ReSOMA:
Research Social platform On Migration and Asylum

Start date of project: 1st February 2018
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D1.8 - Ask the expert policy briefs @M17

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<tr>
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</tr>
</tbody>
</table>
Content

1 LIST OF ABBREVIATIONS AND DEFINITIONS ................................................................. 4
2 INTRODUCTION .............................................................................................................. 5
3 The Ask the Expert Policy Briefs @M14 ....................................................................... 6
   3.1 Taking stock of Y1 and deciding the role of Ask the expert policy briefs ............... 6
   3.2 The drafting, publication and dissemination of the Ask the expert policy briefs ....... 6
   3.3 Positive points & criticalities .................................................................................. 7
4 CONCLUSIONS .............................................................................................................. 8
5 ANNEXES – ASK THE EXPERT POLICY BRIEFS @M17 ............................................. 9
## LIST OF ABBREVIATIONS AND DEFINITIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>DoA</td>
<td>Description of Action</td>
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<td>EC</td>
<td>European Commission</td>
</tr>
<tr>
<td>H2020</td>
<td>Horizon 2020</td>
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<td>Steering Group</td>
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<tr>
<td>WP</td>
<td>Work Package</td>
</tr>
<tr>
<td>AE</td>
<td>Ask the Expert Policy Briefs</td>
</tr>
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<td>DB</td>
<td>Discussion Brief</td>
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<tr>
<td>WP</td>
<td>Work Package</td>
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<td>QM</td>
<td>Quality Manager</td>
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2 INTRODUCTION

The Ask the Expert Policy Briefs are highly informative tools proposed in the framework of the ReSOMA project. They tap into the most recent academic research on the 9 topics covered by ReSOMA and map it out in a way that is accessible to a non-academic audience. By doing so, the briefs introduce the policy-relevant research conducted by researchers with different approaches and perspectives on the same topic. From a project perspective, Ask the Expert Policy Briefs are useful tools to collect scholars’ evidence and start framing the discussion around the 9 topics which is at the core of WP1.
3 The Ask the Expert Policy Briefs @M14

3.1 Taking stock of Y1 and deciding the role of Ask the Expert Policy Briefs

Over the course of the project implementation and keeping in mind lessons learnt from Y1, partners reviewed the objectives and role of the second round of AE namely in relation to the first round. As a matter of fact, partners started strategising on the AE @M17 before the beginning of Y2, namely at the 16/01 Steering Group (SG) Meeting. While deciding how to conclude Y1, partners started discussing the topics ReSOMA would focus on in Y2 with the objective of anticipating part of the work before M13 to prevent the delays incurred in Y1. As a result, partners addressed the issue of what the Y2 topics should look like and how the Consortium should use them in a synergical way with all other WP1 outputs, with particular attention to the Discussion Briefs.

After the SG Meeting and at the request of WP leader EUR, partners met in a virtual call on 14/03 to briefly discuss the 9 final topics for Y2 and envision the objectives and structure of the AE. As a result of the call, partners decided that:

1. AE @M14 would map out who is doing what on every single topic. In other words, the focus would be on introducing the scholars working on each topic and not summarizing available knowledge on the topic.
2. AE @M17 would take the form of a Q&A with one of these scholars – either someone from IMISCOE member or an external scholar.
3. The DBs would introduce the discussion points around every topic. In this perspective, both rounds of AE would ease CEPS/MPG’s work on each topic and would also be much helpful for online stakeholders.

3.2 The drafting, publication and dissemination of the Ask the Expert Policy Briefs

In line with the Consortium’s strategic decisions, lead experts identified 3-4 questions for each topics and selected 2 experts to interview. In doing so, they reached out to relevant partners to collect their input on relevant topics. In some cases the feedback provided related to either questions, interviewees or both. Lead experts also agreed on including one common question across all topics to highlight new point for WP1 consultations. They also produced a coherent format that was meant to be used for all interviews.

The steps that led to the production of the AE were:

- Contacting interviewees via Skype or by asking them to provide written contribution;
- Analysing interviews;
- Drafting the AE;
- Sharing the draft AE with interviewees to collect their feedback and greenlight;
- (At the same time) Sharing the draft AE with the SG and the QM;
- Integrating comments into a final draft;
- Sending the final draft to the QM (if needed);
- Editing and formatting the final briefs.

As for the timeline, partners managed different feedback loops at the same time to avoid a domino effect in the event of delays in drafting one or more specific AE. The timeline was as follows:

- Interviews were conducted between mid-May and the end of May;
- 1 draft AE of the AE (Integration) was sent to the SG/QM on 29/05;
- 2 draft AE of the AE (Integration) were sent to the SG/QM on 11/06;
- 1 draft of the AE (Asylum) was sent to the SG/QM on 11/06;
2 draft of the AE (Asylum) were sent to the SG/QM on 13/06;
1 draft of the AE (Migration) was sent to the SG/QM on 21/06;
1 draft of the AE (Migration) was sent to the SG/QM on 9/07;
1 draft of the AE (Migration) was sent to the SG/QM on 18/07;

The briefs were not disseminated as stand-alone publications but were gradually integrated into the WP1 discussions that will lead to D1.2 and D1.10. On Twitter, briefs were included as background readings to facilitate readers in positioning in the thematic debates in the form of thread discussions.

Figure 1 – AE featured in a Twitter thread discussions disseminating discussions on one of the 9 topics (see part circled in red)

3.3 **POSITIVE POINTS & CRITICALITIES**

All in all, there was a good coordination among the three lead experts who, it should be noted, represented partners responsible for the implementation of the task (ISMU) and of the overall WP coordination (EUR). Coordination between lead experts and relevant stakeholder platforms partners was also very positive, with PICUM and ECRE providing feedback on a number of AE. MPG provided lead experts with sound technical input to set the key questions and involve the right interviewees. The deadline for running the interviews that was originally agreed in the 14/03 virtual call was end of May. Lead experts started structuring their work accordingly and managed to deliver the final draft of the asylum and integration briefs in early June. However, the lead expert responsible for the AE on Migration highlighted major criticalities due to the identification of relevant questions and relevant interviewees to reach out to. In particular, a number of first-choice experts pulled out of the interviews and had to be replaced with a second one. This has led to the briefs on migration being delivered one to one-and-a-half month later.
4 CONCLUSIONS

Partners successfully took stock of the experience around AE in Y1 and tried to link the drafting of Y2 AE to the selection of topics as early as possible. At the same time, they implemented the AE @M17 in a way that produced added value for the wider project audience as well as for the set-up of other WP1 activities such as the Discussion Briefs. The briefs have been drafted, edited by taking into account partners’ feedback and uploaded onto the Platform. They were gradually made publicly available online and linked to a number of tweets promoting the WP1 consultations to help readers understand the key points around the topics.
The secondary movements of asylum seekers and beneficiaries of international protection represent a central topic in the academics’ discussions. As explained by researchers, many different factors may influence such movements and the decision to settle in a specific country.

Therefore, scholars and stakeholders interpret this phenomenon both as reflection of asylum seekers’ need to reach countries with more appropriate reception conditions and better opportunities, and as the direct outcome of the failure of many Member States in respecting dispositions provided by the Reception Conditions Directive and by the Qualification and Procedure Directives.

As a result, the huge number of arrivals of asylum-seekers to Europe in recent years has led to the phenomenon of securisation (by re-introducing internal border controls, derogating from the Schengen regime and by building new border fences), which risks undermining the Schengen system. Thus, the European Commission proposed in 2015 a comprehensive harmonization of asylum rules and a range of new measures on asylum policy both to stop secondary movements and to ensure solidarity for Member States of first entry.

The following brief is a summary of our interview and written exchange with two key experts: Dr. Jeroen Doomernik, Researcher with the Institute for Migration and Ethnic Studies (IMES) and Lecturer at the Department of Political Science; and Prof. Chiara Favilli, Professor in European Law at the University of Florence and at the Legal Profession Specialization School of Rome, Florence and Palermo.

In the light of recent developments in this field, underlined in the first brief, and in the light of their own research, we asked the experts to individuate drivers for secondary movements both of asylum seekers and beneficiaries of international protection and to comment specifically on the instruments to adopt to harmonize EU Member States reception and integration systems and, thus, to manage or reduce this phenomenon.
What are the main drivers for secondary movements of asylum seekers and beneficiaries of international protection? Do you think they differ for the two categories?

As Doomernik said, “The secondary movements are not necessarily a bad thing, because they allow asylum seekers and refugees to settle where they could expect to have better opportunities for a new life. The secondary movements may be in the interest of asylum seekers and refugees.”

Indeed, we must assume that both asylum seekers and beneficiaries of international protection are looking for work and, therefore, they will try to reach destinations where they could have more chances to find an occupation. Moreover, these people are aware of the discrepancy between reception systems of Member States and they are incentivised to seek for the best options in view of integration.

As underlined by Favilli, drivers for secondary movements are surely affected by “short-term” expectations (basic reception conditions), but, above all, by “long-term” ones. She explained that most of those who try to evade the Dublin system consider the fact that the State competent to examine the application for international protection will be the same State in which the third-country national would be intended to reside if the international protection was granted. Indeed, the European asylum system, combined with other EU provisions on the movement of third-country nationals, leads to a coincidence between the State responsible for examining the application for international protection, the State responsible for protection and the EU State of residence, almost always the State of first arrival.

