The EU Migration Policy: between Europeanization and Re-Nationalization

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1. Introduction: some historical and theoretical considerations on the migration policy of the European Union

According to a widespread opinion, the European Union's migration policy is historically a sort of "liberal paradox", since it shows a liberal approach regarding the free movement of EU Member States' citizens within the Union's territory, while being rather restrictive when third-country nationals (TCNs) are concerned (Givens, Luedtke 2003). Actually, this allegation is disputable, since in most cases "illegal" or "clandestine" migrants are people who regularly entered EU countries (or other countries included in the Schengen area), but remained after the expiry of their access titles (Guarino 2013). Moreover, in the case of refugees, the sole application of (non)refoulement rules stated by the Convention of Geneva constrains the freedom of each signatory state to decide on the admission of TCNs on its territory. Since there is no comprehensive international migration treaty or a global institutional system in force, the EU's goal of developing a common migration and asylum policy is a true exception, because States do not easily accept limitations on their regulatory capacity (Hampshire 2016a).

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On the contrary, they have generally conceived their immigration policies with respect to their security and economic interests (Adamson 2006).

Migration policies and their effectiveness are influenced by multiple objectives and competing political agendas of various actors and interest groups (e.g. politicians, voters, employers, trade unions and non-governmental organizations for human rights) (Czaika, De Haas 2013). In addition, international migration is often driven by factors – like labour demand, inequalities in wealth and political conflicts in departure countries – on which an effective policy impact is difficult to exert. In the case of the EU, while states have been reluctant to relinquish sovereignty, European institutions have developed their own positions. The European Commission, as policy starter, has tendentially followed a proactive strategy, while the Council has traditionally paid more attention to national needs. Instead, the European Parliament has gradually changed its view from a generally liberal one to a more restrictive, in coincidence with the adoption of co-decision, possibly in order to work better with the Council to pass legislation (Lopatin 2013; Hampshire 2016b). It has been argued that in this policy area Member States have increasingly approached the EU level because it is a policy venue where national governments can agree on salient policies more easily. They escape domestic opposition in parliaments and criticism from organized civil society. This strategy is named 'venue shopping' (Guiraudon 2000). Not by chance, within EU migration policy, directives are the most frequently used legal instrument, since they leave a certain discretionality to Member States on implementation, while regulations – which come directly into force – are rarer (Aja, Diez 2005).

While the Commission has historically favoured a "root causes" approach, in order to detect the "push-pull" causes of migrations, the Council has been more control-oriented. Checking and intercepting irregular immigrants remains predominantly a national matter, though the EU has legislated to establish common standards. The same can be said for asylum legislation and practices, where recognition rates, standards of decision-making and reception conditions are very variable among Member States. And, notwithstanding several directives, also economic and family migration still remains largely in the discretion of states. The Dublin rules themselves, though very discussed, constitute an attempt to come to terms with different national disciplines regarding asylum-seeking (Schuster 2009). In this sense, even the principal-agent approach has been applied (to Member States as principals and to the EU as the agent) (Menz 2015).

In the following paragraphs, the tug-of-war between Member States and EU institutions is reconstructed throughout the historical development of the policy, though especially after the Lisbon Treaty (2007, in force since 2009) the Europeanization process has maybe shown stronger signs of consolidation, also because of the economic and financial crisis.

2. From the origins of the policy to the Treaty of Amsterdam

Migration policy was originally dealt with at state level, outside EU institutions (Cellamare 2006). In the Maastricht Treaty (1992) the issue was included in the intergovernmental cooperation for Justice and Home Affairs (the JHA pillar). Ministers of Interior and Justice were involved in the Council activity through the K4 Committee, later substituted by the SCIFA (Strategic Committee of the Council for Immigration, Frontiers and Asylum) (Campesi 2015, 87). In 1997, the Amsterdam Treaty linked migration to the definition of an integrated European Area of Freedom, Security and Justice (AFSJ). But the history of foreign immigration in Europe dates back at least to the years following the end of the WWII. According to Delgado (2002), Europe attracted migrants due to the post-war economic recovery, though in the Northern States (United Kingdom, Ireland, Scandinavian countries) the regulation of the labour market was comparatively more accurate[1]. After the oil crisis (1973), more restrictive policies were adopted, particularly in France and Germany, but family reunification remained an alternative channel to import migrant labour (Czaika and De Haas 2013). The migration issue acquired a supranational dimension in the 1980s, with the development of the European Single Market, the accession of Greece, Spain and Portugal in the EEC, and the fall of the Berlin Wall. These events set the issue of border control: the Mediterranean area would soon become problematic under this profile, and the future membership of eastern European countries would involve organisational problems in terms of financial resources and personnel training. According to the White Paper on the Completion of the Single European Market (1985), European directives would be necessary for the coordination of visa regulation, the status of non-EEC residents and the asylum/refugees matters.

After the Single European Act (1986) an ad hoc group on immigration was established by initiative of the Council following the Schengen agreement (1985), signed by Germany, France and the Benelux countries and supposed to strengthen police and judicial cooperation. In 1990, the reunification of Germany and the application of the Schengen convention enhanced the pressure exerted on the other institutions by the Commission, for a communitarization of migration policy. This purpose was however difficult to achieve, because of the differences in national policies. In order to stimulate convergence, a Council Decision

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[1]   In 1961 a common European Economic Community (EEC) procedure for job offers was implemented, according to which – after three weeks since their publication – offers could be taken by non-nationals, with the release of job permits. Entry and exit visa within the EEC were abolished. In 1964 the three-weeks limit was eliminated, and family members of Community workers could also move abroad. Moreover, it was stated that the entry could be denied only for public safety reasons or individual illegal behaviour, a rule still currently valid (Recchi 2013, 45). In 1968, Regulation 1612 and Directive 360/CEE established the free movement of workers without discrimination in working conditions, with a valid ID document, for a renewable residency period of five years. Bilateral agreements between member states also favoured workers' movement within the EEC.

