The EU's approach to the current refugee crisis, between strengthening of external borders and slow emergence of solidarity

Ponencia presentada en el Curso de Verano de la UPV-EHU 2016

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Abstract. The EU's approach to the so-called 'refugee crises', and more in general to the governance of irregular migration, is one of most politically debated and challengingdomains of the EU.

This chapter deals with EU's response to the crisis on the basis of the EU's Agenda on Migration of 13 May 2015 and its implementation. It will map the evolutions of the different policies in questions and their main legal innovations: which ideas and solutions have been developed in order to manage a phenomenon whose morphology has radically changed in the past couple of years? If indeed the arrivals of migrants were so far confined to the Southern European States (mainly Italy and Greece), the reality of manySyrians fleeing their torn-war country and the emergence of the Balcanic route have brought the phenomenon at the heart of Europe.

The EU's response is centered around several axes: first of all, the EU acknowledges that some of the migrants landing the European shores are persons fleeing persecution and, as such, in need of international protection; another component of the EU's approach is concerned with strengthening border surveillance; a third one consists in externalizing migration control policies to Third Countries (TC): the EU-Turkey Agreement of 2015 is a prominent example of this trend.

This chapter deals with some of the policies concerned with this societal challenge: first, it focuses on the system of border management and its reforms (2), looking -secondly- as well at the militarization of border management (3); third, it discussesthe main reforms of the asylum system (4), before concluding on questions on how to move forward (5).

1. Introduction: the EU's recent approach to the refugee crisis

It is no new that the governance of human migrationis partly emergency-driven. Also in 2015, the raising numbers of Syrians arriving via the Balcanic route, together with another terrible accident of 'boat migration'on 18 April 2015, in which almost 850 lost their lives ashore Lampedusa, moved the EU to adopt a new Agenda on Migration[1], which marks an important moment in such policies.

Until that moment, the EU's approach to the phenomenon of boat migration from Africa was mainly inspired by securitization, i.e., the constructed need to protect borders from a security threat, irregular migration. Though it was also known in the past that the phenomenon of boat migration entailed so-called mixed fluxes, *i.e.*, economic migrants together with prospective refugees, it was only with European Council of 23 April 2015 that the EU supreme political instance has acknowledged the need of a commitment to prevent the further loss of life at sea.[2]

An anticipated above, the EU's reaction further materialized with the European Agenda on Migration, of few weeks later, in which the Commission acknowledges that "[t]he immediate imperative is the duty to protect those in need", as well as stopping exploitation by criminal networks of migrants by addressing the root causes of migration. In order to achieve this aim, it presented a plan of measures, consisting of immediate actions as well as long-term measures. Among the first ones, we have the goals of saving lives at sea, targeting criminal smuggling networks, contributing in helping displaced persons with intra-EU relocation and resettlement to the EU of persons in need; working together with TC to prevent hazardous journeys and helping frontline MSs. For the long term perspective, the Commission envisions a new policy to better manage migration axed on four pillars: reducing the incentives for irregular migration; securing external borders and saving lives at sea; fulfilling EU's duty to protect with the CEAS; and a new policy for legal migration, which targets skilled workers.

What is striking of this document is that, in spite of the alleged premise of EU's commitment to humanitarian finalities (Europe must open its doors to people in need for international protection and must prevent further loss of life at sea), there is nothing or little in the program that makes it possible: if the resettlement program in cooperation with the UNHCR is the option, then the fact that the EU of 500+ mln inhabitants is committing to resettlement of

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[1] Communication on a European Agenda on Migration, COM (2015) 240 final, at http://ec.europa.eu/dgs/home- affairs/ what-we-do/policies/european-agen da-migration/background- information/docs/communication_on_the_european_ agenda_on_migration_en.pdf

[2] The press statement of the Special meeting of the European Council, 23 April 2015 starts as follows:
¨The situation in the Mediterranean is a tragedy. The European Union will mobilise all efforts at its disposal to prevent further loss of life at sea and to tackle the root causes of the human emergency that we face, in cooperation with the countries of origin and transit. Our immediate priority is to prevent more people from dying at sea."
The European Council commits itself to strengthening EU's presence at sea; fighting traffickers in accordance with international law; preventing illegal migration flows; reinforcing internal solidarity and responsibility. athttp://www. consilium.europa.eu/en/press/press-releases/2015/04/23-special-euco-statement/

only 20.000 persons/year gives an idea that the EU is not really engaging in opening up safe routes for asylum-seekers.[3]

The next section is devoted to EU's effort in strengthening external border controls.