Therefore, asylum seekers’ choice to move forward and avoid the identification procedures in specific Member States is extremely influenced by the consideration of the opportunities for social integration existing in that context. In fact, the States chosen as destinations by asylum seekers and beneficiaries of international protection are the ones that present economic and social standards that lead migrants through a more accessible integration process, due to the existence of better employment prospects, structured welfare systems and organised social inclusion programmes.

Finally, the choice of the destination could be also determined by other factors, such as the presence of family members or the knowledge of the language of a specific country.

What aspects of States’ asylum policies should be prioritized for further harmonization in order to reduce or stop secondary movements between EU Member States?

According to Doomernik, secondary movements are not a phenomenon that needs to be controlled, “unless its outcomes could be very unfair”.

However, according to his point of view, the only kind of “control” than could be exerted, consists in allocating asylum seekers according to a certain distribution key, that would assure a more equal responsibility sharing both between European countries and within each Member State itself. In this perspective, he suggested to follow the good
example represented by the German allocation system. In Germany, it is established a sort of “moving restriction”: you cannot move freely within the country as long as you depend on the welfare system. Indeed, there is an authority who decides in which Federal State a refugee or an asylum seeker should go and reside; thus, the person is obliged to remain within that specific bundersland as long as he or she is dependent on welfare or other public facilities. Only when he or she finds an employment elsewhere, he or she can move.

Moreover, considering the major outcome of the secondary migration, consisting in the Schengen crisis, the experts proposed a harmonisation of the reception systems within the European Union as complementary way to handle these onward movements. As they both underlined, indeed, “it should not matter where you apply for asylum, even if we know that it is not like this”. Specifically, Favilli suggested the need to improve the quality of reception systems, providing integration programmes that are immediately activated when migrants apply for asylum.

Do you think that reduction of secondary movements necessitates a legislative reform of the Dublin Regulation and if so, what should be the key features of such reform for the purpose of such reduction?

According to both the experts, the Dublin Regulation provides a non-working mechanism that should be abandoned. In this perspective, as explained by Doomernik, Dublin Regulation is a “bad invention”, because it leads to a very unfair distribution of the responsibilities within the European Union and produces unsustainable migratory pressure on EU-border countries, such as Italy, Greece, and Spain. Furthermore, he highlighted that the above-mentioned regulation is not only “unfair”, but it also undermines the idea of solidarity within the European Union. Dublin III should be replaced by a very simple mechanism, based on a fair distribution key and which might be like the one that has already been proposed by the Commission. However, according to him, assuming the necessity of a reform, it would be very smart and in the interests of everyone to consider both asylum seekers and refugees’ desires in view of a modification of the Dublin regulation.

On the other side, Favilli underlined that it should be borne in mind that the real cause of secondary movements is the fact that the Dublin Regulation determines not only the Member State responsible for examining an application for international protection but also the Member State in which the person may reside after recognition of the status. Indeed, unless the European Union is now an
area of freedom, security and justice, characterised by the right of free movement of persons, beneficiaries of international protection have not been granted freedom of residence in other Member States. On the contrary, the recognition of a limited freedom of movement and residence for beneficiaries of international protection would provide a secure and orderly regulatory framework for secondary movements of beneficiaries of international protection and could be an effective preventive and deterrent to secondary movements of asylum seekers.

What are the major issues on this topic that need further research to contribute to the policy field? Related to that, on which issues are further feedback needed from national stakeholders active in this field, namely policy actors at the local and national level as well as related NGOs, experts and practitioners?

- Further analyses on the dynamics and on the drivers of secondary movements can help to propose more adequate solutions to the ongoing crisis. Indeed, qualitative research into the nature of the needs of asylum seekers and refugees means understanding what opportunities these people dream of, and, consequently, individuating the better ways to face the responsibility sharing issue.
- Related to that, broader information about the validity of the refugee status within different Member States can assist in figuring out the reasons that encourage people to choose some destinations rather than others.
- Creative thinking and discussion on distribution mechanisms is an absolute priority.
- Serious reflection and a wide-ranging debate on opportunities sharing can lead to realize that asylum seekers - and migrants in general - are an advantage and a resource, because they want to contribute to our economies. Therefore, it is essential to design opportunities for these people, rather than block them.
- Further studies on the application criteria of the “sovereignty clause” provided by article 17 of the Dublin Regulation and on the evaluation of the existing family links, requested to individuate the Member State competent for the examination of the asylum application, could be useful with a view to design a more harmonized system.
- It would be also important to be able to obtain constant updating about the number of effective transfers from and to each Member State.

In sum, the experts highlighted the need to invest resources in supporting the harmonisation and proper implementation of the CEAS to minimise the differences between national asylum systems and, thus, strengthening mutual trust and mutual recognition of the measures taken by the Member States. Also, they pointed out the
urgency to find an alternative for the non-working Dublin system and to design a different mechanism for the allocation of responsibility between Member States. In this perspective, considering the needs of asylum seekers and recognizing a limited freedom of movement and residence for beneficiaries of international protection could represent a disincentive for onwards movements of the first ones and assure a systematic regulatory framework for secondary movements of the second ones.
Ask the Expert Policy Brief

Global Compact on Refugees (GCR)

By Marina D’Odorico & Erika Colombo

After two years of consultations with Member States, international organizations, refugees, civil society, the private sector, and experts, on 17 December 2018 the United Nations General Assembly adopted the Global Compact on Refugees. This agreement represents a framework for more predictable and equitable responsibility sharing, which aims providing host communities with the support they need, considering that a sustainable solution to refugee situations cannot be achieved without international cooperation.

In this perspective, scholars and stakeholders are focusing on its non-legally binding nature, debating whether its character could be considered as a weakness or as an expression of cooperation and goodwill of the UN Members states.

In addition, scholars are concentrating their analysis on the need for durable solutions that could implement the GCR and lead to relevant outcomes both at the international and national level. The literature is discussing about the engagement of a wide variety of actors, including the private sector and local communities, which could play a direct role in receiving and integrating refugees.

In this context, the European Union is called to assume a fundamental responsibility, becoming a source of inspiration in the perspective of a successfully implementation of the Compact.

The following brief is a summary of our interview and written exchange with three key experts: Dr. Jean-François Durieux, Professor in International Human Rights and refugee law at the Refugee Studies Centre, University of Oxford (2007-2012) and senior adviser to the international team that has set out to develop and publish a worldwide Refugee Response Index by the end of 2018; Prof. Geoff Gilbert, Professor of Law in the School of Law and Human Rights Centre at the University of Essex, Member of Solutions Alliance UNHCR/ UNDP and Principal Fellow of the Higher Education Academy; and Dr. Volker Türk, who was research assistant at the University’s Institute of International Law as well as the University of Linz’s Institute of Criminal Law and, currently, is Assistant High Commissioner (Protection) for UNHCR.

In the light of recent developments in this field, underlined in the first brief, and in the light of their own research, we asked the experts to comment specifically on the implementation perspectives of the Global Compact on Refugees within the European context, especially focusing on the existing
admission instruments, and to suggest which actors could be involved in this process of implementation.

Considering the non-binding nature of the compact, which would be the role of the European Union and its Member States towards the implementation of the GCR? Related to that, which would be the impact of the GCR on the existing resettlement and complementary admission instruments for refugees and would-be refugees implemented at the EU and Member State levels?

As underlined by Türk, the European Union (EU) and its Member States were very active in, and supportive of the process by which the international community worked together to develop the Global Compact on Refugees (GCR). The hope and expectation are that this active engagement will continue in the implementation of the GCR. It is noted that the GCR provides the EU with various entry points to implement its commitment to humanitarian-development cooperation as part of its overall approach to forced displacement, and which includes opportunities to advance the implementation of the GCR, also within Europe. For example, a predictable disembarkation mechanism for persons rescued in the Mediterranean Sea and their access to asylum; solidarity measures, including relocation within Europe; resettlement and complementary pathways; addressing barriers to family reunification; and integration. Moreover, through the forthcoming three-year strategy on resettlement and complementary pathways, it is hoped that EU Member States that already have resettlement programmes would consider expanding them, and that those without them would be willing to consider their establishment. Given the important role that complementary pathways for the admission of refugees have had in facilitating refugees' access to protection in Europe, it is hoped that these opportunities will also continue to expand.

Durieux considers that EU law has the power to turn non-binding GCR commitments into legal obligations, imposing refugee resettlement criteria and/or quotas on Member States. According to his view, this is the "missing link" within the CEAS, and a "potential bridge" between the internal and external dimensions of EU refugee policy. In this perspective, EU institutions and Member States have a responsibility and they cannot afford to emphasize (and hide themselves behind) the non-binding nature of the compact. Indeed, the European Union is called to implement its commitment to humanitarian-development cooperation as part of its overall approach to forced displacement, not only supporting third countries hosting large numbers of refugees, but also improving its own legislative framework.

