based on “reasonable evidence”.

At the same time, participants referred to the risk of falling prey to a “data trap”. While the crisis has multiplied data available to policymakers, in many cases those data focus only on a limited number of issues, such as the number of maritime arrivals, asylum requests, rejected asylum seekers, etc. However, this narrow approach to migration phenomena may raise false expectations, artificially inflate “problems” and divert the attention of policymakers from other key dimensions.

In spite of the increasing amount of statistical data collected on migration and asylum issues, participants underlined some important problems and gaps in statistical knowledge. One participant pointed to the problem of double counting in relation to the number of irregular entries and asylum applications, due to the collation of data from various sources describing the same occurrences. Furthermore, despite the existence of large statistical sources and databases, such as those provided by EU-LISA (EU Agency for the Operational Management of Large-scale IT Systems) on ‘hits’ and ‘alerts’, these statistics do not take into consideration the actual extent and evolving nature of some of the key societal phenomena related to migration and human mobility. Major areas in which more reliable and complete data would be needed include the socio-economic condition of migrants and asylum seekers arriving in Europe, transitions between asylum and migration status, information on access (or lack of
access) to the asylum process, and detention of asylum seekers and irregular migrants.

There is also a lack of evidence on the actual scale of so-called ‘secondary movements’ of asylum seekers within the EU, a phenomenon which may be less relevant in reality than how it is often presented in policy debates. In this regard, the use of available statistics to back policy measures that aim “to curtail secondary movements” disregards that asylum seekers may have legitimate reasons for not staying in the first country of entry. Specifically, asylum seekers may be willing to reunite with family members in another Member State, a right enshrined in EU legislation but which is often hampered in practice by legal and bureaucratic obstacles. Some asylum seekers may also be trying to escape inhuman and degrading treatment, such as destitution or lack of housing and access to basic social rights, which stems from inadequate reception conditions in the first country of entry.

Besides pointing to discrepancies and gaps in available data on asylum within the EU, participants also highlighted the need for more evidence (both quantitative and qualitative) on major migration dynamics and trends. Specifically, more work is still needed to systematically collect and analyse data on a number of key issues, including the dynamics and drivers of migration movements in regions of origin and transit, as well as on the political, social and economic factors that shape migration decisions. More accurate evidence of these phenomena would be crucial for adapting EU interventions in third countries and setting realistic expectations about what can be achieved by measures that aim to address the underlying drivers of migration and refugee movements.

1.3 How to improve EU policy responses in the long-term?

Participants underlined how, in the aftermath of the refugee crisis, the political priority of achieving an impact in the short-term drove EU policy makers to focus cooperation with third countries on security and border controls-related issues, instead of other equally central policy issues, such as foreign affairs, protection of human rights, development cooperation and humanitarian aid. Short-term policy responses driven by national governments and ministries of the interior have monopolised policy debates, through an insistence on national sovereignty, security and the containment of flows towards the EU. The focus on deterrence of current EU policies is also indicated by the discussions around the concept of ‘disembarkation platforms’, put forward by the June 2018 European Council Conclusions. Against this background, participants underlined the need to “normalise” the debate on migration and asylum in the EU. In order to do so, it is crucial to challenge the assumption on which nationalist narratives are based, namely that there is an opposition between the values enshrined in the EU Treaties (such as respect for the
The debate also highlighted the key role of the EU in the global protection regime. One participant underlined as a priority that the EU and its Member States should maintain their commitment to ensuring protection for the small share of refugees (compared to the global refugee population) that apply for asylum in Europe. In this regard, it is important to remember that through the establishment of the Common European Asylum System (CEAS), EU Member States have adopted a set of standards (on issues such as reception conditions for asylum seekers), which should be fully implemented on the ground.

Along the same line, one participant mentioned that despite voices alluding to “the end of the humanitarian crisis in Europe”, there are still some spots in Europe where the crisis is not yet over. The situation on the ground in some Greek islands, such as Samos and Lesbos, continues to be very worrying and unresolved, with asylum seekers experiencing ill-treatment and unacceptable reception and detention conditions, homelessness and destitution. Situations like those mentioned above impact negatively on EU credibility vis-à-vis third countries. It is thus necessary that the EU “keeps its house in order” before asking other countries to do the same.