2. The strengthening of EU's integrated border management

Since the Schengen integration, the EU has begun shaping the 'common external border' of the EU as made up of the borders of the single MSs. This is and remains the original hallmark of the 'common' external border. This has affected also the way other core instruments of related policies have been shaped: it is here referred to the Dublin Regulation (see infra, section 4).

The Schengen Agreement, meaning the lifting of internal border controls, has entailed, first, the linkage of migration with security, and, second, the need for compensatory checks on the external borders, together with flanking measures in the areas of asylum, visas and migration.[4]

With the Treaty of Maastricht there was a first codification of these policies as "matters of common interest" of the Member States, "for the purposes of achieving the objectives of the Union, in particular the free movement of persons, and without prejudice to the powers of the European Community" (Art. K.1 TEU). Again, in the Treaty of Amsterdam border controls is still framed as part of the "directly related flanking measures with respect to external border controls, asylum and immigration" (Art. 61 TEC). It will only be with the Lisbon Treaty that such policies are clearly framed and spelled out as shared competences of the EU.[5]

However, even before the entrance into force of the last treaty reform, the secondary legislation adopted has created a body of legal instruments supporting the progressive enactment of fully-fledged policies, marked by institutional actors (such as the agencies Frontex and E.A.S.O.), by the establishment of legal framework defining the powers, the limits of agencies' actions and instruments for operation: it is here referred, for example, at Frontex, EASO; the Schengen Borders Code and the Return Directive.

The political impulse of the European Agenda on Migration has taken shape here into the EU's Borders Package of December 2015[6], aiming at reforming Frontex into the European Border and Coast Guard (EBCG) agency[7]. This has led to the swift adoption of the Regulation 1264/2016, entered into force on 6 October 2016.

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[3] The policy on legal migration is not considered here, since it targets migrants economically attractive for the

[4] 4T. Bunyan, H. Busch, E. Guild, S. Peers, "The Impact of the Amsterdam Treaty on Justice and Home Affairs", European Parliament, 2000, p. 12, at http://www.europarl.europa.eu/RegData/etudes/etudes/join/2000/228145/IPOL-LIBE_ET(2000)228145_EN.pdf

[5] See Art. 4 (2) (j) TFEU. According to Art. 77 TFEU, letter c) "the gradual introduction of an integrated management system for external borders" is a competence of the EU. For more elaboration on the implications of this qualification, see S. Peers, EU Justice and Home Affairs Law, OUP, 2011, 71-73.

[6] European Commission, "A common approach to managing Europe's external borders", Brussels, 15 December 2015, at ec.europa.eu/news/2015/12/20151215_en.htm

[7] COM (2015) 671 final, Proposal for a Regulation of the European Parliament and of the Council on the EBCG, at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/securing-eu-borders/legal- documents/docs/regulation_on_the_european_border_and_coast_guard_en.pdf

The crucial question to be answered here is to which extent the 'new Frontex'or EBCG agency represents a truly departure from the Frontex model or rather a consolidation of the current experimentalist governance[8]. It is not possible here to give a detailed account and analysis of the last reform. At the opposite, the focus will be kept on some aspects of the design of the new agency: first, legal framework for Search and Rescue (S.A.R.) operations; second, the additional powers assigned to Frontex.

Frontex is born as a coordinating agency, i.e., an agency whose main task was to "coordinate operational cooperation between Member States in the field of management of external borders", and not as a supranational agency, as for example we could consider OLAF. The composition of the Management Board was well reflecting this origin. Other tasks are training, risk analysis, R&D, and assist MSs "in circumstances requiring increased technical and operational assistance at the external borders, taking into account that some situations may involve humanitarian emergencies and rescue at sea".Frontex has been equipped with an information systems, EUROSUR, the EUROpean Border SURveillance System.In practice, the most significant activity of Frontex is represented by its operations, at least for inasmuch budget is concerned. Every emergency in the context of migration has entailed additional resources for Frontex.[9]

The reform of Frontex into a EBCG has touched upon several critical powers of the agency and, to some extent, represents a rupture with the current nature of Frontex as a coordinating agency.