Gilbert specified that EU obligations towards refugees and asylum-seekers require ensuring their access to education, employment, health care, and justice systems, both as a part of the 1951 Convention, international human rights law and the SDGs. The advancing of the implementation of the Compact within Europe could lead to positive results, such as the
This project has received funding from the European Union’s Horizon 2020 research and innovation program under the grant agreement 770730

introduction of a predictable disembarkation mechanism for persons rescued in the Mediterranean Sea, facilitated access to asylum, and solidarity measures including relocation within Europe and resettlement.

In which way could the involved actors provide support in achieving the objectives fixed by the agreement given the non-binding nature of the compact?

Türk considers that the achievement of the objectives of the GCR will be determined by the degree of political will in support of it. Although non-binding, it includes a series of built-in measures to monitor progress made, to maintain political momentum, and to rally support for comprehensive responses to refugee situations. These measures include a Global Refugee Forum every four years at the ministerial level for governments and other stakeholders to take stock of progress made, to share good practice, and to make pledges and contributions in a range of areas such as funding, resettlement places and refugee inclusion initiatives, amongst others. Furthermore, the GCR envisages the establishment and development of various mechanisms to enhance responsibility-sharing. These include, for example, the aforementioned three-year strategy on resettlement and complementary pathways as well as the Asylum Capacity Support Group. The latter will support States in developing and strengthening fair, efficient and adaptable national asylum systems that have integrity as part of their comprehensive refugee response. The ACSG is envisaged as a vehicle to ensure that States have measures in place for the timely identification of persons with international protection needs.

Therefore, as explained by Durieux, the most obvious way EU Member States may contribute to making the GCR a reality is by setting an example. Indeed, non-binding does not necessarily mean “empty”: if the European Union would take the lead in the design and implementation of one or more Comprehensive Refugee Response Framework(s), this would surely build confidence in the “GCR toolbox” among other potential donors as well as recipient States. According to Durieux, this is an area in which a major humanitarian actor such as the European Union must be seen to play an active role, notably by supporting such civil society initiatives as the Refugee Response Index.

In sum as explained by Gilbert, the European Union should contribute to aid and trade programmes with refugee hosting states, resettling refugees from low- and middle-income states that provide asylum, and to providing complementary pathways to sustainable and durable solutions for refugees through education or employment visas.

What are the major issues on this topic that need further research to contribute to the policy field? Related to that, on which issues are further feedback needed from national stakeholders active in this field, namely policy actors at the local and national level as well as related NGOs, experts and practitioners?

According to Durieux and Gilbert:

- Creative research on the issue of “performance measurement” – in relation to GCR but also, within the
international refugee regime – is absolutely needed, because further analysis could make an important contribution to the field of legal research, clarifying the meaning of “soft law” in international refugee law (as well as in EU law).

- Creative thinking on responsibility sharing for refugees is as much required after the adoption of the GCR as it was before. Indeed, the GCR does not impose standards to govern this area and to measure fairness in the distribution of refugee “burdens” and responsibilities. Such standards and indicators remain to be invented, which seems to require a dedicated research agenda involving both thinkers and policy-makers.

- A comparative analysis of the various networks and platforms that seek to engage cities and municipalities in refugee responses, and to produce guidelines or toolkits to facilitate this process, could support better coordination and more coherence.

- Further analyses aimed at deepening the nature of commitments in an international document that is explicitly “not legally binding” and at developing indicators that respect human rights, rule of law, good governance and the SDGs in all States;

- Information is finally needed on the securitisation policies in developing countries, protection of civilians, and refugee protection and solutions.

In addition, Türk provided the following suggestions for further research and engagement:

- Enhancing cooperation with the private sector, which has the capacity to act as an accelerator in refugee response situations, both within the EU and in other refugee contexts. Better information is needed on how to leverage the private sector in support of resettlement, complementary pathways for admission and access to jobs and livelihoods; all of which can support more effective burden-sharing, protection and solutions for refugees.

- The role of cities and municipalities in reception and integration is fully recognized. In recent years, there has been a proliferation of platforms that seek to engage cities and municipalities in refugee responses, and to produce guidelines or toolkits to facilitate this process. A comparative analysis of these various networks and platforms could support better coordination and more coherence.

- Additional research on root causes and creating conditions conducive to return, with a focus on top countries of origin generating refugee flows to Europe, could help to better inform EU policy and support to relevant stakeholders. This could be further supplemented by targeted research on the impact of premature returns on countries of origin, e.g. Afghanistan.
For resettlement, research and the development of an evidence base to demonstrate the [positive] impact and contribution that refugees admitted through resettlement have on receiving societies is an area that could benefit from further research.

In sum, the experts underlined the responsibility that both Member States and EU institutions are called to assume in complying their obligations within the GCR framework, despite its non-binding nature. They should specifically expand existing resettlement programmes, establish new ones, and advance complementary pathways for admission, involving a wide range of actors, including the private sector, local authorities and municipalities.
Ask the Expert Policy Brief

SAR and Dublin: ad hoc responses to refusals to disembarkation

By Marina D’Odorico & Erika Colombo

One of the main concerns under the attention of stakeholders and scholars is the disparity between national approaches towards asylum, together with the need for cooperation and sharing solidarity inside the CEAS.

Some experts are focusing their analyses on the issue of Search and Rescue (SAR) operations, a humanitarian response that aims to prevent loss of human lives at sea. Specifically, scholars deal with the identification of the cooperating actors who handle these rescue activities (including the European Union), arguing about how to allocate responsibility between them (above all where allegations of human rights violations arise).

Differently, other studies point out a different response to this concern, related to the reform of the Dublin System. Commentators argue over the effective relevance of the European Commission’s “Dublin IV Proposal”, based on a corrective allocation mechanism automatically triggered when a country must handle a disproportionate number of asylum applications. The most part of them underline its weakness and highlight the obstacles in its concrete application.

However, it is also essential to be aware of the existence of other pressing concerns. One of these is the need to find a solution for the actual “Schengen crisis”, to ensure that States meet their existing obligations and to build a support mechanism for Member States that face larger numbers of arriving asylum seekers.

The following brief is a summary of our interview and written exchange with two key experts: Dr. Eugenio Cusumano, Assistant Professor in International Relations and European Union studies at the University of Leiden; and Prof. Alessia Di Pascale, Associate Professor in Migration and Asylum Law at the University of Milan and Deputy Member for Italy of the Odysseus Network.

In the light of recent developments in this field, underlined in the first brief, and in the light of their own research, we asked the experts to comment specifically on the different approaches to disembarkations, focusing on the project for the creation of platforms outside the EU in supporting SAR operations and on the introduction of specific solidarity mechanisms to address the arrival of asylum seekers within the Dublin system.
Would “regional disembarkation platforms” (potentially outside of the EU), and “controlled centres” (within the EU) be effective tools supporting SAR operations and disembarkation in line with States’ obligations under EU, international refugee and maritime law?

As underlined by the interviewed experts, the creation of “regional disembarkation platforms” represents an idea that, despite its theoretical ratio, has never been concretized by the European Union. Thus, even if these instruments might give help in eliminating existing disincentives in conducting SAR operations, the Commission has specified neither which might be the characteristics of these structures, nor where these platforms should be created. For example, it is not clear if they might be located within the European Union or outside its territory.

Furthermore, Di Pascale pointed out how the decision to set these platforms in a third country, outside the European Union, could raise some relevant legal questions. In that case, the European Commission would need to make sure that the neighborhood countries in which these platforms would be set up, would be willing to collaborate assuring the appreciation of the rights guaranteed by the European Law. Indeed, considering that the European Union is bound in its actions to the fundamental rights enshrined in the ECHR, the establishment of agreements with third countries that do not respect these rights and guarantees might pose an issue of incompatibility with the EU Law.

Moreover, it is not clear what would happen to asylum seekers, at the same time as they would arrive on disembarkation platforms. In particular, it should be established which body should be responsible for examining and deciding on the merits of being eligible for entrance in the EU territory and it should be defined which would be its composition and its tasks.

In sum, the experts remarked how there is no knowledge of how these tools should be structured and how would therefore be useful to ask the Commission to submit concrete proposals, which could then be the subject of a study.

Should a reform of the Dublin Regulation include specific solidarity mechanisms to address the arrival of asylum seekers and beneficiaries of international protection rescued at sea and why (not)? If so, what should the key features of such a system and in which circumstances should it be triggered?

Both the experts considered that the main problem to be dealt with in this historical moment concerns the fact that the Dublin Regulation and its consequent inadequate burden-sharing mechanism are causing a disincentive to not conduct save and rescue operations at sea. From this humanitarian perspective, thus, a Dublin reform is essential, and the creation of a mechanism to assure an equal redistribution of all protection applications among Member States should be a priority.
However, according to the experts, the above-mentioned disincentive did not exist before the implementation of the Dublin regulation by the States. For example, at the time of *Mare Nostrum*, in 2013, Italy did not have great difficulty to allow a great number of arrivals, rescuing all those people at sea, since there was the awareness that a part of them would move to other European countries and would not remain an Italian problem.

Nevertheless, after the closure of the EU States’ borders, the situation has radically changed and people who arrived in the EU-border countries are forced to remain there, causing problems in the efficient functioning of reception systems of those Member States.