Participants also underlined as a priority for the EU and Member States to develop a multi-policy approach when engaging in international cooperation with third countries on asylum and migration matters. This requires developing a policy framework that does not focus exclusively on border controls and readmission, but also addresses the economic and social challenges faced by the major countries of first asylum. While the EU and its Member States remain the world’s biggest development donor, further efforts are required to overcome existing operational silos, integrating humanitarian aid, development cooperation and political engagement in a comprehensive manner. To that aim, increased coordination is needed both among EU institutional actors (e.g. among relevant Commission DGs and the EEAS) and between the latter and Member States’ agencies.

However, in order to produce tangible results, EU policymakers should be ready to deploy additional financial resources and sustain investments on the scale required to address the magnitude of displacement situations in major countries of asylum. Substantial resources would also be required to support the long term development of asylum systems in countries of transit, such as in the case of North-African states.

Participants also recognised the importance of EU Member States increasing their resettlement quotas and exploring the introduction of additional pathways to protection for refugees, through expanded family reunification, education programmes and labour mobility schemes. Besides providing access to protection for those in need, resettlement and complementary pathways
should be considered as a concrete demonstration of solidarity and fair sharing of responsibility towards those developing countries that are currently hosting the majority of forced migrants on a global scale. The EU’s role is even more important considering that the United States, traditionally the country resettling the highest share of refugees globally, is weakening its commitments in this area.

The debate also underlined the importance of the EU taking an active role in the current UN-led processes for implementing the two Global Compacts on migrants and refugees. Specifically, the Global Compact on Refugees puts special emphasis on the need to create legal avenues for refugees to access protection, through resettlement and other complementary pathways. The Refugee Compact also stresses the need to deploy additional resources to address the long-term development challenges faced by countries hosting large refugee populations. Finally, at a time when several states in Europe and elsewhere are in the process of lowering their protection standards, the Refugee Compact reaffirms the commitment of the parties to promote and respect international law, human rights and fundamental freedoms, as well as the rule of law at the national and international levels.
II. The effects of anti-smuggling policy on civil society actors in Europe

2.1. The impact of the ‘refugee crisis’ on EU policymaking and agenda-setting

There was general agreement among Task Force participants that the so-called ‘European humanitarian refugee crisis’ should be considered as the result and extension of other underlying EU crises – namely a security crisis, an economic crisis, and a crisis of EU values and solidarity. The politically-motivated exploitation of the above-mentioned crises led to the adoption of restrictive approaches in the area of migration and asylum, which in turn resulted in increasing policing activities towards civil society actors providing support to refugees and migrants.

First, Task Force participants stressed that the EU security crisis has been aggravated by terrorist attacks occurring in the Member States in recent years. Some participants underlined how the “fear of terrorism” should be considered a key factor for explaining the restrictive turn undergone by EU policymaking and agenda-setting on migration. Against this trend, however, participants stressed that migration and security should be considered as two separate and distinct policy areas, to be addressed by means of specific conceptual and operational tools.

Secondly, the economic crisis that plagued Europe from 2008 has weakened state institutions, leaving a fertile soil for populism, in particular in southern European countries. Member States with weaker administrative and financial capacities found themselves unable to manage increasing numbers of asylum seekers and migrants. The response of these countries to the ‘refugee crisis’ was characterised by inadequate procedures for the registration of migrants and unaccompanied minors and by the inability to keep people safe and secure. The economic crisis also contributed to nurturing the sense of insecurity among European citizens and increased the power of nationalist movements proclaiming the need to close and protect national borders.