For example, one of the first criticism against Frontex has been that the practices of the agency were not paying due respect to fundamental rights obligations of the EU and of the MSs[10]. In the past years, much has been done to address this criticism and also to make sure that fundamental rights of migrants are integrated into Frontex' operational frameworks.

From the institutional perspective, some actors have been established: first, a Fundamental RightsOfficerinternal to the agency; the post is currently held by the Spanish Inmaculada Arnaez; next to it, the Fundamental Rights Consultative Forum is advising the agency on fundamental rights matters.

Furthermore, the Regulation No. 656/2014 established rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex. The Regulation has been welcomed because it specified and codified into an EU instrument the legal framework, thus reducing the discretion of agents involved in operations of maritime border surveillance coordinated by Frontex.At the same time, the Regulation codifies in EU law S.A.R. obligations, and therefore it provides a legal framework also for Frontex operations, which often entail S.A.R. operations or activities.

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[8] J. Pollak, P. Slomiski, "Experimentalist but not Accountable Governance? The Role of Frontex in Managing the EU's External Borders",West European Politics Vol. 32 , Iss. 5,2009

[9] S. Carrera, L. den Hertog, A European Border and Coast Guard: What's in a Name?, CEPS Paper No. 88/2016, p. 12, at https://www.ceps.eu/system/files/LSE%20No%2088%20SC%20and%20LdH%20EBCG.pdf

[10] Here the literature is abundant. See L. Marin, "Protecting the EU's borders from … fundamental rights? Squaring the circle between Frontex's border surveillance and human rights, in R. Holzhacker & P. Luif (eds.), *Freedom, Security and Justice after Lisbon: Internal and External Dimensions of Increased Cooperation in the European Union*, Springer, New York, 2014, pp. 75-99

On this dimension, the EBCG Regulation represents a further improvement, in comprising S.A.R. operations in the concept of European Integrated Border Management (Article 4)and in making clear that the tasks of the new EBCG also do entail to 'provide technical and operational to Member States and third countries in accordance with Regulation (EU) No. 656/2014 and international law, in support of search and rescue operations for persons in distress at sea which may arise during border surveillance operations at sea'.

This provision, though in a very careful formulation, has the merit to explicitly spell out participation to search and rescue operations as one of the tasks of Frontex. However, because of the nature of Frontex and of the EU viz a viz international obligations on search and rescue, here the agency has not autonomous powers, but is rather required to support Member States in that respect.

However, on the subject of Regulation No.1624/2016, the most striking provisions are Articles 13 and 19, providing,respectively, for two new mechanisms: the vulnerability assessment, and a mechanism that has been labelled as a "right to intervene".

The vulnerability assessment of the 'technical equipment, systems, capabilities, resources, infrastructures, adequately skilled and trained staff of MSs' (Article 13, 2) has the aim to 'assess the capacity and readiness of MSs to face upcoming challenges', to identify possible immediate consequences at the external borders and on the functioning of the Schengen area. The result of the assessment shall be first submitted to the MS in question, and, if it results in a recommendation, the lack of implementation of the measures in question shall be referred to the Management Board and the Commission notified (Article 13, 4-8).

Another provision, Article 19 (Situation at the external borders requiring urgent action),is further detailing new powers of the EBCG agency, 'where control of the external borders is rendered ineffective to such an extent that it risks jeopardizing the functioning of the Schengen area' (Article 19). In this case, the Council can adopt a decision on the basis of a proposal of the Commission, for which it has to consult the agency. With this decision, the Council can endorse the agency with powers to intervene, by coordinating a rapid border intervention and deploy EBCG teams, also in the hotspot areas, to coordinate activities for one of more MSs and TC at the external borders, including joint operations with TC, and organize return interventions.

This appears to be the most innovative provision of the new Regulation, in the sense that it aims at providing for powers of substitution of the European agency in case a state is deficient in securing control at the external borders. In this sense, this is a form of supranationalization of border control, which can be activated in a subsidiary manner.

In case the concerned MS does not comply and cooperate with the agency, the Commission may trigger the procedure for the reintroduction of internal border controls, in accordance with Article 29 of the Schengen Borders Code (Article 19, 10).

While the current analysis does not allow for a comprehensive assessment of the new agency under the new EBCG Regulation, it is suggested that the current agency represents aconsolidation of the current experimentalist governance with some crucial reforms that might pave the way for new developments, with special reference to the 'substitution powers' enacted in order to react to some Southern MSs more than others on the frontline of border surveillance, such as Italy and Greece in particular.