(1988/384) introduced a policy of information and consultation on migration flows. This process was supported by informal discussion groups (the ad hoc group, the TREVI group and the Schengen group)[2]. Within the ad hoc group the Dublin Convention (1990) was elaborated with the purpose of identifying the state responsible for the processing of each asylum request. Thanks to these efforts, national legislations on the treatment of foreign citizens gradually became more similar, but relevant differences remained regarding the conditions of migrants. Such differences were related to political and historical reasons (e.g. former colonial ties), with specific terms for asylum-seeking and family reunification.

In the meantime, the perception of the interdependence between the national migration policies grew stronger, also because of globalizing factors (like new information technologies, more intense public scrutiny on state authorities, a diffuse pressure in support of human rights). Overall, the position of the EU in this field remained cautious (Fielding 1993). The Commission gradually took the initiative on asylum and immigration, while states' discretionary power on labour immigration persisted. A common interpretation for such gradualism is neofunctionalist: economic integration (i.e. the Single European Market) was supposed to come first, other policies had to follow (the classical theorization of this approach is Haas, 1958). This may also explain why in 1985 – in coincidence with the White Paper – the Commission prepared for the Council the first proposals for a common policy on immigration. The main goals were the coordination of national legislations and the definition of a common position among the states, but informality (and secrecy) were the rule within the TREVI and the Schengen groups, mainly dealing with internal security. This approach was confirmed in the Single European Act, where intergovernmentalism prevailed in this field, with the exception of visas. The adoption of a common model for visas and the listing of countries for which visas were compulsory became a community issue. But unanimity was hard to achieve, decisions were mostly non-binding, and national parliaments proved slow in the ratification of international conventions related to migration issues. The communitarization of the policy was still difficult to reach. To gather and disseminate information on asylum, in 1992 the CIREA (Centre for Information, Reflection and Exchange on Asylum) was founded by a Council decision. In the same year the CIREFI (Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration) was established[3]. Simultaneously, after the end of the Cold War and the disgregation of Yugoslavia, new fluxes started to move towards the EU, also from Africa.

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[2] TREVI was the acronym for Terrorism, Radicalism, Extremism and Violence International (Menz 2003). The *ad hoc* group issued recommendations on migration policy to national authorities. It was substituted by a new coordination body in 1993.

[3] Since 1999 it offers an early warning system for the transmission of information on illegal immigration. In 1998 the Council adopted *Odysseus*, a programme for training, exchange and cooperation in the field of asylum, immigration and the crossing of external borders. It was

A turning point was reached in 1997 with the Amsterdam Treaty (in force since 1999), which contemplated the institution of the AFSJ. This opened the way for the adoption common measures in immigration. Title IV of the treaty included dispositions on asylum, visas, migration and free movement of people, while Title VI regarded police and justice cooperation in crime issues. The communitarization of Title IV subjects included the Schengen agreements and norms on entry visas, residency permits and conditions. After five years, norms would have to be implemented on the abolition of controls at internal borders and their setting at external borders, on immigration terms, illegal residency and the travelling of TCNs within the EU territory for less than three months. After the adoption of the Vienna Programme for the AFSJ (2000-2004), the European Council meeting at Tampere in October 1999 proclaimed the equivalence of rights and duties of EU citizens and legal residents, the fight against racism and xenophobia, the convergence of national legislations on the admission to citizenship. Information campaigns on transit and legal migration were launched in third countries, with the first agreements on readmission and return, the definition of a common visa policy against false ID documents, the setting of measures against human trafficking and smuggling, the strengthening of cooperation between national border authorities. The Directorate-General for Justice and Home Affairs was constituted and the Commission prepared a working plan on the new AFSJ, including a section on asylum and immigration. Consequent provisions were to be adopted on the transmission of information and the definition of a common residence permit model. If the Council – as intergovernmental body – had a crucial decisional role, the Commission played a decisive political role, moving the migration issue to a supranational level. The European Parliament, generally favourable to integration policies, supported the establishment of the European Migration Forum (Favell and Geddes 1999), a body made by representative organizations of TCNs, and pushed towards communitarization (however, the Forum failed to find common ground due to internal differences among represented foreign communities; see Guiraudon 2003). In order to get consensual positions, the Commission regularly adopted rather generic and impartial stances, but consistently worked in three directions: the analysis and control of migratory pressures, the check on the number of migrants and the enforcement of norms on legal immigration.

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open also to non-governmental organizations and private institutions (included research institutes and universities). In 2002 Odysseus'work was continued by ARGO (Action Programme for Administrative Cooperation in the Fields of External Borders, Visas, Asylum and Immigration), to promote cooperation among competent national administrations.

3. The consolidation of the policy until the Treaty of Lisbon

In 1998 another specific working group, the High Level Working Group, was established within the Council to deal with JHA issues. Following the Nice Treaty (2001) it was decided that, regarding the free movement of people, Council decisions would be taken by qualified majority voting (QMV). The Commission took advantage of this rule to formulate a new Directive (2004/38/EC), which still regulates entry and residency by European citizens in Member States. The directive defines the length of residency (short, long and permanent – after five years), stating that permanent residents must have access to the national welfare provisions. Some restrictions were applied to citizens of Central and Eastern Europe after the 2004 and 2007 enlargements, similarly to what had previously happened to Greece, Spain and Portugal upon their accession. However, codecision and QMV were postponed to 2004 for immigration issues, while for asylum and temporary refugee protection the Council was supposed to adopt common norms and principles beforehand[4]. At the same time, the adoption of five-year plans for the implementation of initiatives related to the Tampere meeting and the Vienna action plan led to the Hague Programme (2005-2009), which foresaw the consolidation of the Schengen system, the police cooperation in criminal matters and the setting of the common asylum policy (Nugent 2010). It also insisted once more on the fight against illegal immigration and in favour of legal migration and integration channels.