Third, the previously identified factors led to a third type of crisis – one of European values and solidarity. National governments of front line Member States, as well as those of transit and destination ones, reacted to increasing arrivals by prioritising unilateral and emergency-led approaches to migration movements. A restrictive and security-driven approach to migration management emerged as the ‘common lowest denominator’ on which EU Member States could agree and show some sort of solidarity at the EU level. Participants underlined that the

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2 Rapporteur: Carmine Conte, MPG; Session moderator: Lina Vosyliūtė, CEPS
management of migration and asylum movements created a deep division among Member States regarding the most appropriate way to address related challenges. Ultimately, the ‘refugee crisis’ resulted in an unprecedented political crisis that put the legitimacy of the European project as a whole into question.

The events described above were identified by participants as key factors that changed the narrative on migration and created the conditions for expanding the involvement and competencies of Frontex, law enforcement and security agencies, as well as military actors. Participants acknowledged that the notion of ‘crisis’ or ‘emergency’ has overshadowed the EU policy agenda during the last four years. However, in light of the widespread use of a ‘crisis’ terminology to refer to migration and asylum phenomena, one participant suggested further reflection on “what this crisis was about”. In this regard, it was also underlined that the scale of migrant flows has now significantly decreased in comparison to 2015 and that, as a consequence, the emergency approach that characterises EU policy responses should be revised.

Participants also identified some of the key policy issues that have become particularly salient across the EU institutional arena in the aftermath of the crisis. These include hotspots, returns and readmissions, intelligence gathering on cross-border crimes (and for migration management purposes), EU external and internal border management and the criminalisation of irregular migration.

As part of the immediate response to assist frontline Member States facing disproportionate migratory pressure, the Commission outlined a new hotspot approach in its 2015 European Agenda on Migration. According to some participants, the establishment of hotspots was motivated as much as by containment and intelligence gathering purposes than by the need to ensure proper identification and registration of asylum seekers. One participant in particular questioned whether the information collected in the context of hotspots procedures was used for upholding the rights of refugees and migrants or to suppress them. It was also highlighted that the focus on returns by national authorities discouraged many asylum seekers from going through the hotspots voluntarily, leading to increased coercion and reported episodes of abuses and violations of fundamental rights.

It was further noted that measures adopted to tackle terrorist activities overlapped with legislative actions in other policy areas, such as international and inter-agency cooperation, data exchange and external border security. One of the outcomes of this approach was that all asylum seekers were considered as ‘potential terrorists’ or, at least, as posing security concerns.

Although a participant emphasised that border management activities have always fed into, or supported, the fight against terrorism, the links between these two fields became more visible as a consequence of the refugee crisis. In 2002, the so-called EU Facilitators’ Package was adopted with two main parallel goals:
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migration management, that is reducing flows of irregular migrant and externalising EU border controls beyond EU physical borders, and criminal justice, i.e. addressing the crime of migrant smuggling.3 However, in the aftermath of the refugee crisis, the focus of EU action clearly shifted from criminal justice towards migration management. While some participants outlined that episodes of criminalisation of solidarity towards migrants were already taking place in Europe before 2015, the phenomenon was significantly amplified in the following years with the increase in the numbers of migrants. New trends in policing are emerging beyond formal cases of criminalisation: in several EU member states, civil society actors have experienced different forms of policing, ranging from suspicion and intimidation to legal restrictions, administrative penalties and formal prosecutions.

The above mentioned changes in policy priorities had a number of practical implications. A participant highlighted that, in some circumstances, prioritising the fight against the facilitation of irregular migration, left asylum seekers and other migrants without assistance and increased their vulnerabilities. Against the narrow security-centred approach emerging at the EU level, participants agreed that migration management needs to be discussed in the broader context of EU external relations with third countries, which includes addressing the root causes of migration and the lack of channels to move to the EU regularly.

2.1 The role of evidence and data in supporting decisions on anti-smuggling policies

Participants agreed on the key importance of reliable and timely evidence, including statistical data, for informing policy choices in the area of migration and asylum. However, the question was raised on what kind of evidence is used in the policymaking process and under which specific circumstances. The discussion touched upon different uses of ‘evidence’ by policymakers – namely for justification and legitimisation of chosen policy options or for influencing and shaping rational decision-making. Some participants highlighted that evidence matters less during times of crisis than during normal times, which leads towards a vicious circle of “less evidence-based” and more “crisis-driven” decision-making.