Therefore, according to the interviewed experts, the European Union needs to design a comprehensive plan, aimed at setting criteria for an adequate redistribution mechanism that would realize a “fairer” sharing of responsibilities among Member States. In particular, this mechanism should be implemented immediately upon the arrival of asylum seekers on European territory, without the need to reach certain numerical thresholds of migrants.

Moreover, according to Cusumano, an alternative to the Dublin reform could be a system that would reallocate structural funds from States which do not accept the redistribution to ones that are more burdened by the migratory pressure. From the same perspective, it would be also possible to block the distribution of structural funds for those countries that do not participate in the redistribution mechanism (a sort of sanction).

What are the major issues on this topic that need further research to contribute to the policy field? On which issues is further feedback needed from which national stakeholders active in this field: national authorities, local authorities, NGOs, including refugee-led organisations, academic experts and (legal) practitioners, EU Agencies, shipping industry?

- First, it would be necessary to encourage the European Commission to formulate more defined proposals about “regional disembarkation platforms”, indicating both the characteristics and the possible localization of these structures. Thus, academics would have the chance to further analyse these projects, above all in a legal perspective, focusing on their compatibility with fundamental rights and with the respect of the procedural dispositions provided by the European Law.
- Additional thinking on the issue of SAR operations is absolutely needed. Specifically, further analysis could help to investigate and define better the concept of “safe harbor”. According to the Maritime Law, indeed, a “safe harbor” must be individuated as a destination for people rescued at sea.
- From the same perspective, it would be essential to establish criteria in order to individuate the actor responsible for SAR activities, specifying which duties...
and which tasks might adjoin each State.

- In the specific context of the Dublin Regulation, creative research is required to find adequate criteria to realize a fairer redistribution of asylum seekers among different Member States. Indeed, the only way to eliminate the disincentives in conduction SAR operations is to find a way in order to lighten the migratory pressure on first entry countries. Instead, it seems that Member States are moving forward in a very different direction, preferring externalizing the problem, rather than reforming the system in compliance with principles of solidarity and sharing of responsibility.

In sum, the points that are highlighted by the experts are the need to define a structural project for the establishment of regional disembarkation platforms, willing to create an efficient instrument to manage arrivals in respect of fundamental and human rights; about the Dublin reform, the urgency to design an allocation mechanism that might realize a fair distribution of responsibilities in examining asylum applications, together with a system of sanctions as deterrence for those Member States which does not comply with their obligations within this responsibility allocation system. Indeed, a functional application of the Dublin Regulation would lead to eliminate those disincentives in conducting SAR activities, which represents an essential response to prevent loss of human lives.
Strategic litigation against crackdown on NGOs: how to stop and prevent criminalisation of solidarity with refugees and other migrants?

By Magdalena Lesińska

Previous Discussion Brief and Policy Options Brief, the ReSOMA Final Synthetic Report on the crackdown on NGOs and volunteers helping refugees and other migrants highlights that EU's Facilitators Package law makes it optional for EU Member States to criminalise the facilitation of irregular entry when it is conducted on humanitarian grounds. This was identified as one of the key reasons of legal uncertainty that has enabled criminalization of humanitarian actors.

The fact is that in a half of the EU member states facilitation of entry is defined as a criminal offence which is punishable by either a prison sentence or a fine, even when assisting person does not obtain any financial benefit (Carrera et al. 2018, p.6). The increasing number of individuals providing humanitarian assistance to refugees and other migrants have faced prosecutions on the grounds of facilitation or other grounds, such as money laundering or membership of a criminal organization (in years 2015-2019 at least 158 of individuals have been investigated or formally prosecuted, see the ReSOMA Final Synthetic Report, p.25). Such misguided prosecutions in European countries have in turn led to appeals in defence cases rise before national courts (the ReSOMA Final Synthetic Report). So far only Salam Aldeen with support of GLAN has started strategic litigation before European Court of Human Rights.

The following brief highlights the opinions expressed by four experts who specialized in the fields of human rights, immigration and asylum: Frances Webber, vice-chair of the Institute of Race Relations; Dr Ioannis Kalpouzos, lecturer at City Law School, University of London and co-founder of the Global Legal Action Network (GLAN); Noemi Magugliani, Doctoral Fellow at the Irish Centre for Human Rights at the National University of Ireland, a legal researcher and coordinator of team working on Migration and Border Violence in GLAN; Dr Valentina Azarova, an international law practitioner and a visiting academic in the University of Manchester Law School.
Currently, there is a high risk of criminalization of civil society organizations working with refugees, asylum seekers and irregular migrants inside the EU Member States and at the EU external borders. What are the most important legal arguments used by stakeholders to avoid criminalisation of solidarity?

Interviewed experts pointed out two main lines of arguments used by various stakeholders (lawyers, NGOs) to avoid criminalization of solidarity:

(1) Obligation to provide humanitarian assistance at sea (duty of rescue at sea)

The provision of assistance to save life at sea is in pursuance of obligations under international law for ships’ masters to rescue any persons in distress at sea, including asylum-seekers, and to render them all necessary assistance. This has solid legal bases in both human rights law and law of the sea (e.g. UN Convention of the Law of the Sea and International Convention for the Safety of Life at Sea). The legal arguments based on the duty of rescue at sea are the first line of defence against a strategy to criminalise humanitarian work of individuals and organizations operating at the sea, including SAR operations conducted by NGOs.

(2) Obligation to provide humanitarian assistance on the territory (to uphold human dignity within the country, by providing food, water, shelter etc.).

It is generally accepted that provision of humanitarian assistance to keep someone alive (by providing food, shelter or clean water) does not amount to assisting illegal stay. Moreover, the state authorities should respect their own obligation to uphold human dignity for everyone including irregular migrants. The Facilitation Directive requires member states to adopt sanctions against any person who ‘for financial gain, intentionally’ assists illegal stay and residence (Carrera et al. 2018). The evidence gathered in ReSOMA project shows that majority of the monitored cases was based on the facilitation of entry or transit of migrants (the ReSOMA Final Synthetic Report, p. 24). Francis Webber highlighted that although EU member states are not prohibited from criminalising those assisting illegal stay for no gain, it can be argued that EU law needs to be amended and applied in a manner consistent with the fundamental rights and other founding EU values and legal principles. Valentina Azarova underlined that the absence of a humanitarian exception in the Facilitation Directive is a serious concern that needs to be urgently addressed by policy makers and legislators.

Webber also pointed out that the rule that provision of humanitarian assistance can never be a crime was recognized by national courts. She gave example of the appeal brought by Cedric Herrou, a French farmer who assisted refugees and other migrants to reside on his farm, and was accused of being a migrant smuggler. A French Constitutional Court took decision (Decision N° 2018-717/718 QPC, Cédric H et autre) accepting the principle of ‘fraternity’ as a constitutional principle preventing the criminalization of those providing humanitarian assistance to undocumented migrants and asylum seekers on the territory. This is linked to the issue of protecting the legal rights specifically associated with migration, for example to the
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right to make a claim for asylum. However, this judgement was not applicable to the situations of entry and transit (ReSOMA Policy Options Brief). Frances Webber also mentioned that an attempt by the mayor of Calais to ban distribution of food to migrants was overturned by the Lille Administrative Court in March 2017 on the ground that the ban violated human rights guarantees and would have amounted to inhuman and degrading treatment contrary to Article 3 ECHR.

**On which grounds prosecutors have accused NGOs (volunteers) and how lawyers are defending them? What could be learnt from defence cases at national level to address the ongoing criminalization of solidarity?**

Experts mentioned several kinds of charges and accusations directed to volunteers and NGOs providing humanitarian assistance: assisting illegal entry, transit or stay, membership of a criminal organization, infringement of state secrets, forgery, false registration of a rescue boat, illegal management of waste, endangering airport security by stopping deportation flights, money laundering, human trafficking (also explained in the ReSOMA Final Synthetic Report). On the other hand, defense strategies are often drafted around the argument of positive obligation to protect life (in case of defense to charges arising from rescue at sea or first response - assisting illegal entry or transit), the duty of rescue in international maritime law, and humanitarian exemption clauses written in national laws. The later have been criticised for their partial and limited nature extending only to the questions of life and death (Discussion Brief).

Ioannis Kalpouzos emphasized that legislation as well as the surrounding official rhetoric, attempt sometimes to equate humanitarian assistance and search and rescue actions with migrant smuggling. This leads, in his opinion, to highlight an economic, self-interested aspect of humanitarian assistance and to de-legitimize the rescuers by equating them with migrant smugglers.

Noemi Magugliani added, that in certain cases humanitarian actors have been threatened with the possibility of an investigation into human trafficking charges (e.g. Sea Watch 3 vessel case). In most cases, however, there is no evidence of the alleged collusion of humanitarian actors with traffickers, and the prosecution simply constitutes a form of judicial harassment, as well as deterrent for other NGOs to undertake pro-active SAR operations. ProActiva Open Arms, Sea Watch and Iuventa, among others, had been investigated by public prosecutors in Trapani, Catania and Palermo – in all cases, the investigations were shelved as no actus reus (guilty act) nor mens rea (guilty mind) of the alleged crimes were determined.