3. The militarization of border control: EU NAVFOR MED and NATO operations on the Turkish coast

The operation EU NAVFOR Med is certainly a step ahead in the process of militarization of border surveillance. The trend is ongoing at national level, and is to be ascribed to the securitization of migration controls.[11]

Alongside the involvement of national agencies with military status (Spanish *Guardia Civil*, Italian *Guardia di Finanza*), the necessity to further externalize border management operations to the countries of origin and transitof migration, together with specific circumstances pertaining to the country in question, has necessitated operations such as *Mare Nostrum[12]*, later replaced by JO *Triton*. The latter had firstly a limited operational area,which was later on increased toward international waters after Lampedusa shipwreck of April 2015. Next to this, it is here referred to the operation EU NAVFOR Med, later renamed SOPHIA. Formally speaking it is a 'military crisis management operation contributing to the disruption of the business model of human smuggling and trafficking networks in the Southern Central Mediterranean (..)'. (Art. 1 Council Decision of 18 May 2015 (CD CFSP 2015/778 of 18 May 2015).

It is a Common Security and Defence Policy (CSDP) operation, discussed and agreed upon after the Lampedusa disaster of 18 April 2015[13], and it represents a turn in border control and in the management of irregular migration through fighting human trafficking and smuggling. This turn is a consolidation of a more central role acquired by migration control in the EU's external and security policies, as one can read in the 2016 strategy for EU's External and Global Security Strategy[14].

The goal of the mission is to disrupt the business model of smugglers and traffickers, and possibly to prevent migrants becoming the 'objects' of criminal activities. For this purpose, it makes a systematic effort to identify, capture and dispose of vessels and assets used or suspected of being used by smugglers or traffickers. This is done in accordance with applicable international law, including UNCLOS and any UN Security Council Resolution" (Article 1, CD CFSP 2015/778). It operates alongside Frontex coordinated JO Triton, and it coordinates with it[15].

It is organized in phases: phase 1 concerns surveillance and assessment of human smuggling and trafficking networks in the Southern Central Mediterranean; phase 2 entails

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[11] M. Akkerman, Border Wars, Transnational Institute and Stop Wapenhandel, 2016, p. 9 ff., at https://www.tni.org/files/publication-downloads/border-wars-report-web1207.pdf ; R. Vollmer, M. von Boemcken, "Europe *off limits*. Militarization ofthe EU's external borders", at http://www.friedensgutachten.de/tl_files/friedensgutachten/pdf_eng/fga2014en/Beitrag%201.7.pdf

[12] Mare Nostrum was conducted by the Italian Navy in cooperation with the Ministry of Internal Affairs.

[13] This was the most dramatic accident after the one of 3rd October 2013, in which between 700-900 migrants lost their lives at sea.

[14] See also "A Global Strategy for the European Union's Foreign and Security Policy" at https://europa.eu/globalstrategy/sites/globalstrategy/files/about/eugs_review_web_7.pdf

[15] "Moved to prevent further loss of life at sea and to tackle the root causes of this humanitarian emergency", "the European Council committed to strengthening the Union's presence at sea, to preventing illegal migration flows and to reinforcing internal solidarity and responsibility" (CD, recital 2).

boarding, search, seizure and diversion, on the high seas and on territorial waters, of vessels suspected of being used for human trafficking or smuggling; phase 3 entails the disposal of vessels and related assets and apprehension of traffickers and smugglers. Both the second and the third phases require a UN Security Council Resolution. The progress of the operation, which according to international law requires the consent of the coastal state, is uncertain because of the situation in Libya. At the time of writing operation SOPHIA has terminated its phase 1 and phase 2A, in international waters. Phase 2B would take place in territorial waters, for which there is a need for consent by the Libyan government. However, the situation in Libya presentslegal and political challenges that do not allow the operation to move forward. On 20 June 2016, the Council extended until 27 July 2017 the mandate of the operation, and also added two additional tasks: the training of the Libyan coastguards and navy and the contribution to the implementation of the UN arms embargo on the high seas off the coast of Libya[16].