A key issue addressed by participants regarded the main sources of evidence that is needed to better evaluate the impacts of the Facilitators’ Package on the activity of civil society actors that provide humanitarian assistance to migrants. The views of participants on this issue were divided. Some participants considered that in order to have sufficient evidence of criminalisation, it would be required to

demonstrate that there is a “cause-effect” relation between misguided prosecutions resulting from the Facilitation Directive’s implementation and convictions of humanitarian actors.

Other discussants stressed the need to look beyond convictions and formal prosecutions, by analysing the context of “intimidation” of civil society actors via other laws, such as is the case of the so-called ‘Lex NGOs’ in Hungary on transparency of organisations receiving foreign funding, and the creation of a “hostile environment” for civil society actors. Some discussants emphasised that increasing policing against civil society actors should be understood in the context of the broader process of ‘rule of law backsliding’ and related reductions of civil society space taking place in some Member States.

The discussion then shifted onto the possible political solutions for addressing harassment and intimidation of NGOs and volunteers. A revision of EU law might not change the situation on the ground, as the harassment and intimidation experienced by civil society organisations and individuals seems to be the outcome of political decisions at the national, rather than at the EU level. Some participants expressed doubts that changes in EU law would prevent the political and misguided prosecutions of NGOs and volunteers who provide humanitarian assistance to migrants.

Some participants were also concerned that the current political climate could have a negative impact on the content of the Facilitators’ Package if this piece of legislation were to be reopened, such as, for example, removing the existing optional exemption of humanitarian assistance. The option to introduce soft non-legislative measures was also discussed. However, some participants underlined that drafting guidelines regarding the interpretation and implementation of the Facilitation Directive would not be useful for offering better instruction to Member States in this field. It was noted in this regard that criminal law is a highly sensitive political issue in Member States.

Some of the participants suggested that data collected by Frontex, Europol, Eurojust, EU–LISA, such as, for example, statistics on arrests of civil society actors could feed into better protection of humanitarian actors. It was suggested that such information could be gathered and analysed by the Fundamental Rights Agency and DG Justice.

Other proposals advanced by participants regarded the creation of an independent observatory overseeing the freedom of civil society space and the protection of human rights defenders, which could be involved in monitoring the early signs of criminalisation of humanitarian assistance provided by civil society actors.

In general, participants agreed that different instruments promoting and strengthening the respect for rule of law and fundamental rights should be prioritised and bolstered with appropriate funding mechanisms. Such instruments
should support critical civil society infrastructure at national level and prevent the phenomenon of ‘rule of law backsliding’. In this regard, the Commission is taking Hungary to the European Court of Justice over the so-called ‘Lex NGOs’, due to the potential impact of that law on foreign-funded civil society organisations operating in the country.

Participants agreed on the fact the EU is a strong actor when it comes to protecting human rights defenders in third countries. At the same time, it was agreed that a set of mechanisms are increasingly needed to ensure the protection of human rights actors within the Union. For example, a lot of EU funding is currently channelled via Member States, which sometimes misuse it to silence critical civil society organisations and human rights defenders. One of the suggestions for addressing this situation was to create a Special Representative on Human Rights within the EU, similar to the OSCE Special Representative on Anti-Semitism.

2.3 How to improve EU policy responses in the long term?

The third round of discussion in this session focused on the long-term policy priorities and solutions needed to address migrant smuggling in a balanced and effective way. Participants agreed on the need to adopt a more holistic and comprehensive understanding of migration, which takes into consideration the links between migration phenomena and development processes. The discussion highlighted that migration and asylum policies are among the few areas where the EU has not fully articulated its long-term policy goals and developed a strategic vision on how to reach them. By design, thus, EU migration and asylum policies are driven by short-term political interests.