As far as assistance within a country is concerned, the Public Prosecutor’s Office in Palermo has emphasized that, according to the Italian Criminal Code (art. 54), “the exercise of a right or the fulfillment of a duty imposed by a legal rule or a legitimate order of the public authority excludes the punishment of the act” and that, according to Article 12(2) of the Consolidated Immigration Act, “without prejudice to the provisions of Article 54 of the
Criminal Code, humanitarian assistance services provided in Italy to foreigners who are present in the territory of the State and in conditions of need, do not constitute a crime."

In the past, lawyers have often argued, and Courts have at times accepted, that measures criminalising solidarity were depriving “a very precarious population of vital food assistance” in a way that was “neither adapted nor necessary, nor proportionate” to the aim, representing a manifestly unlawful interference with the freedom to come and go, freedom of assembly and, by preventing migrants from satisfying basic needs, the right not to be subjected to inhuman or degrading treatment enshrined in Article 3 of the European Convention on Human Rights (The Administrative Court of Lille 2017).

What are the major issues on this topic that need further research to contribute to the policy field?

- An analysis of the phenomenon of criminalisation of humanitarian assistance in its historical perspective is also recommended.
- The particularities of the submitting cases need to be further studied. The comprehensive and detailed review analysing charges that have been brought against civil society for their humanitarian activities in different countries, their evidential basis for them and the defense arguments used at the national level would be valuable.
- Better understating the extent to which such practice as criminalisation of solidarity is a violation of the state’s obligations towards refugees and other migrants as well as towards civil society is suggested. And how civil society could put forward strategic litigation before European and international foras.

To sum up, the experts agree that the role of the national courts increased profoundly in the process of protecting the migrants’ rights. A number of NGOs that have faced prosecutions for providing humanitarian assistance to refugees, asylum seekers and other migrants have submitted appeals at national level. They have used human rights and international maritime law arguments in their defence.

However, the proactive strategic litigation before national and, especially, European and international courts is just starting and needs to be further explored in terms of framing claims and selecting the legal avenues (the ReSOMA Final Synthetic Report).
Implementation of the Global Compact on Migration (GCM)

By Magdalena Lesińska

The Global Compact for Safe, Orderly and Regular Migration (GCM) prepared in an intergovernmental process endorsed by the United Nations aims at addressing aspects of migration from the subnational to the global level in a holistic and comprehensive manner. It is a framework containing a broad set of consensual guidelines and standards for international cooperation between different partners on migration and is a notable achievement, being the first and relevant attempt to create a coherent framework on migration at the global level. As a Compact, however, it is a soft law instrument (it is not legally binding), and as such it does not create any legal obligations for the governments signing.

The main arguments raised by governments that refused to sign the Global Compact stress that it undermines the sovereign right of the states to enforce immigration laws and secure their borders, and that it contains a number of goals that are inconsistent with national law and policy, especially in areas such as detention standards and procedures, migrants’ access to social services (The Global Compacts...2019). It also includes issues such as opening wider regular channels for migrants, which are difficult to accept by some governments.

The brief is a summary of interviews and written exchange with two key experts specialized in migration law and policy, and international relations: Prof. François Crépeau - Director of the Centre for Human Rights and Legal Pluralism at the Faculty of Law of McGill University, former UN Special Rapporteur on the Human Rights of Migrants, and Patrick Taran - President Global Migration Policy Associates, former Senior Migration Specialist at the International Labour Office (ILO).
Considering the non-binding nature of the Compact, what are the most important challenges in process of the implementation of the GCM and what would be the role of the European Union and its Member States?

The circumstances of human population movements and the patterns of mobility in different countries (of origin and destination) and challenges related to them are so varied that governments recognized it would be extremely difficult to develop a binding, normative international framework on such a complex issue as migration. The non-binding nature of the Compact seems to be one the most important obstacle to its further implementation in practice.

François Crépeau referring to this issue notes that the GCM is very much like the Universal Human Rights Declaration which was adopted in 1948 as a resolution of non-binding nature, as "a wish for the future". It was the first step in the process of formulating the International Bill of Human Rights, which was finally completed in 1966; it took 18 years to transform a conceptual framework into a binding instrument. It seems also in the case of the GCM, that its implementation requires a reasonable amount of time in order for successive governments and public opinion to be accustomed to the concept. It allows governments and other stakeholders to gather experts' opinions and discuss different interpretations, and to slowly move from a non-obligatory normative tool more binding commitments. He estimates that the governments will start limited cooperation around the GCM in the coming years, but hawse may have to wait for 10-20 years before one sees a real movement towards effective cooperation to facilitate mobility. In the meantime, he suggests that a long-term strategy of development of mobility policies with precise timelines and accountability benchmarks should be developed by national governments, as it is done in case of other state's policies like energy, transportation or the environment.

Patric Taran is much more skeptical about the content and impact of the Compact, he pays attention to its long-term implications related to the system of protection of human (and migrants) rights. According to his opinion, the GCM does not enhance the existing rule of law rights-based governance system for migration and does not advance application and realization of human rights. It rather establishes a non-binding substitute set of general policy recommendations, many of which represent lower and lesser expectations than the standards set in already existing law (Human Rights Conventions, International Labour Standards as well as those established by customary international law). He argues that the implementation of the GCM will generate a “regime change”, in meaning that its implementation will be used to substitute national adoption and application of the principles and instruments of binding, universal human rights obligations applying to all persons and all workers including migrant workers and their families, with non-binding, non-constraining guidance for executive migration management.
In which way different actors involved in implementation of the GCM could provide support in achieving its objectives given the non-binding nature of the Compact?

The GCM includes 23 objectives, such as the cooperation between states, tackling irregular migration, protecting the human rights of migrants and promoting measures to strengthen regular migration pathways. Among them, according to François Crépeau, to facilitate legal channels of mobility is the main message of the Compact. He notes that terms derived from the verb “to facilitate” were used 62 times in the text of the Compact. In the long term, the facilitation of mobility is the obvious choice for all states - from the North and the South –, because not to regulate the mobility means negative economic and human consequences for all actors: countries of destination, of origin and migrants. The lack of facilitation of mobility increases irregular migration and underground labour markets, as well as the exploitation of migrant workers. Reducing the visa obligation, especially for labour migration, is important to facilitate such mobility. He claims that facilitation of mobility would provide legal and secure migration channels, but that it must be implemented collectively, by most countries. European visa facilitation and liberalization programs are excellent examples of concrete tools to fill this objective. These programs should be enhanced and negotiated with many more countries of origin, especially populous countries.

Crépeau mentions that all institutions, including parliaments, executives, administration, courts, human rights institutions, schools, employers’ associations, labour unions, professional associations, academia and media, have to be engaged and do their part to create positive and reliable public debate on migration policies and the role of migrants in societies. Migrants do not have a political voice in the host country and they cannot challenge the stereotypes and myths that are used constantly in the public and media debates. The politicians need to change the language and tone of political debates on migration, and refrain from presenting migration as a threat to public security, society and economy.

Patric Taran notes that in contrast to the Global Compact on Refugees, which refers explicitly to the core binding international instruments on refugees (the 1951 Convention and the 1967 Protocol relating to the status of refugees), the Global Compact of Migration makes no similar reference to adherence and accountable application of binding instruments on human and labour rights of migrants. This in effect omits committing to the role and responsibility of parliament to establish proper legislation and the judiciary to monitor both the executive and legislative branches of government the legislative branch of government to ensure and strengthen the rule of law-based national governance addressing migration and migrants.
What are the major issues on this topic that need further research to contribute to the policy field?

- Exploration of human rights institutions, courts and NGOs networks. They should be strong enough and independent to be supportive power to uphold the existing standards on migrant rights.
- A comparative and critical analysis of the various legal and political instruments facilitating legal channels of migration (such as visa facilitation and liberalization programs, mobility partnerships with third countries, bilateral agreements on labour migration, etc.), as well addressing challenges of irregular migration, human trafficking, foreign workers exploitation and migrant smuggling.
- The wide scope of various stakeholders engaged in the GCM implementation requires a proper and effective platform of communication and coordination of the undertaken transnational and multi-dimensional activities. An analysis of applicable platforms and tools to strengthen multilateral collaboration at national level is required.
- Promotion of adoption of the key human rights Convention and international labour standards which migrants need to rely on (such as rights to social protection, decent work conditions, family life, and protection against arbitrary expulsion) that are vaguely referred to in the GMC.
- The relationship of human rights and migration and good practices addressing the risks and vulnerabilities that migrants face at different stages of migration require a dedicated research agenda involving academics and policy-makers as well as relevant civil society organizations and migrants themselves.
- In sum, the Compact may be an important step, not the end, for the international community to come together to address one of the great challenges of the day. Although it is not a legally binding document, it contains political and moral commitments for the governments to pursue their aims as well as improve international cooperation on managing migration. It needs time, political will, and further effective cooperation of involved stakeholders to ensure that its important commitments are put into effect.
Towards alternatives to detention

By Magdalena Lesińska

The excessive use of detention in the immigration framework has been widely criticized in recent years. UNHCR in the Global Strategy (2014, p.5) concludes it straightforward: “putting people in detention has become a routine – rather than exceptional – response to the irregular entry or stay of asylum-seekers and migrants in a number of countries”. The high proportion of detained individuals released from detention, and the fact that vulnerable individuals (including minors) are regularly found in detention, indicate that the system is inefficient for the authorities and inhumane and alienating for migrants. There is a common call for less intrusive measures, which are usually referred to as alternatives to detention. Although there is a lack of legal understanding of this term, the interpretation provided by International Detention Coalition (IDC) is widely accepted. An alternative to detention is “any legislation, policy or practice that allows for asylum seekers, refugees and migrants to reside in the community with freedom of movement while their migration status is being resolved or while awaiting deportation or removal from the country” (IDC 2015, p. 12). Alternatives to detention should represent a shift from security and restrictions to a more pragmatic and proactive approach focused on case resolution. In practice, however, they are considered by state authorities as additional (not alternative) instruments for migrants’ control.