It is here argued that this operation is a relevant example of militarization of border control operations: EU NAVFOR MED is not formally a border surveillance operation, but it aims at transferring defence instruments, assets and technology to the borders and beyond. It therefore represents a consolidation of the militarization of border surveillance and a further step in the direction of its externalization to the countries of departure, contributing to the techno-securitization of borders[17].

Next to this CFSP operation, it is here suggested that militarization of border management is taking place also with the involvement of NATO. Since 11 February 2016, a NATO operation has the aim of supporting Frontex, Greece and Turkey in their efforts of border patrolsin the Aegean Sea. NATO assets are carrying out, as one can read in their press information sheets, operation of reconnaissance, monitoring and surveillance in territorial waters of both Greece and Turkey, as well as international waters[18]. Allegedly NATO assets are providing real-time information to coastguards and other national authorities of Greece and Turkey, as well as to Frontex. This cooperation is operationalized with the presence of a Frontex liaison officer on board of NATO vessels, and other, not better specified operational arrangements between Frontex and NATO. NATO cooperation, strongly supported by UK, US and Germany, has been at one point contrasted by the Turkish government[19]. Also according to the press information on the subject, NATO ships track smugglers' boats and send signals to Turkish coast guard, who decides on the course of action.

What is here needed is a clarification of the operation rules followed in such operations, how to make sure that interception operations do not entail a violation of the principle of

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[16] European External Action Service, 2016, at http://eeas.europa.eu/csdp/missions-and-operations/eunavfor- med/

[17] See L. Marin, "The deployment of drones technology in border surveillance: its impact on security and its challenges to privacy and data protection" in R. Bellanova, J.P. Burgess, J. Cas, M. Friedewald, W. Peissl (eds.), "Discourses on Privacy and Security", Routledge forthcoming 2017

[18] "NATO's Deployment in the Aegean Sea", Fact Sheet, July 2016, at http://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2016_07/20160627_1607-factsheet-aegean-sea-eng.pdf

[19] "Turkey Blocks Expansion of NATO's Aegean Mission", at http://www.wsj.com/articles/turkey-bl ocks- expansion-of-natos-aegean-mission-1466020162

non- refoulement[20]; as to the accountability side, how will transparency on such operations, having a high impact of the human rights of migrants, be assured?

To those questions there is unfortunately no answer. Itis therefore worrisome that the militarization of border controls operations might be a scapegoat also to avoid scrutiny and accountability on such operations[21].

4. The Common European Asylum System (CEAS), between free-riding and distrust

Overall, the governance of the European asylum system is based on mutual recognition and on minimum harmonization. The EU has limited enforcement powers; for the enforcement of EU law it must rely significantly on MSs and their institutions. The MSs still have rather different systems in place, and the common playing field is rather limited[22].

The Dublin system has been built on the main aim to avoid forum shopping and 'asylum-seekers in orbit' phenomenon. Even if it has been reformed twice, the Dublin Regulation (now Reg. No. 604/2013, or Dublin III) is bearing a clear origin with the Schengen

Agreement, and its foundational hallmark (see supra, Section 2) of the external EU border made up of juxtapositionof the single borders of the MSs.

For this system indeed, the cornerstone provisions[23] imply that the first access country is the one responsible for asylum application, irrespective of the geography and morphology of the countries of the EU. This entails that southern European countries are the most exposed to migration from the southern and poorest part of the globe. Is this approach still acceptable in light of current stage of European integration? It is by no chance that the Dublin system has been labelled as 'good weather law'[24]: is therefore the good weather law still appropriate for the regulation of 'bad weather' situations?

The past years and the problems experienced so far with Dublin would suggest for a negative answer.

First of all, the automatic transfers entailed by an automatic interpretation of the principle of mutual recognition, have proved to be a violation of the fundamental rights of the individuals, as ascertained by the European Court of Human Rights (ECtHR) in M.S.S. v. *Belgium*

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[20] See also the European Union Agency for Fundamental Rights (FRA), "Guidance on how to reduce the risk of refoulement in external border management when working in or together with third countries", December 2016, at http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-guidance-reducing-refoulement-risk_en.pdf ; and also "Scope of the principle of non-refoulement in contemporary border management: evolving areas of law", December 2016, at http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-scope-non-refoulement_en.pdf

[21] For similar observations, see F. Crépeau, A. Purkey, Facilitating Mobility and Fostering Diversity: Getting EU Migration Governance to Respect the Human Rights of Migrants, CEPS Paper No. 92/2016, p. 20 at https://www.ceps.eu/publications/facilitating-mobility-and-fostering-diversity-getting-eu-migration-governance- respect

[22] M. Den Heijer, J. Rijpma, T. Spijkerboer, "Coercion, Prohibition, and Great Expectations: The Continuing Failure of the Common European Asylum System", in *Common Market Law Review*, 53, 607-642, 2016.