Participants stressed that one key long-term goal for the EU should be to address citizens’ fears of migration, while improving the management of the ‘crisis’ by taking concrete actions to address the underlying causes of migration dynamics. Some participants mentioned that migration should be managed in an orderly and balanced way to avoid controversial situations such as those experienced in Libya and Calais. The reform of the CEAS and the widening of EU legal migration policies should be considered as key long-term priorities by EU policy makers. Participants recalled how, at the beginning of the ‘refugee crisis’, priority was given to save lives in the Central Mediterranean and the Eastern Aegean. By contrast, the reduction of new arrivals has become the most crucial objective at EU and national levels in subsequent years.

Some participants stressed that the EU policy response should not only focus on enhancing returns, which is a very short-term objective, but should also aim to create long-term and sustainable partnerships with countries of origin and transit. To achieve this objective, political initiatives on migration and refugee issues should be agreed at the international level,
for instance in the framework of the UN-led Global Compacts on Migration and Refugees, which attempts to provide a coordinated answer to global challenges.

It was therefore suggested that anti-smuggling policies can only work in a comprehensive framework which includes adequate legal, safe and orderly pathways for both migrants and refugees. Safe channels of entry could be provided through forms of cooperation between civil society actors and state authorities. As an example, in the last few years, religious groups such as the Federation of Evangelical Churches (FCEI) and the Community of Sant’Egidio have worked in cooperation with government authorities in Italy to create humanitarian corridors for refugees coming from Syria and countries of the Horn of Africa.

Participants pointed out that the EU legal framework should clearly distinguish between humanitarian assistance and migrant smuggling. Some discussants also suggested that police officers and border guards should be trained to better understand the difference between smuggling activities and the humanitarian assistance provided by NGOs and volunteers. They should also cooperate with civil society actors to ensure the establishment of ‘firewalls’ between civil society and law enforcement authorities.

Participants emphasised that a clear separation is needed between security policy, criminal justice and migration management. One of the participants stressed that criminal law should not be used as a migration management tool, as this choice would backfire in the long run with citizens and civil society losing trust in criminal courts. On the contrary, criminal law should be anchored in the framework of the rule of law, democracy and protection of fundamental rights. Accordingly, a correct and fundamental rights compliant implementation of criminal law should represent a long-term priority for the EU response to migrant smuggling.

Participants underlined that restrictive EU migration and visa policies, coupled with the absence of humanitarian entry channels for asylum seekers, have created the conditions for the proliferation of smuggling activities. One of the participants pointed to the need to address these structural gaps in EU migration policy, while another participant proposed to create incentives for migrants and asylum seekers to present themselves to national authorities at the external borders of the Schengen area. This was seen as a solution to the issue of ‘secondary movements’ within the EU, which has resulted in the reintroduction of internal border controls by a group of Member States since 2015. Participants also agreed that, at a time when EU agencies are gaining a bigger role in collecting and sharing data, effective data protection and fundamental rights monitoring mechanisms should be put in place at the EU level to address emerging data protection issues.

Finally, participants touched upon the effectiveness of the existing mechanisms
for evaluating EU policies. Some participants proposed that EU Member States and the Commission should strengthen the role of EU agencies in conducting internal impact assessments of EU policies in national contexts. However, other participants highlighted that internal impact assessments are subject to various trade-offs and political compromises. Therefore, external, independent and transparent processes of evaluation are needed in order to obtain a proper assessment of EU policies in the areas of migration and asylum in general and migrant smuggling in particular.

In order to ensure comprehensiveness and independent outcomes, assessment of current EU policies should involve all relevant stakeholders and be subject to transparent procedures. Some participants recommended following the model of UN Special Procedures, which rely on independent high-level experts for conducting investigations and reports. In conclusion, there was a consensus among participants that an honest and self-critical reflection on “where we are in the area of migration and asylum in the EU” is currently lacking and therefore it is hard to predict the overall direction of EU policies in this field in the long term.
III. The future of EU funding for the integration of migrants

The thematic session on the future of EU funding for the integration of migrants started with the question of the impact of the ‘refugee crisis’ on EU policy making, and then turned immediately into a debate on how to improve long-term EU policy responses in the context of the Commission proposals for the 2021-2027 Multiannual Financial Framework. These two aspects are inherently linked, as the proposals tabled by the Commission in 2018 to shape the next phase of EU integration policies are directly informed by the lessons learned during the peak of arrivals in 2015/16 and the ensuing review of the provisions and policies in place in the 2014 to 2020 period. In a second round, the participants considered the role of evidence and data in supporting policy decisions.