The brief is a summary of the interviews and written exchanges with two key experts specialized in migration law and policy at national and EU level, and in international relations: Prof. Arjen Leerkes from the Maastricht Graduate School of Governance and Erasmus University Rotterdam and Prof. Witold Klaus – lawyer and criminologist from the Institute of Law Studies of the Polish Academy of Sciences.
What are the main legal gaps (or key controversies) in the current EU and national legal framework that could increase the resort to detention of migrants?

Both experts agree that the main problem with regard to detention as deprivation of liberty for immigration-related reasons is that it is used by authorities not as a measure of last resort (as it should be according to European law), but as a with systematic migration control measure. There are also at least two other problematic issues related to the current system of detention mentioned by the experts: the conditions of detention (highly criticized, especially in the case of Southern European countries) and the negative socio-psychological effects of separation faced by the detainees.

In the light of the low efficiency characterizing detention systems in the EU, Witold Klaus proposes reconsidering the grounds for placing third-country nationals in detention. He underlines that alternatives to detention are presented in the public debate as positive solutions for foreigners, as less restrictive and offensive mechanisms of control than detention. However, in his opinion, it is “a false perspective”, because existing alternatives are used by state authorities not as alternatives but as an additional instrument of control. They are less costly option than placing migrants in a detention centre, more flexible instrument and outsourced to other institutions mechanism of surveillance. The case of Poland shows clearly that after introducing alternatives to detention, there was a steady increase in the number of migrants being under the government control (these being already in detention centres were joined by foreigners encompassed by the alternative forms of control). He describes detention as a form of institutional violence whose main purpose is to increase the number and speed of successful expulsions by facilitating the administration procedures for voluntary or forced return.

Could you indicate the most significant gaps which need to be addressed in order for alternatives to detention be more effective (what legal and/or political actions should be accomplished at the state and/or EU level to strengthen the effectiveness of alternatives to detention)?

Arjen Leerkes points out that the detention system is representative of the incapacity of the state to control migrants at its territory. Although the authorities are obliged to issue a return decision to any third-country national staying illegally in their territory (if the right to stay is not granted or denied), in practice, the number of unsuccessful return decisions due to practical or legal obstacles is significant. Detention is often used for people who are subjects to a return decision but at the same time they are difficult to expel for various reasons (known as the undeportable or non-removable returnees) as punitive instrument to convince them to choose voluntary return schemes. The academic research clearly shows that the isolation in detention center, especially for prolonged periods of time, seriously affects an
individual’s physical health and psychological well-being, in the same way as the stay in prison (e.g. Puthoopparambil et al. 2015). He recommends only using these measures when there is a real perspective of expulsion and to consider less punitive ways to prevent migrants from absconding (including electronic tagging, a reporting obligation to the police, or less coercive reception centres). People who cannot be returned should be able to get a work permit or at least, be given accommodation. They should also be able to obtain a residence permit if return decision cannot be enforced in a reasonable period of time.

Witold Klaus underlines that detention should in principle be avoided and whenever used, only for short periods of time and after carrying out the individual assessment (consideration of the appropriateness of detention or alternatives to detention should be undertaken in each individual case). He recommends free of charge and obligatory legal advice available for persons placed in detention. In this regard, migrants should be fully informed of their rights and entitlements, as they are not often aware or have a limited understanding of migration law and procedures in the countries of arrival and limited language proficiency. Klaus further pointed out that in many countries vulnerable groups, i.e. children, victims of torture, physical or sexual violence, or traumatized persons, are not sufficiently protected. Even if the law prohibits to detain them, the ineffective assessment of their needs and conditions (or the lack of it) may still result in detention. Although EU law recommends that imprisonment of these groups should be prohibited or possible only in exceptional circumstances, the regulations are not adequately defined and, in consequence, left to the arbitrary decision of the state.

Witold Klaus pays attention to the process of expanding the institutional system of state control. In his opinion, new bodies have been involved in monitoring foreign residents on states’ territory. In many countries the employers are obliged to control the legal status of the employees, and the landlords have to examine the resident permits of the tenants. Also, NGOs involved in the implementation of alternatives to detention are indirectly a part of the institutional system designed by the state to control migrants.

Lack of reliable, comprehensive data related to migration detention is a main issue in order to assess the state of play. Are there any plans to make the collection of data at the national level (in your country) more systematic?

Both experts agree that at national level the data on detention are sufficient and easily available. In the Netherlands, data on the numbers of detainees or the length of detention are regularly published by government agencies. In Poland data are provided to interested entities when they ask for them (on the base of the access to public information).

Arjen Leerkes adds that internationally, comparative data and analysis is more challenging. Eurostat publishes data on
migration and asylum, but information related to detention, such as the percentage of people being detained who are actually deported, is very limited. In the Netherlands, about half of the detainees are released because of a failed expulsion procedure. Also, figures on the number of people detained then released without resolution of their case are difficult to find and are not centralized at the EU level. Moreover, the empirical studies conducted directly in migration detention centres are still very rare.

What are the major issues on this topic that need further research to contribute to the policy field?

• There is the need to collect further evidence on the effectiveness of detention and of alternative measures in the context of return policies and international protection.

• The review of current instruments addressed to the non-removable returnees is required.

• The serious debate about the revision of the current system of asylum at the EU level and designing the new global one is needed. The Global Compacts on Migration and Refugee is a step in this direction. The practice shows that the system based on the Geneva Convention is inefficient and outdated, as designed mostly for political refugees in the aftermath of the Second World War and for small numbers of applicants.

• There should be more in-depth investigation into and discussion about the use of detention in the light of widespread violations of human rights in migration detention centres and about the ineffectiveness of the detention system. The analysis of short- and long-term implications of alternatives to detention from the perspective of detained migrants would be valuable.

• The involvement of different non-state actors in the implementation of alternatives to detention needs careful examination in the context of increasing institutional control system.

• The political rhetoric securitizing migration emphasizes the need for effective migration control. In practice, it leads to the normalization of the use of detention of migrants as a central means to achieve this goal. In this context, the role of mainstream narrative on migration as a threat in influencing social perception of migrants requires thorough analysis.

To sum up, the experts agree that alternatives to detention do not prevent the use of detention as a measure of last resort. The discussion on detention has become part of a wider debate related to migration control and security, even if migrants are not necessarily a threat and should not therefore be subject of surveillance or coercive measures. There is a need to further explore less intrusive measures of control and more human rights compliant approaches when dealing with migrants.
Comprehensive approach to integration
at the local level

By Zeynep Kaşlı

A comprehensive approach to integration entails the active involvement of many actors on interrelated dimensions of integration, namely the legal-political, the socio-economic, and the cultural-religious. As summarized in our first brief, latest research on immigrant integration at the local level shows that sustainability of integration process is contingent upon many structural factors. These factors include availability of support related to migration process, involvement of third sector organizations, political composition of the local governments, electoral power of immigrants, resourceful local authorities willing to support place-based community building and interaction sites.

This brief is a summary of our interview and written exchange with two key experts in integration and local governance in Europe: Professor Ricard Zapata Barrero, the director of GRITIM-UPF (Interdisciplinary Research Group on Immigration) expert on intercultural policies and multilevel governance of migration and diversity; and Assoc. Prof. Tiziana Caponio, Marie Curie Research Fellow at Migration Policy Center and Associate Professor at the Department of Cultures, Politics and Society (CPS) of the University of Turin, currently working on city networks as well as local integration and multilevel governance.

In the light of recent developments in this field and their own research, we asked Ricard Zapara Barrero and Tiziana Caponio to comment specifically on the key elements of a long-term comprehensive approach, the role of the EU and advocacy groups in fostering comprehensive integration, and on what issues need further research and feedback from different stakeholders.
What are the key elements and components of a long-term comprehensive approach that are ‘fundable’ from EU programmes?

Zapata Barrero and Caponio agree that comprehensive approach entails attention to multiple dimensions of integration and especially everyday interactions at the local level. Both are doubtful about the success of top-down universalistic solutions. Zapata Barrero points at the difficulty of addressing combined effects of different sources of inequalities, related to gender, ethnicity, religion and class. Caponio further underlines the difficulty of top-down ‘operationalisation’ of social interactions and everyday relations in a way that would meet the needs and conditions of the local communities.