After the 2001 terrorist attacks in New York and Washington and the 2004 and 2005 bombings in Madrid and London, the securitization of the policy gained momentum, as did the distrust towards integration policies (Ceccorulli 2014)[5]. In spite of this, the early 2000s saw the enforcement of the legal texts which constitute the basis of the EU asylum law: the Reception Directive (2003/9/EC, amended as 2013/33/EU), the Qualifications Directive (2004/83/EC, amended as 2011/95/EU), the Procedures Directive (2005/85/EC, amended as 2013/32/EU), as well as the Dublin II and III Regulations (343/2003 and 604/2013)[6]. However, Member States insisted on keeping harmonization to a minimum, especially regarding procedures, while the European Parliament opposed their restrictive attitude (Ripoll Servent and Trauner 2014, 1146). Both the Commission and the

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[4]   Before 2004 the Council still decided unanimously on Member States' proposals, after consulting the European Parliament. After 2004, the Commission would monopolize legislative initiative also in this field and the Council – at unanimity and with European Parliament's consultation – would be able to apply QMV and codecision with the Parliament.

[5]   In 2011 the leaders of the three largest European countries (Sarkozy, Merkel and Cameron) would all denounce multiculturalism as a failure (Scholten and van Nispen 2015).

[6]   Other two related texts – the Eurodac Regulation (2725/2000, revised as 603/2013) for the constitution of the European fingerprints database, and the Temporary Protection Directive (2001/55/EC) should also be remembered (Ripoll Servent and Trauner 2014). The Eurodac is an automated fingerprint identification system covering asylum-seekers and undocumented migrants. For a review of its use, see Aus 2006.

Parliament kept a more liberal position in comparison to the Council also during the revision of the Dublin regulation. As a result, Dublin III addressed previous shortcomings by establishing an early warning mechanism and an ad hoc support for frontline countries (like Greece and Italy), but did not introduce any real burden-sharing provision.

In 2007 the Lisbon Treaty (in force since 2009) affirmed that the AFSJ is a shared competence between the EU and the states, but communitarization – and the ordinary legislative procedure – are extended to nearly all the issues. States remain competent on border control, on part of the police and judiciary cooperation, and on the release of ID papers – but with a common policy on visas and short-stay permits – and reinforced cooperation among at least nine states is allowed. A common European asylum and temporary protection system and a common management of external borders were also anticipated. Art. 67, § 2 confirmed the principle of fairness towards TCNs and stateless people, as in the previous Tampere Programme. Common provisions on partnership and cooperation with third countries for the management of asylum- and protection-seekers' inflows were also provided. Art. 78, § 3 affirmed that if a Member State faces an emergency related to a sudden inflow of TCNs, the Council – on a Commission proposal – may adopt temporary measures in favour of the affected state, after consulting the European Parliament. Art. 79 declared the adoption of a common immigration policy, covering an efficient management of inflows, the fair treatment of legally-residing TCNs and the fight against illegal immigration and smuggling of human beings. The article also covers readmission agreements with third countries. Member states are however held responsible for integration policies and the definition of labour migrants' admission. The European Parliament and the Council may establish incentives and support for states' action. Art. 80 declares that solidarity and fair sharing of (also financial) responsibility shall govern EU policies in this field. Even if the competence of the EU is shared with Member States, the treaty puts an end to the "minimal norms" implied in Amsterdam to set comprehensive provisions. It remains in the competence of the states to decide on the number of migrants who are legally admissible (Favilli 2010), as in the Tampere Programme.

In 2005, the establishment of Frontex (via Regulation 2007/2004), the EU's border control agency, though conceived as a common patrolling instrument, raised further debates because of the limited initiative power of the agency and its dependency on states' resources (Rijpma 2010)[7]. A new Standing Committee on Internal Security was also established as a supporting arm of the Council with Frontex, Europol and Eurojust. Notwithstanding the treaty, a clear signal that states would not easily leave control on immigration policy to the EU was given by the French Presidency of the Council in 2008, when it presented a Pact on

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[7] Differently from most interpretations of the agency's surveillance system, Neal (2009) maintains that Frontex is not the result of securitization, but rather of the ineffectiveness of the EU migration policy.

Immigration and Asylum right when the Commission was preparing the AFSJ's Stockholm Programme (Hampshire 2016a, 543).

4. After Lisbon: an assessment

In 2010 the Commission's Directorate-General Justice, Freedom and Security was split into two sections, the first responsible for justice and the second for the internal AFSJ and the protection from external risks. The latter section, renamed Home Affairs, deals with immigration, the common asylum system, the Schengen area, border controls and visas, internal safety, organized crime and terrorism, police cooperation and international affairs. Migration is divided into four sections: legal, and illegal, immigration, asylum and refugees, and integration. Apart from tourism and short-term visits, since legal immigration is related to the labour market situation of each state, the EU has intervened only to set entry and residency conditions for specific groups of workers (highly-skilled professionals, students and researchers) and to give guidelines on family reunification and long-term stays. Integration policies are also primarily a state charge, within a framework of general principles set by the EU. Asylum and refugees have already represented a serious problem due to the multi-level regime constituted by international obligations, EU guidelines and Member States' positions[8]. Concerning illegal immigration, EU intervention regarded human smuggling and trafficking, by creating control devices like Eurosur, the surveillance system for border information exchange[9]. Following the Hague Programme, the Stockholm Programme (2010-2014) stated the need to protect fundamental rights and to build the external security dimension in the AFSJ (Nugent 2010, 229). In 2011 the Commission launched the EU Immigration Portal, an online instrument which offers practical information for legal immigration. The Blue Card Directive (2009/50/EC) came into force to facilitate highly-skilled migration from third countries, harmonizing national approaches on the admission and residence of labour migrants. At the same time, the Commission tries to empow-

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[8]   The juridical basis for international protection of asylum-seekers in EU Member States are the Convention of Geneva (1951) and its 1967 Protocol, national legal and constitutional norms and other international conventions, like the European Convention for Human Rights and Basic Freedoms (1950), the Convention against Torture (1984), the Convention on the Rights of Children (1989) and the Charter of Fundamental Rights of the EU (2000) (Garlick 2010). National courts and the European Court for Human Rights can also give instructions in this sense (Nascimbene, Mafrolla 2002).