3.1 The impact of the ‘refugee crisis’: a drive towards improved EU policy responses in the long-term

A multi-fund approach to supporting migrant integration, drawing on recent experience

The experience of recent years – including the challenges of the timely use of funds and flexibility in directing funds to where they are most needed during large-scale arrivals – has catalysed and accelerated the Commission’s efforts to pursue migrant integration as a high-ranking and cross-cutting policy goal in the upcoming 2021 to 2027 MFF. The related Commission proposals are informed by a multi-fund approach seeking to streamline integration funding from the Asylum, Migration and Integration Fund (AMIF) – to be renamed as Asylum and Migration Fund (AMF) – the European Social Fund (ESF) (to become ESF+) and European Regional Development Fund (ERDF) programmes.

The chosen programme architecture thus declines opting for one single instrument. Instead, the objective of mainstreaming migrant integration into the fabric of the existing Structural Funds goes along with that of maintaining a dedicated migration fund (AMF), now focused on early integration. Achieving more flexibility has been the guiding principle throughout, to allow Member States to react to emerging needs in a speedier way. It would also allow the Commission to fill gaps better, through Commission-managed instruments, where national governments have difficulties (or are less inclined) to act. The Commission is keenly aware that in the migrant integration field, EU funding programmes represent the most effective and nearly only available instrument to influence policies being implemented in the Member States.

Rapporteur: Alexander Wolffhardt, MPG; Session Moderator: Thomas Huddleston, MPG
**Key challenge: coordination among funds**

The ambitious goal of giving increased attention to migrant integration across funds, while at the same time deliberately maintaining flexibility, leads to tough and protracted challenges of coordination. On the level of the funds’ overall scope, a key issue is the duality between the ‘early integration’ focus of AMF and the orientation towards longer term integration proposed for integration spending under ESF+. In line with the underlying philosophy of flexibility and the priorities of the 2016 Action Plan, the Commission aims rather to support through the AMF measures that follow a comprehensive, fast track integration approach ‘from day one’, to facilitate the process of settling in and leading the way towards more topic-specific measures and projects supported under ESF+. Framing the two programmes’ objectives in this way responds to the trade-off between, on the one hand, a loss of flexibility if those objectives had been defined in a less open way, and on the other hand, the emergence of possible funding gaps or loss of synergies if those same objectives had been framed in a more circumscribed way. The result will certainly be an overlap between potential beneficiaries of the funds, with e.g. early labour market integration as much eligible for support from ESF+ as under AMF.

**Need for coordinated implementation at Member State level**

Participants highlighted that the challenge resulting from the duality of ‘early’ and ‘longer term integration’ that characterises the EU funding architecture is replicated at the Member State level, where the implementation structures of the two funds (AMF and ESF+) need to be aligned and coordinated by Managing Authorities in a much more comprehensive way than it is currently the case. Already in the current programming period, a lack of operational and strategic coordination has been recognised in many Member States, specifically between the processes that are typically overseen by ministries of the interior (regarding AMIF) and those in hands of the ministries of labour and social affairs (concerning ESF). In this context, including the AMF in the new Common Provisions Regulation on shared management funds as proposed by the Commission would be a major step forward to achieving better integration of Member State programming efforts. Specifically, if this proposal were accepted by the two co-legislators, the AMF would be subject to the same rulebook as the Structural Funds, including more demanding rules in terms of reporting and monitoring as well as horizontal ‘enabling’ conditions including effective application of the EU Charter of Fundamental Rights.