In terms of fundable programmes, they stress that a long-term comprehensive approach to integration requires integrating citizens as well as newcomers, and, hence identifying and focusing on the needs according to the general profile of the local population, around issues related to gender and youth. For Zapata Barrero, it implies that funding instruments must include all civil society organizations, such as labour unions and sport associations or other civic organizations, and not only migrant specific organizations. Such mainstreamed programmes necessitates successful management of public space by direct local interventions and involvement of citizens, civil society organizations as well as state actors and they become sustainable especially through interpersonal relations and interactions. As such, they include multiple territorial dimensions starting from face-to-face going up to the level of neighbourhoods and districts. To facilitate interaction and contact at the local level, Caponio also stresses the necessity to prioritize the following aspects; better quality childcare and education with support to schools of all levels, providing higher quality health services, support for neighbourhood communities and organizations, as well as catering to the needs of all individuals rather than abstractly defined groups.

What can the EU do, with its limited set of options in the integration area (funding programmes, promotion of policy principles) to foster such a comprehensive approach?

Both experts think that the EU has quite some options despite the fact that it has no direct competence on the issue, although they differ slightly in their suggestions for the roles local and national governments may play within this framework. Zapata Barrero suggests that the EU could foster a comprehensive approach in two ways: empowering the cities in relation to their states and providing EU-level criteria on integration. The first one entails, beyond mere recognition, providing tools and expanding the decision-making and financial capacities to allow cities to fulfil their roles. On the second point, he underlines that if there are EU-level minimum criteria set and communicated directly to the cities, through new agencies and existing channels like Eurocities or Committee of Regions, cities will be able to bypass their national governments to reach to the funding available at the EU level. Setting criteria of supporting intercultural policies could be a first step to allow cities to submit their individual or joint
projects directly to the EU authorities and encourage coordinated efforts for experimenting similar policies.

Caponio underlines the potential benefits of the EU’s involvement in supporting projects and programmes that would target local communities in both urban and rural areas. She further stresses the EU’s key role in enforcing the partnership principle in local level policymaking and organization of service provision. Yet Caponio also suggests that this can be possible through the management of funding and monitoring at the national level with proof of active engagement of local authorities and civil society organizations, including NGOs, civil society organizations and immigrant groups, in forming extended governance partnerships.

How can advocacy groups spell out the idea of a comprehensive approach to promote it on various levels as a policy agenda?

Both experts agree that advocacy groups are key actors involved in the formation and implementation of a comprehensive approach. For Zapata Barrero, beyond direct support to established civil society organizations and institutions, it is also essential to promote links between theory and practice among stakeholders working in this field. This requires a more functionalist approach to connect different actors occupied with ideas, decisions and implementation. Identifying all the agents or groups involved and active at different levels is the necessary first step for determining how to frame ideas and goals related to comprehensive approach.

Zapata Barrero further evokes that the EU level actions is not the only way to promote the comprehensive approach at the local level. While the EU is expected to promote transnational relations across cities, it is also the responsibility of the cities to promote interaction between citizens, civil society organizations and neighbourhood communities at the local level including interactions at the neighbourhood and district levels. For the local level in particular, Caponio argues, advocacy groups, effectively based in local communities and neighbourhoods, should not find it too difficult to spell out a comprehensive approach, as it would contribute to the valorisation of the local societies that they are embedded in.
What are the major issues on this topic that need further research for more sustainable and effective policies in this field? What issues require further feedback from national or local stakeholders, namely policy actors, NGOs and practitioners?

- There is not a shared view on what comprehensive integration policies must look like. How are the intersections of different dimensions and different forms of inequalities incorporated into a comprehensive approach?
- How is a comprehensive approach perceived in different countries and cities sharing a common principle of integration?
- Comparable common database on urban populations is necessary and this can be promoted at the EU level. What type of data would be useful for local and national stakeholders?
- We need such a detailed mapping of the positions and the tasks of the stakeholders involved in integration processes stand. What roles do each local and national stakeholder fulfil in their day-to-day actions in order to enable citizens and newcomers to establish significant social relations?
- Placing what they are individually doing within a larger whole will help all the actors involved see what they can do together and in relation to one another, hence be more interested in cooperating and broadening their scope of action. This is a matter of horizontal communication. Platforms such as ReSOMA are important to build such horizontal communication channels as much as vertical ones.

In sum, the points that are repeatedly highlighted by the experts are the necessity to encourage partnership across local actors of governance and civil society organizations for a comprehensive approach and, to achieve that, to diversify policy interventions that would facilitate local interactions in different scales, from neighbourhood and community-based organizations to the district level. The EU instruments, shaped by shared EU-level principles of integration that recognizes and empowers these actors of local governance, may play a key role for local actors to be active agents of horizontal and vertical partnerships starting with funding and programme application processes and all along the implementation. Identifying the specific role each stakeholder plays and strict monitoring are important steps for effective implementation of EU programmes informed by such a comprehensive approach.
Ask the Expert Policy Brief

Public opinion on migrants: The effect of information and disinformation about EU policies

By Zeynep Kaşlı

There is a tremendous increase in fake news on migration, particularly through online and social media in Europe and across the world. But what effect does this have on public opinion? As summarized in our first brief, recent studies uncover that the negative public attitudes are related to extensive media coverage, while the effect of media coverage on public opinion vary across medium and scale (local versus national media). Social experiments draw attention to different individual factors in shaping what we observe as “public opinion,” ranging from one’s empathy level, already existing partisanship to geographical proximity to newcomers.

This brief is a summary of our interview with two key experts in migration governance and public opinion in Europe: Dr. Leila Hadj Abdou, Teaching and Research Fellow at Migration Policy Center in European University Institute; and Dr. Lenka Dražanová, Research Associate at the Observatory of Public Attitudes to Migration (OPAM) project.

In the light of recent developments in this field and their own research, we asked Dr. Leila Hadj Abdou and Dr. Lenka Dražanová to comment specifically on the factors that drive changes in public opinion, including media framing and dis/information, and on what issues need further research and feedback from different stakeholders.
What is driving changes in public opinion about EU migration policy?

Dražanová and Hadj-Abdou both stress that we need to be cautious when talking about shift in public opinion. They recall studies that show how the majority of the people form their opinions quite early in their life and how changing established views is more unusual than expected. Dražanová stresses that what we perceive as change in public opinion is not so much about people changing their opinion, but it is more about the issue becoming more salient for them. In other words, one may already hold an opinion, but it is not activated unless it is talked about as a problem. In the case of migration policies, even though some people might be against immigration to begin with, it may not be an important issue that determines their voting choices until it becomes a key matter in the public debate.

Hadj-Abdou also draws attention to the literature on political parties and political cleavages. She reminds that political cleavages also change over time. Globalization and its effects on societies, changes in the structure of political systems based on people’s grievances, lived experiences or perceptions of injustice, are factors driving what appears as change in public opinion. Both scholars agree that, regardless of the number of newcomers, the increased salience of an issue drives the public discourse and motivates people not necessarily to change opinion but to reinforce it based on their pre-existing values and worldviews.

What is the relationship between framings/public imaginaries on immigration and policy preferences of people and politicians?

As shown in the 2018 report of Dražanová and her colleague Dr. James Dennison on public attitudes on migration in the Euro-Mediterranean region, positive and negative media frames certainly affect people’s views on migration. More interestingly, their research demonstrates that regardless of the content, the sheer frequency of migration-related news has a negative impact. This is the case also for elites and policy actors, as Hadj-Abdou underlines. She mentions that understanding of complex phenomena is often based upon what social psychology scholarship calls cognitive biases, such as the “availability bias”. Availability bias, the human tendency to judge an event based on the examples of the event retrieved from one’s memory or constructed anew, does not only apply to common people but also to politicians and other elites, including researchers and key stakeholders. In fact, even though they have more professional skills in forming decisions and often have better access to information on the topic, this does not make them immune to public debates in their environment. To the contrary, their societal position as elites may lead to overconfidence about their knowledge and makes it potentially even harder for them to question their established beliefs and views.

Hadj-Abdou underlines that while values stay the same, how you target and activate these values can make the difference. In this sense,
Framing affects how you perceive an issue and plays an important role in the way the same value could be translated into a given policy preference. She refers to research conducted in the US by Merolla and others on the framing of immigrants and policies affecting them. This research shows that people are more likely to positively perceive a regularization policy if it is framed as an “earned citizenship” for migrants who work hard and pay taxes. The reverse is true, if the same policy is instead framed as an “amnesty.” She also stresses that communications through visual campaigns matters: this is why it is necessary to avoid images related to migration that recall chaos, but instead opt for ones that convey stability and order.

**What are the impacts of information vs. disinformation (fake news) on EU migration policies on public opinion and vice versa?**

Both scholars emphasize that disinformation can lead to anxiety or skeptical attitudes. As Dražanová underlines, disinformation is quite widespread and it starts from how people tend to overestimate the number of migrants coming in every year, in some countries by almost three times. In this regard, Hadj-Abdou also recalls studies showing that if you provide the real numbers, people become less skeptical about migration.