[9]   The start of the European Border Guard, agreed in 2016, should potentiate Frontex activity, in view of the possible adoption of a new "entry-exit" registration system in the framework of the "smart border" project for the control of border-crossing by TCNs of the Schengen area, due to come into force by 2020 (European Commission 2016a).

er border controls and the governance of Schengen by the VIS system[10]. In 2011 the EASO (European Asylum Support Office) was inaugurated in order to support Member States in the implementation of the Common European Asylum System (CEAS). After the expiry of the Stockholm Programme, the European Council issued a series of strategic guidelines mainly related to the correct implementation of the existing legal discipline (particularly on family reunification, the Blue Card and the repatriation of immigrants). In the latter sense, agreements and partnerships were established with Jordan, Morocco, Turkey and Tunisia, also for the safe resettlement of migrants. Cooperation was also opened with Horn of Africa states in order to prevent smuggling and trafficking. A debate also started with the purpose of re-elaborating the Dublin III rules, and better defining Member States' obligations. In line with the Global Approach to Migration and Mobility (GAMM), the EU insisted on cooperation with third countries and regions, including eastern countries (like Azerbaijan, China and Armenia). The main instrument of the GAMM, originally born in 2005 but relaunched between 2011 and 2012, are the mobility partnerships. They are informal and flexible agreements between the EU and third countries. Though non-binding and based on the exchange between cooperation on migration issues and favourable visa conditions, the participation on the part of EU Member States is highly variable (Hampshire 2016b). Mobility partnerships may allow limited legal migration in specific sectors and in a time-limited scope (Cardwell 2013). The renewed Schengen Information System (SIS II) started operations in 2013, to alert border control customs and police authorities about wanted or missing people, objects (e.g. stolen vehicles) and documents. The European Refugee Fund, the External Borders Fund and the Return Fund have been part of a framework programme "Solidarity and management of migratory flows", financed with a total of € 5.8 billion for the period 2007-2013 (Trauner 2016).

More generally, in front of periodical emergencies (like summer mass arrivals in southern Italy or attempts to reach central Europe from Greece), the principle of burden-sharing does not seem to find a fluent application[11]. Though the Lisbon Treaty states that border controls, immigration and asylum policies are subject to the solidarity and fair division of responsibilities among Member States, in practice EU intervention is often difficult. The Directive 2001/55/EC provides extraordinary provisions for temporary protection of displaced people, but Frontex – which assist the states in checking the borders, also through the so-called RABITs (acronym for Rapid Border Intervention Teams) – has unclear competences with regard to Member States' authorities (Nascimbene, Di Pascale

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[10]   The VIS (Visa Information System) started working in 2011 at all visa-issuing consulates in North Africa, as a database to collect and exchange biometric data, digital photographs and fingerprints of visa applicants between Schengen States. It has been applied also in the rest of Africa, the Near East, the Gulf region, South America, Central and South-Eastern Asia.

[11]   In 2015, 75% of all asylum applications were registered in just five Member States (Germany, Hungary, Sweden, Austria and Italy); see European Commission 2016b.

2011). At the domestic level, the effectiveness of policy measures can be conditioned by several factors, like the levels of economic development and unemployment in arrival and departure countries, or the existence of social and family networks, uneasy to control by states (Franchino 2009; Bertossi 2008).

A much discussed agreement has also been closed with Turkey in March 2016, whereby irregular migrants and asylum seekers arriving on the Greek islands may be returned to Turkey. For every Syrian returned to Turkey from Greece after an irregular crossing, the EU should take a Syrian from Turkey who has not sought to make this journey irregularly. Since doubts have been raised on the human rights' record of the country, this could offer a chance to courts (included the European Court of Justice) to have their say on asylum and immigration matters. In 2009, the adoption of the Directive 2008/115/EC on common standards and procedures for returning illegally-staying TCNs has tried to harmonize this process, ensuring rights-compatible practices and legal assistance to non-EU nationals, applying cooperation with third countries within the GAMM and among Member States through the European Migration Network information platform. The "external governance" of the EU migration policy has been translated into projects towards neighboring countries, using the Neighborhood Policy dimension of the common foreign policy and extending the range of European action (Wunderlich 2012). A streamlining of the common visa policy has also been recommended from the Commission to the Council and the Parliament in 2012 (European Commission 2012).

On the front of labour migration, within the application of the Blue Card Directive, Member States kept the option of running specific programmes for specialists and skilled labour, though EU citizens and legal residents are due to come first to cover a job before hiring a TCN (Roos 2013). Illegal immigration is negative both for immigrants (since their work is often exploited and they can be expelled legally) and for public administrations (since they ignore the number of overstayers and do not get fiscal benefits). Moreover, the diffuse perception of insecurity and social tensions with citizens and legal residents make illegal immigration a public order problem (Aja, Diez 2005). In this sense, the Directive 2009/52/EC provides minimum standards for sanctions against employers of illegally-staying TCNs (in addition, the Directive 2014/36/UE – about the so-called "circular migration" – determines entry and residency conditions of TCNs for seasonal jobs). However, these sanctions are mainly monetary, while inspections and legal support to workers are not so widespread to fight this form of black labour.

Frequent critical remarks have been made to the Dublin rules, deemed as too rigid. According to the evaluation of Dublin III (European Commission 2015b), the regulation was not designed to deal with mass inflows and, since it does not foresee a fair sharing of responsibility, its effectiveness is severely reduced. Its current application emphasizes only one of its guiding criteria (i.e. the country of first entrance is in charge of the asylum request processing). Bilateral relationships among potentially responsible states make such processes very time-con-

suming, and multiple asylum requests ("asylum-shopping") remain a problem. Moreover, transfers are made difficult by the length of appeals and procedures, the difficulties of inter-state coordination and the attempts by asylum-seekers to evade the system. The other criteria (presence of family members in a given state, the past issuing of a visa, the regular/irregular entry) should be more properly considered.