**Need for expanded capacity in Member States to utilise EU funds**

The limited ability of some Member States to fully exploit the funds’ potential for supporting reception and early integration has emerged as a key concern in the preparation of the upcoming MFF. In fact, in a context marked by increasing numbers of migrants, the biggest problem in many
countries has not been that of not having enough resources available, but the capacity of authorities, institutions and beneficiary organisations to coordinate programme implementation and absorb all funds available. At the same time, funds have not been accessible to key actors in many Member States, such as local authorities and civil society organisations, which have often found themselves at the frontline of reception and integration without fast and effective EU support. A core issue remains therefore how to spend existing resources efficiently and fast enough. While the Commission aims to render the revised funding instruments more flexible (e.g. by introducing mid-term reviews linked to re-programming), the main responsibility to address this issue rests with Member State governments, which must streamline procedures and find pragmatic solutions to address identified bottlenecks. In this regard, participants recognised that the current political climate across the EU, marked by anti-immigrant and eurosceptic sentiments, is not conducive to the adoption and implementation of much needed reforms in this area.

**Member State ambiguity about use of the ESF for migrant integration**

Participants recognised that a major stumbling block for granting the ESF a more prominent role in longer term integration is the reluctance of many Member States to effectively regard migrant integration as falling within the scope of this Fund. For many actors on national level, the ESF is traditionally tied to European cohesion philosophy and the concept of using EU means to facilitate socio-economic catch-up processes and reduce development gaps among Member States. The idea of spending EU means on migrants and not for ‘own citizens’ is uncomfortable, especially in countries hit hard by the economic crisis, or where a self-perception as a ‘country of transit’ still prevails. A similar reluctance can be observed in the context of the ERDF which may be used to finance reception infrastructures. To overcome such a restricted view on the objectives of these funds and promote an approach that better links EU programmes with identified needs, the Commission aims to establish a stronger link between the programming of the funds at the national level and the European Semester process. In this context, it is to be hoped that more Member States will agree to implement Country-Specific Recommendations (CSR) related to migrant integration.

**Deliberate flexibility of Commission-managed AMF instruments**

The varying propensity of Member States to draw on EU funds for migrant integration possibly also informed the high degree of flexibility proposed for those parts of the AMF directly managed by the Commission. Proposed provisions for the AMF Thematic Facility are relatively vague, not only to be able to respond flexibly to emerging situations, but also to provide additional EU support in areas where Member State efforts to address integration-related needs have to be shored up. The proposed provision in the
AMF Regulation for local and regional authorities as well as civil society organisations to directly gain from the Thematic Facility (including a higher co-financing rate for such actions) is part of this deliberate choice for a markedly flexible instrument. Welcomed by stakeholder organisations representing civil society and local/regional levels, this proposal for improved and direct access to EU integration funds has become a point of contention in the ongoing negotiations with Member State governments. Worth noting in this context are the financial dimensions at stake: while the proposed AMF Thematic Facility amounts to €4.2 billion and the Member State programmes under shared management to a further €6.2 billion (integration being only one of the AMF spending goals), the overall volume of the ESF+ programmes under shared management is proposed to reach €88 billion.

Need for better understanding of long-term integration challenges

The protracted nature of the debate around ‘early’ (AMF supported) and ‘longer term’ (ESF+ supported) integration also stems from the fact that in a number of Member States the notion of long-term integration as such is not yet well established. Especially in more recent destination countries (e.g. Eastern European Member States), efforts to build integration policies are more linked to the reception phase, and mainstreaming immigrant integration across policy areas has yet to happen. Therefore, cooperation with Member State authorities in the context of programming under shared management should be considered by the Commission as an exercise in awareness-raising on the importance of not restricting long-term integration policies to individuals who have gained a long-term residence perspective. In that sense, finding operational solutions for AMF and ESF+ implementation should be considered as tantamount to engaging in a policy dialogue with Member States about the principles, objectives and actors of migrant integration in general.