They both agree that the key question is not whether we need to provide more information (real numbers), but which type of information is needed and to address what issues. Dražanová points at what she calls a common mistake among public actors and advocacy groups, that is, starting the dialogue through a framing that is familiar and acceptable to the public actors and advocacy groups themselves. For a successful and open dialogue, it is essential to think what the other sides’ values are, not our own. Hadj-Abdou’s example of Brexit debates support this point. According to her, the anti-Brexit camp’s emphasis on economic factors did not matter much to the pro-Brexit public who were more concerned with other issues, such as free movement, migration and identity. Therefore, both scholars underline that often the problem is more about the framing of existing information rather than complete disinformation.

**What are the major issues on this topic that need further research for more sustainable and effective policies in this field? What issues require further feedback from national or local stakeholders, namely policy actors, NGOs and practitioners?**

- Further comparative research, including beyond European examples, to better understand the effects of national-level macro factors, such as political regime and economic state of the country etc, and especially on topics such as the effects of education on people’s attitudes towards migration.
- Research within Europe must focus more on the Eastern European cases, such as Poland and Hungary as we know very little about the public opinion and the issue framings that drive public opinion in those regions.
- Feedback from the national and local stakeholders on the kind of...
communication strategies they apply, as such what works best for them, whether they avoid opposite views, confront or how do they frame migration-related topics and whether they have some recipes that works well for different types of constituencies.

In sum, our experts repeatedly highlighted the need to consider the negative effects of issue salience on people’s grievances and perceptions of injustice and changes in public opinion on migrants and migration policies. In this sense, disinformation most often does not mean lack of information. To the contrary, they even observe overflow of information in many respects, and call for a reconsideration of which type of information is necessary and what the purpose of providing that information is. They also stress that what appears as fake news nowadays is more related to how the available information is framed and presented. Issue framing is not only a matter of news coverage on migration policies and its potential effects on the articulation of grievances in the form of anti-immigrant policies. Even more, issue framing must be a key consideration for NGOs and policy actors who would like their claims and policy proposals to be welcomed and accepted by those with opposing values and opinions. This requires more awareness and mindfulness about the limitations of one’s own issue frames, which are informed by their established world views.
Ask the Expert Policy Brief

Integration outcomes of recent sponsorship and humanitarian visa arrivals

By Zeynep Kaşlı

Alternative legal channels in Europe as well as research on their effectiveness seem in its infancy. As summarized in our first brief, the effectiveness, fairness and in general integration outcomes of existing alternative channels are disputed. In general, there remains a gap between fast and effective refugee resettlement through alternative pathways and achieving transition into labor market and wellbeing of individuals and households.

This brief is a summary of our interview and written exchange with two key experts in asylum reception in Europe: Prof. Dr. Birgit Glorius, Professor of Human Geography, from Technische Universität Chemnitz, Principle Investigator of the Horizon 2020 CEASEVAL project; and Prof. Dr. Hannes Schammann, Professor of Migration Policy Analysis, from University of Hildesheim, the author of a recently published report on European refugee politics.

In the light of recent developments in this field and their own research, we asked Prof. Glorius and Prof. Schammann to comment specifically on the relationship between alternative visas and integration, the effectiveness of alternative channels and what role the EU could play in that regard, and on what issues need further research and feedback from different stakeholders.
What are the key features of private sponsorship and alternative channels for the integration of refugees and humanitarian visa arrivals in the destination society?

Glorius and Schammann both agree that private sponsorship is potentially a constructive process from a longer-term integration perspective, as it entails involvement of more societal actors from the very beginning. They highlight that especially local stakeholders play quite important roles, such as NGOs, employers and property owners as well as municipalities, starting from but certainly not limited to initial reception. Therefore, the process depends very much on different actors’ willingness to cooperate which can be fostered with good planning of the coordinated efforts and implementation of support programs. To achieve that, they both pinpoint the necessity to give more power to municipalities on the reception process, such as the decisions on whether the local integration infrastructure and migration biography of the given municipalities can accommodate individual needs and preferences of a specific newcomer. This is considered a key factor in achieving longer-term positive reception and integration outcomes on the locality and to avoid secondary movements.

While Schammann mentions that the UK private sponsorship scheme has recently become an example for Germany, Glorius stress that Europe overall is not doing very well on these kinds of resettlement schemes on a global scale. In this regard, the family reunification schemes in German is a novel and important alternative path for arrival and integration. It a form of private sponsorship and in theory an effective way of integration since a family member would know the needs of newcomers’ the best, care for them and would try to smoothen the path for them.

How can they be ‘operationalised’ by local, regional and/or national policy makers?

Both experts underline the role of cooperation among all the relevant actors, starting from the individual applicant, their local consultant networked with all related state institutions and the civil society, and bureaucrats in relevant institutions. So far, private sponsorship has been a double-edged sword. On the one hand, it required individual solidarity and active participation of (former) refugees and migrants, and, on the other hand, the existing practices have put the full responsibility and risk of the process on refugees’ shoulders. Many applicants and state agents have criticized the current family reunification scheme for asylum seekers under subsidiary protection for its complicated application process and lack of cooperation and coordination across municipalities and state institutions. They mention especially the strict and short deadlines for application from the submission of financial guarantees to the actual relocation after the approval of an application and the hardships in physically reaching the embassies in countries of origin or transit. For such practical reasons, it has not
so far reached the much-contested annual quota of 12000 persons.

Glorius suggests that cooperation necessitates more involvement of local actors in countries of settlement and actors with discretionary power. This means softening of the legal procedures and regulations on social assistance, which impede local authorities to use their discretion on a case-by-case basis. In a similar vein, to increase the decision making power of local authorities as well as applicants, in their recent policy brief, Schammann and his colleagues suggest a new municipal relocation mechanism that guarantees human rights standards, considers individual preferences and allows the persons seeking protection a selection of suitable municipalities through an algorithm-based matching process. Schammann also stresses the new NeST programme in Germany, government and civil-society joint sponsorship program that starts in spring 2019. The programme builds on the experiences gained in Canada and the UK and relies on group of sponsors meaning at least five people committed to helping one individual or family settle by providing practical and financial support. How it will work in practice is yet to be seen. However as the experience of family reunification scheme shows, institutional and structural support is of great importance in the application process to begin with.

What can the EU do to foster such legal pathways?

Experts suggest both political and institutional measures that could be taken at the EU level. One of the findings of the CEASEVAL project is that the EU reception directive had very limited impact on the harmonization, meaning that national systems are even more divergent than before the crisis. While at the moment humanitarian visa pathways are a matter of national decision, it is also observed that some cities and even some rather small towns may sometimes be more advance than their national authorities in welcoming refugees and yet they need political support to be realize their plans.

As a first step, Glorius suggests that a declaration of intention by the EP on the necessity to open humanitarian visa pathways in all member states. This would give the European Commission the signal to engage in supporting those pathways with their own competencies and their national contact points. For example, visa procedures are something that every applicant, every municipality and every state is struggling on their own and, if they could be united, they would have stronger capacity to share their expertise and enact pressure on their national governments to make sure those alternative visa pathways are open and work smoothly. However, for such interventions to be politically legitimate, an EU-level political declaration of intention is essential.

At the institutional level, experts underline the necessity to improve multi-level cooperation and especially cooperation between EASO, EU institutions, IOM, UNHCR, ECRE and other
organizations and governmental actors. For example, one way to obtain documents from host country without putting persons at risk, or easier ways to obtain travel documents would be embassy representatives visiting the camps instead of individual applicants having to go to the embassy. This means, institutions must get more responsibility than leaving it all to individuals. Schamann briefly evokes the concrete suggestions they make in their report regarding how the EU can support municipalities and local communities willing to work on legal pathways and implementation of CEAS:

**Simpler access to EU funds through:**
- One municipality, one application
- Simplified co-financing
- One-Stop-Shop for advising municipalities.

**Giving the municipalities more of a say by:**
- Strengthening the Partnership Principle
- Establishing an EU body to mediate the disputes between national and local authorities.

**What are the major issues on this topic that need further research for more sustainable and effective policies in this field? Related to that, what issues require further feedback from national or local stakeholders, namely policy actors, NGOs and practitioners?**

- Knowledge on the positive and negative experiences of long-term integration is still scattered. How did the problems come about and how are they solved?
- According to stakeholders, what does a locality need to be open for receiving asylum seekers?
- What kind of information do the stakeholders need in advance to prepare for the newcomers?
- How can we establish a more efficient cooperation between the EU, national and local level as long as there is no EU-wide consensus about a common asylum system? How would a flexible multiple-speed EU asylum system look like to be effective?
- Which organisations are able to support the legal pathways in which way and how can they work together? (starting from EASO, UNHCR, NGO’s, ECRE going down to grassroots level)

In sum, the points that are repeatedly highlighted by the experts are the urgency to provide political and structural support to the local communities and organizations and municipalities willing to take more active roles for the integration of private sponsorship or humanitarian visa arrivals. More discretionary power and legal flexibility at the local and regional level of governance are key for more cooperation across state institutions. This will democratize the process, give more room for civil society actors to get directly involved in integration processes from the beginning and contribute to socially cohesion at all levels.