5. FUTURE PROSPECTS AND CONCLUSIONS

In the latest years, the migration crises which took place in Greece, Italy and the Balkans have shown that the EU migration policy still lacks effectiveness. Besides, notwithstanding the increased police and judiciary cooperation, terrorism has repeatedly caused victims and raised deep worries in the political realm and in the public opinion in Europe. The control of the Commission and the action of the European Court of Justice are often invoked by experts who fear the effects of restrictive policies on asylum-seekers and refugees (Rossi 2015).

At the same time, the Dublin rules have proven increasingly inadequate, also because of non-compliance by Member States, especially regarding photo-identification and fingerprints collection. Even the proposal of extending the Open Method of Coordination to migration policy does not look promising, because the procedural differences among states make comparisons and benchmarking very arduous (Velluti 2007; the author mentions the INTI programme for integration of TCNs as an example of benchmarking application).

Another factor on which the EU should intervene regards undeclared labour. Especially in the case of African migration, a root cause is the demand for cheap migrant labour in sectors like agriculture, constructions, catering and services. Beside the implementation of the Directive on sanctions against employers exploiting migrant labour illegally, particularly Southern European countries should avoid mass regularizations. The frequency of regularizations may contribute to the perception that illegal entry is more effective than via the regular instruments of programmed flows and quotas (De Haas 2008). On the contrary, cooperation with third countries in patrolling the borders could more effectively curb illegal immigration – since expulsions and readmissions are far more expensive, also in terms of public opinion's reactions and State reputation[12]. In this sense, in 2015 the tensions regarding the relocation of 160,000 asylum-seekers (and the resettlement of 20,000) from Italy, Greece and Hungary, the building of fences or their reinforcement in Hungary, Greece and Spain, and the clashes in the migrants' camp of Calais confirmed the urgency to further clarify the policy categories within the notion of immigration (in July 2016, only 3,000 had been relocated, while 4,873 had been resettled, 79 within the EU Turkey agreement).

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[12]   Readmission destinations may not offer safe standards in terms of human rights' respect (Nascimbene, Mafrolla 2002).

Only a small proportion of international migrants are within the remit of the Geneva Convention, while labour migrants can be of interest to the national business communities (Geddes, Scholten 2016). Consequently, the political rhetoric on immigration control – so popular in electoral times – should leave the place to a closer attention to labour migration (Geddes, Scholten 2016, 7).

However, in 2014 the Pew Research Centre surveys showed that in European countries citizens tend to oppose current levels of immigration, and see it more as a burden than an opportunity, as far as their effects on labour markets and welfare provisions are concerned (Geddes, Scholten 2016, 13). Consequently, if States are responsible for integration policies, their legitimacy can be questioned by citizens if such inclusive policies do not produce positive results, with a precise 'cause-effect' connection (which also involves effective controls). Similar observations are made also by Hatton (2016a). According to his data, public opinion in Europe is increasingly favourable to genuine refugees, but strongly opposed to illegal immigration. Moreover, EU citizens also strongly support joint EU-level policy. This author stresses that refugees are mostly resettled to the United States, Canada and Australia, while EU countries do not easily accept them. His suggestions are that resettlement capacity should be improved through burden-sharing and that EU borders should be tightened, also in cooperation with transit countries (Hatton 2016b). In order to make relocations and resettlements more efficient, an improvement could imply the adoption of an exchange system between participant states, similar to the ETS environmental instrument, with the addition of sanctions or incentives, and taking – at least partially – refugees' preferences into account, in view of integration prospects (Fernández-Huertas Moraga 2016).

Since integration policies are still within the competence of Member States, their JHA ministers adopted a set of common basic principles (CBP) in 2004 (revised in 2014), which then produced a common framework for integration promotion (through the exchange of information and good practices) and a renewed European Migration Forum. In 2011 the Commission proposed a new European Agenda for the Integration of TCNs, and later (2015) a Common Agenda on Migration, based on four pillars: reducing the incentives for irregular migration, supporting effective border management (to save lives and secure external borders), implementing a strong common asylum policy and a renewed policy on legal migration. About funding, between 2007 and 2013 Member States could count on the European Fund for the Integration of TCNs (EIF), with a total budget of € 825 million. In 2014 it was replaced by the AMIF (Asylum, Migration and Integration Fund), which runs until 2020 and is a cofinancing instrument of national integration programmes. Of course, the European Social Fund (€ 80 billion for 2014-2020) and the Regional Development Fund (more than € 20 billion for 2014-2020) can also be used[13]. If «immigration works where immi-

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[13]   Data taken from Servoz (2016). In June 2016 an Action Plan on the Integration of TCNs has been adopted by the Commission.

grants work» (Hansen 2016), it is also true that skilled work has to be privileged and dumping on work conditions and wages by low-qualified immigrant labour must be avoided[14]. That was already a component of the Stockholm Programme, which insisted on the analysis of labour market requirements, the transparency of European online employment and recruitment information, skill matching and titles recognition (Official Journal of the European Union 2010). According to a recent analysis (Kobzar et al. 2015), migration flows in EU Member States are fluctuating since they depend on multiple interacting factors. In the next twenty years, Asia may be a new focus of immigration (Massey 2012)[15]. For this reason, besides insisting on implementing existing legislations and increasing coordination, the adoption of an asylum code, the mutual recognition of asylum decisions and the establishment of a single asylum decision process (according to the "one-stop shop" approach) should be combined with a strong mutualisation of resources (Vitorino, Pascouau 2015).