The Partnership Principle: a key instrument for improving long-term integration policies

Participants stressed how the joint development of an understanding of the long-term integration priorities in each Member State will depend on involving all relevant social policy actors, social services and other authorities operating at the national level. Likewise, local authorities, civil society and social partner organisations have a key role to play in programming and implementation, in particular concerning community-based integration and fostering integration as a two-way process. Legally enshrined in the proposed Common Provisions Regulation that the Commission proposes to apply to AMF as much as to the Structural Funds, the Partnership Principle is a premise for a meaningful participation of civil society, local and regional authorities and social partners in the programming, implementation, monitoring and evaluation of EU funds under shared management in Member States. As stressed by several participants, the issue of
whether or not a strong Partnership Principle forms part of the adopted Regulations will have a substantial impact on the quality of policies and measures implemented in subsequent years.

3.2 The role of evidence and data in supporting policy decisions

Concerning the evidence used to inform the Commission’s proposals and assessments of Member State situations, data related to migration and integration have considerably improved over the past decade. Participants underlined how country reports in the European Semester context have a better evidence base when it comes to migration and integration than previously, not the least due to the agreement on common EU indicators and ensuing data gathering efforts together with the OECD (e.g. second edition of Settling In report to be released in December 2018). However, a big evidence gap is still present in relation to the impact that EU-funded interventions are having in the Member States, beyond the collection of performance indicators. In fact, systematic evaluation of good practices as well as assessment of the long-term impact of projects and policies are widely lacking. To address this gap, the ESF Transnational Platform and similar networks established in the framework of other programmes could be granted a bigger role as think tanks and knowledge gathering and dissemination platforms.

In the current political climate and in view of the reluctance of some Member States to support migration-related measures, a higher acceptance of EU-funded interventions can be achieved through avoiding an openly target-group approach (using migrant-related indicators), and instead focusing on the spatial dimension of integration challenges (e.g. using territorial socio-economic indicators). In terms of evidence, therefore, when framing policies on issues such as benefitting neglected neighbourhoods or targeting deprivation and poverty, the relevant territorial indicators (e.g. youth unemployment rates in deprived areas) that are available on a small scale are of at least as much value for the dialogue between Commission and Member States as are data and indicators related to specific migrant or minority target groups.
Appendix – List of Task Force Participants

Session 1 – External dimension of EU asylum policy

Mr. Michele Amedeo, Head of migration policy in the Directorate General for Neighborhood and Enlargement (DG NEAR)

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Mr. Peter Bosch, Advisor to the Deputy Director-General, Commission Joint Research Centre

Mr. Jean-Louis De Brouwer, Director for Europe, Eastern Neighbourhood and Middle East, DG ECHO

Mr. Ward Lutin, Head of Department of Operations, EASO

Ms. Sophie Magennis, Head of Policy and Legal Support, UNHCR Regional Representation for EU Affairs

Mr. Rainer Münz, Adviser on Migration and Demography to the EPSC (European Political Strategy Centre)

Mr. Kris Pollet, Head of Legal Policy and Research, ECRE

Mr. Patrice Quesada, Senior Emergency and Post Crisis Specialist, Regional Office Brussels IOM

Mr. Stephen Ryan, Deputy Head of Unit, C3 Asylum, DG Home Affairs and Migration

Session 2 – The effects of anti-smuggling policy on civil society actors in Europe

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Ms. Michele Levoy, Director, PICUM

Ms. Sandra Nunes, Head of Sector Liaison Office Brussels, eu-LISA

Ms. Dima Yared, Human Rights Officer, UN Human Rights Office, Regional Office for Europe

Session 3 – The future of EU funding for the integration of migrants

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ReSOMA - Research Social Platform on Migration and Asylum

is a project funded under the Horizon 2020 Programme that aims at creating a platform for regular collaboration and exchange between Europe’s well-developed networks of migration researchers, stakeholders and practitioners to foster evidence-based policymaking. Being a Coordination and Support Action (CSA), ReSOMA is meant to communicate directly with policy makers by providing ready-to-use evidence on policy, policy perceptions and policy options on migration, asylum and integration gathered among researchers, stakeholders and practitioners.

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