In addition, the internationalization of migration policy is already evident, with the involvement of international organizations (like the International Organization for Migration and the United Nations High Commissioner for Refugees) and the consequent multi-level stratification of the policy (Lavenex 2016). This involves also departure and transit countries (Bertossi 2008, 199). In the field of external cooperation, the EU has supported capacity-building in third countries, also through the Return Fund (2008-2013), for the constitution of national asylum systems, for readmissions and in the fight against organized crime (European Commission 2014)[16]. Linking incentives, like investment projects, assistance in resettlements, legal migration channels, to the foreign policy of the EU could better integrate migration policy in the external activity of the Union and make it more consistent. The issuing of EU-Africa bonds has also been proposed to facilitate the access of African countries to capital markets (Majocchi 2016). More accurate provisions should be taken for unaccompanied minors

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[14]   A comparative study of the EU, the United States, Canada and Australia showed that welfare benefits for refugees must be carefully evaluated in order not to displace work as an alternative, and that wage conditions must avoid dumping on nationals' wages and working terms (Legrain 2016). Under this profile, EU member states still present rather heterogeneous conditions, despite harmonization attempts. The Blue Card Directive should also be revised in order to attract qualified personnel from third countries. Until now, it has had scarce impact, since national similar schemes have overlapped with it unfavourably (van Riemsdijk 2012).

[15]   According to Massey, the efficacy of restrictive immigration policy depends on the interplay of five basic factors: the relative power and autonomy of state bureaucracy, the relative number of people seeking to immigrate, the degree of constitutional protection of political rights of citizens and non-citizens, the relative independence of the judiciary, and the existence and strength of an indigenous tradition of immigration (Massey 2012, 20). Consequently, centralized and authoritarian states can more easily deploy harsher immigration policies. It is clearly not the case of the EU, but rather, for example, of the Persian Gulf countries.

[16]   Between 2006 and December 2013 Frontex has returned 10,855 people. In spite of such limited numbers, the supposed "criminalization" of migration is the subject of a conspicuous literature (Parkin 2013).

and for illegal migrants released from detention (here conditions vary largely among states). Though a certain convergence has been registered regarding the definition of irregular stay and the release of residence permits for humanitarian reasons, Member States still apply different rules on apprehension and suffer from practical problems in the identification of returnees and in getting documents from non-EU authorities. This hinders a proper return policy (European Commission 2014, 30).

On the front of security, the European Agenda on Security (European Commission 2015a) focuses on terrorism, organized crime and cybercrime, arguing that a better implementation of EU legal instruments, transparency, accountability and compliance with fundamental rights are needed, together with a "cross-sectoral and inter-agency approach" (European Commission 2015a, 4). The reference is to the necessity that instruments like the SIS, the Interpol's Stolen and Lost Travel Documents (SLTD) and Europol work together effectively. The Prüm framework on data exchange (or Schengen III agreement) the coming Passenger Name Record (PNR) system[17] and electronic instruments like the ECRIS (European Criminal Records Information System) and the Maritime Common Information Sharing Environment (CISE) should also be of help, together with cooperation with third countries. An example is the EU-US Terrorist Financing Tracking Programme (TFTP), which allows financial search if there is a suspicion of terrorist activity. In spite of current difficulties, the Schengen system is supposed to stay in force (Guild et al. 2015; in the past, some countries had already suspended Schengen rules for health reasons, but such extraordinary measures had later been lifted). To stop irregular immigration, the EU has also resorted to reception "hotspots" and experts to help register people on arrival and coordinate returns, according to the 2015 Agenda on Migration.

In 2016, proposals have been made by the Commission for new rules on asylum. Basically, candidates should still apply for it in the first EU state they enter unless they have family ties elsewhere (European Commission 2016a). Bur fair sharing of responsibility within the EU should assist overwhelmed countries. Another recommendation regards regularizations, which should be individual-based, in order not to be perceived as "mass amnesties" (Bilgic 2013). Further legal channels for asylum demands could be established through resettlement agreements, the delegations of the European External Action Service in critical areas (in order to check asylum requests immediately) and capacity building initiatives in cooperation with third countries and regional organizations. European legislation should also better address the more recent root causes of migrations, like climate and environmental factors. To fix a long-term strategy, the "push factors" should be handled more decisively. Development plans (with conditionality and convergence clauses) for Africa and the Middle East, multi-lateral stabilization initiatives and support for a global approach to migration in the framework of

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[17]   The Passenger Name Record Directive (2016) obliges airlines to give EU countries their passengers' data in order to help the authorities against terrorism and criminal actions.

the United Nations would be possible solutions (Cofelice 2015)[18]. As far as the Dublin rules are concerned, they are not going to change in the foreseeable future, since the economic crisis still lingers and tends to circumscribe provisions for asylum-seekers because of financial reasons (Trauner 2016). With the hotspot approach, support for frontline states is supposed to be given through EU agencies if they cooperate with registration and fingerprinting of migrants. Here, adequate infrastructural and human resources will be important.

In conclusion, notwithstanding the large number of agencies, funds and legal rules, the EU migration policy still struggles to find a proper balance between different pressures. Another uncertainty regards the strategic guidelines for the AFSJ. In March 2014 the Commission presented its proposals for the new five-year programme. It was a communication, named "An Open and Secure Europe: Making It Happen", containing few new proposals and rather a warning on the need to implement existing norms and policies (Hampshire 2016a, 543). The ultimate version, presented at the European Council summit in Ypres that year, remained rather vague on future developments (Léonard, Kaunert 2016). About the hotspot approach, it is telling that even the European Parliament now insists on the duty of Member States to register and identify all migrants arriving in the hotspots to enhance both relocation and return procedures, and to improve overall security (European Parliament 2016, 44). But, in spite of the venue-shopping argument and of all the hardships, the EU cooperation on asylum matters has actually led to a rise in the legal standard applicable to asylum-seekers and refugees (Kaunert, Léonard 2012). It is maybe a good starting point to hope for effective developments in this contested policy area.

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[18]   However, the EU agreements with migrant-sending countries are criticized by some authors both because of conditional terms (Adepoju *et al.* 2009) and of the supposed "export" of EU migration policy (Boswell 2003). It is also objected that, in many participating countries, human rights records are not respected and refugee protection systems are not guaranteed (Lutterbeck 2006).

BIBLIOGRAPHIC REFERENCES

Adamson, F.B. (2006), "Crossing Borders. International Migration and National Security", International Security, 31, 1.

Adepoju, A., et al. (2009), "Europe's Migration Agreements with Migrant-Sending Countries in the Global South: A Critical Review", International Migration, 48, 3.

Aja, E., Diez, L. (2005), "La normativa sull'immigrazione negli Stati e nella Comunità europea", Diritto, immigrazione e cittadinanza, 7, 1.

Aus, J.P. (2006), "Eurodac: A Solution Looking for a Problem?", European Integration Online Papers, 10, 6.

Bertossi, C. (2008), "The Regulation of Migration: A Global Challenge", Politique Étrangère, 73, Special Issue: World Policy Conference 2008.

Bilgic, A. (2013), "Framing an EU Level Regularization Mechanism: Mission Impossible?", International Migration, 51, 5.

Boswell, C. (2003), "The 'external dimension' of EU immigration and asylum policy", International Affairs, 79, 3.

Campesi, G. (2015), *Polizia della frontiera. Frontex e la produzione dello spazio europeo*, DeriveApprodi, Roma.

Cardwell, P.J. (2013), "New Modes of Governance in the External Dimension of EU Migration Policy", International Migration, 51, 6.

Ceccorulli, M. (2014), "Migrazioni e rifugiati", in Foradori, P., Giacomello, G. (cur.), *Sicurezza globale. Le nuove minacce*, il Mulino, Bologna.

Cellamare, G. (2006), *La disciplina dell'immigrazione nell'Unione Europea*, Giappichelli, Torino.

Cofelice, A. (2015), "In cerca di una governance europea delle migrazioni", Commenti, 53, Centro Studi sul Federalismo, Torino.

Czaika, M., De Haas, H. (2013), "On the Effectiveness of Immigration Policies", Population and Development Review, 39, 3.

De Haas, H. (2008), "The Myth of Invasion: the inconvenient realities of African migration to Europe", Third World Quarterly, 29, 7.

Delgado, L. (2002), "La politica dell'immigrazione", in Fabbrini, S., Morata, F. (cur.), *L'Unione Europea. Le politiche pubbliche*, Laterza, Roma-Bari.

European Commission (2012), *Communication from the Commission to the Council and the European Parliament. Implementation and development of the common visa policy to spur growth in the EU*, Brussels, http://ec.europa.eu/dgs/home-affairs.

European Commission (2014), *Communication from the Commission to the Council and the European Parliament on EU Return Policy*, Brussels, http://ec.europa.eu/dgs/home-affairs.

European Commission (2015a), *Communication from the Commission to the European Parliament and the Council, the European Economic and Social*

Committee and the Committee of the Regions. The European Agenda on Security, Brussels, http://ec.europa.eu/dgs/home-affairs.

European Commission (2015b), *Evaluation of the Dublin III Regulation*, 4 December, Brussels, http://ec.europa.eu/dgs/home-affairs.

European Commission (2016a), *Communication from the Commission to the European Parliament and the Council. Stronger and Smarter Information Systems for Borders and Security*, Brussels, http://ec.europa.eu/dgs/home-affairs.

European Commission (2016b), *The EU and the refugee crisis*, July 2016, Brussels, http://ec.europa.eu/dgs/home-affairs.

European Parliament, Directorate-General for Internal Policies (2016), *On the frontline: the hotspot approach to managing migration*, Brussels, http://www.europarl.europa.eu.

Favell, A., Geddes, A. (1999), "European Integration, Immigration and the Nation State: Institutionalising Transnational Political Action?", Working Paper RSC, 32, European University Institute, Fiesole.

Favilli, C. (2010), "Il Trattato di Lisbona e la politica dell'Unione europea in materia di visti, asilo e immigrazione", Diritto, immigrazione e cittadinanza, 12, 2.

Fernández-Huertas Moraga, J. (2016), "Combining physical and financial solidarity in Asylum Policy", paper presented at

"Immigration, Refugees and Asylum Policies", 22 April 2016, Milano, Università Commerciale "Luigi Bocconi" and Fondazione Rodolfo Debenedetti.

Fielding, A. (1993), "Migrations, institutions and politics. The evolution of European migration policies", in King, R. (ed.), *Mass Migrations in Europe: The Legacy and the Future*, Belhaven Press, Londra.

Franchino, F. (2009), "Perspectives on European Immigration Policies", European Union Politics, 10, 3.

Garlick, M.V. (2010), "The Common European Asylum System and the European Court of Justice: New jurisdiction and new challenges", in Guild, E., et al. (eds), *The Area of Freedom, Security and Justice Ten Years On. Successes and Future Challenges under the Stockholm Programme*, Centre for European Policy Studies, Brussels.

Geddes, A., Scholten, P. (2016), *The Politics of Migration and Immigration in Europe*, 2nd ed., Sage, London.

Givens, T., Luedtke, A. (2003), "The Politics of EU Immigration Policy", paper presented at the European Union Studies Association Convention, Nashville, Tennessee, March 26-29.

Guarino, G. (2012), "Migrazioni, terrorismo e sovranità", in Di Stasi, A., Kalb, L. (cur.), *La gestione dei flussi migratori tra esigenze di ordine pubblico, sicurezza interna ed integrazione europea*, Editoriale Scientifica, Napoli.

Guild, E., et al. (eds) (2015), "What is happening to the Schengen borders?", CEPS

Papers in Liberty and Security in Europe, 86, Centre for European Policy Studies, Brussels.

Guiraudon, V. (2000), "European Integration and Migration Policy: Vertical Policy-making as Venue Shopping", Journal of Common Market Studies, 38, 2.

Guiraudon, V. (2003), "The constitution of a European immigration policy domain: a political sociology approach", Journal of European Public Policy, 10, 2.

Haas, E. (1958), *The Uniting of Europe: Political, Social and Economic Forces, 1950-1957*, Stanford University Press, Stanford.

Hampshire, J. (2016a), "European migration governance since the Lisbon treaty: introduction to the special issue", Journal of Ethnic and Migration Studies, 42, 4.

Hampshire, J. (2016b), "Speaking with one voice? The European Union's global approach to migration and mobility and the limits of international migration cooperation", Journal of Ethnic and Migration Studies, 42, 4.

Hansen, R. (2016), "Making Immigration Work: How Britain and Europe Can Cope with their Immigration Crises", Government and Opposition, 51, 2.

Hatton, T. (2016a), "Refugees and Asylum Seekers, the Crisis in Europe and the Future of Policy", paper presented at "Immigration, Refugees and Asylum Policies", 22 April 2016, Milano, Università Commerciale "Luigi Bocconi" and Fondazione Rodolfo Debenedetti.

Hatton, T. (2016b), "Perché l'Europa deve cambiare politica sui rifugiati", 27 maggio, http://www.lavoce.info.

Kaunert, C., Léonard, S. (2012), "The development of the EU asylum policy: venue-shopping in perspective", Journal of European Policy, 19, 9.

Kobzar, S., et al. (2015), *Evolving patterns and impacts of migration*, Rand Corporation, Santa Monica-Cambridge.

Lavenex, S. (2016), "Multilevelling EU external governance: the role of international organizations in the diffusion of EU migration policies", Journal of Ethnic and Migration Studies, 42, 4.

Legrain, P. (2016), *Refugees Work: A Humanitarian Investment that Yields Economic Dividends*, May 2016, www.tent.org.

Léonard, S., Kaunert, C. (2016), "Beyond Stockholm: in search of a strategy for the European Union's Area of Freedom, Security, and Justice", European Politics and Society, 17, 2.

Lopatin, E. (2013), "The Changing Position of the European Parliament on Irregular Migration and Asylum under Co-decision", Journal of Common Market Studies, 51, 4.

Lutterbeck, D. (2006), "Policy Migration in the Mediterranean", Mediterranean Politics, 11, 1.

Majocchi, A. (2016), "Growth, Jobs and Migrations: the Real Challenges", Policy Paper, 18, Centre for Studies on Federalism, Torino.

Massey, D. (2012), "Towards an integrated model of international migration", Eastern Journal of European Studies, 3, 2.

Menz, G. (2003), "Changing Patterns and Parameters in EU Immigration Policy", paper presented at the EUSA Eight Biennial International Conference, Nashville, Tennessee, 27-29 March.

Menz, G. (2015), "The promise of the principal-agent approach for studying EU migration policy: The case of external migration control", Comparative European Politics, 13, 3.

Nascimbene, B, Mafrolla, E.M. (2002), "Recenti sviluppi della politica comunitaria in materia di immigrazione e asilo", Diritto, immigrazione e cittadinanza, 1, 2.

Nascimbene, B., Di Pascale, A. (2011), "L'eccezionale afflusso di persone dal Nord Africa e l'Unione europea: una colpevole assenza?", Diritto, immigrazione e cittadinanza, 13, 1.

Neal, A.W. (2009), "Securitization and Risk at the EU Border: The Origins of FRONTEX", Journal of Common Market Studies, 47, 2.

Nugent, N. (2010), *The Government and Politics of the European Union*, 7th ed., Palgrave Macmillan, London.

Office Journal of the European Union (2010), *The Stockholm Programme. An open and secure Europe serving and protecting citizens*, 4 May 2010.

Parkin, J. (2013), "The Criminalisation of Migration in Europe. A State-of-the-Art of the Academic Literature and Research", CEPS Papers in Liberty and Security in Europe, 61, Centre for European Political Studies, Brussels.

Recchi, E. (2013), *Senza frontiere. La libera circolazione delle persone in Europa*, il Mulino, Bologna.

Rijpma, J.J. (2010), "Frontex: Successful Blame Shifting of the Member States?", ARI Working Paper, 69.

Ripoll Servent, A., Trauner, F. (2014), "Do supranational EU institutions make a difference? EU asylum law before and after 'communitarization'", Journal of European Public Policy, 21, 8.

Roos, C. (2013), "How to Overcome Deadlock in EU Immigration Politics", International Migration, 51, 6.

Rossi, E. (2015), "Quote rifugiati in Europa: una questione di controllo o di diritti?", Eutopia Magazine, 17 giugno, www.eutopiamagazine.eu.

Scholten, P., van Nispen, F. (2015), "Policy Analysis and the "Migration Crisis": Introduction", Journal of Comparative Policy Analysis, 17, 1.

Schuster, L. (2009), "Dublino II ed Eurodac: esame delle conseguenze (in)attese", Mondi Migranti, 3.

Servoz, M. (2016), "Integrating Refugees", Social Agenda, 44, June.

Stone Sweet, A., Sandholtz, W. (1998), "Integration, supranational governance,

and the institutionalization of the European polity", in Sandholtz, W., Stone Sweet, A. (eds), *European Integration and Supranational Governance*, Oxford University Press, Oxford.

Trauner, F. (2016), "Asylum policy: the EU's 'crises' and the looming policy regime failure", Journal of European Integration, 38, 3.

van Riemsdijk, M. (2012), "(Re)scaling Governance of Skilled Migration in Europe: Divergence, Harmonisation, and Contestation", Population, Space and Place, 18.

Velluti, S. (2007), "What European Union Strategy for Integrating Migrants? The Role of OMC Soft Mechanisms in the Development of an EU Immigration Policy",

European Journal of Migration and Law, 9.

Vitorino, A., Pascouau, Y. (2015), "The EU's migrant strategy: a welcome new impetus", European Policy Centre, Commentary 19 May, www.epc.eu.

Wunderlich, D. (2012), "The limits of external governance: implementing EU external migration policy", Journal of European Public Policy, 19, 9.