[23] Art. 7 ff., Art. 13 'Dublin III'.

[24] K. Hailbronner, "Asyl in Europa: Wenn, wie, wann, wo?", *FrankfurterAllgemeine*,10 Dec. 2015.

and Greece[25]. It is by no chance that Dublin III has tried to correct the automatic nature of the system, by adding Articles 16 and 17 on 'dependent persons' and 'discretionary clauses', providing for the possibility that MSs advocate to themselves the responsibility of deciding an asylum claim, and limiting the temporal scope of the first access country criterion to one year.

The second crucial problem met by the Dublin Regulation and the CEAS system is that MSs have little incentivesfor compliance. The system is indeed unbalanced since it bears on southern European states the responsibility for border management, first reception facilities and also the responsibility of the processing of asylum applications and acceptance of asylum seekers.

Because of the 'original sin' of Dublin, the incentive for free-riding and non-compliance is high. Greece for example has been since 2011 exempted from transfers from other MSs, after the *M.S.S.* judgment. This has resulted in Italy 'tolerating' that migrants did not accept to be fingerprinted, and, consequently, secondary movements of asylum-seekers within the EU, further undermining the whole Schengen system, with MSs like Austria threatening the closure of Brenner border with Italy, and, in the past, a crisis between France and Italy on Ventimiglia crossings.

Also here, the solution has been found in attempting to build aintra-EU solidarity system, with the Commission trying to push states to increase solidarity and the resistance of the same, in accordance to Art. 80 TFEU. For example, following up on the European Agenda on Migration, the Commission proposed an emergency relocation proposal for 120,000 refugees from Greece, Hungary and Italy and the implementation of a hotspot approach.

Under the hotspot approach EU AFSJ agencies (EBCG, EASO, Eurojust and Europol) work together –in the hotspot location- in order to 'assist' a frontline MS (mainly Italy and Greece) to cope with an emergency situation. Their aim is to mainstream different categories of migrants and channel every migrant in short time span to his or her legal path applicable to his/her case: in short, identify, fingerprint or return migrants. What remains outside the hotspot approach are the reception of claimants and the processing of claims. It is by no chance that commentators have suggested that beyond the assistance rhetoric, the main aim of the hotspot approach is to hold frontline states accountable to their Dublin obligations[26].

In order to mitigate this effect, the relocation schemes have been introduced, in a partial derogation to Dublin and in order to support the functioning of the 'hotspot approach'[27]. Those

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[25] ECtHR, judgment of 21.1.2011, Application No. 30696/09. The Court of Justice has accepted this case law, in its judgment *N.S.* and *M.E.*: MSs have to apply the Dublin Regulation, unless there is evidence of systemic deficiencies in the asylum system of the state in question. Rebuttal of the presumption of mutual trust (MT) is possible only in limited cases. With the case *Tarakhel v. Switzerland* (Application no. 29217/12, 4 November 2014, Grand Chamber), the ECtHR has extended the duty of the MSs to check respect for fundamental rights beyond the case of systemic deficiencies, in particular in case of uncertainty on reception conditions for families.

[26] F. Maiani, "*Hotspots and Relocation Schemes: the right therapy for the Common European Asylum System?*", 2016, at http://eumigrationlawblog.eu/hotspots-and-relocation-schemes-the-right-therapy-for-the-common-european-asyl um-system/

[27] Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, OJ L 239, 15.9.2015, p. 146–156; Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ L 248, 24.9.2015, p. 80–94

instruments provide that a number of asylum applicants in Italy (66,400) and Greece (39,500) should be relocated, until September 2017, to other MSs. Applicants may only be relocated after applying for protection in those countries, after being fingerprinted in EURODAC and with a clear establishment of responsibility for Italy and Greece. Secondly, relocation can only target applicants 'in clear need of international protection', those in possession of a nationality with a recognition rate of 75% or more.[28]

The aim of the combination of 'hotspot approach' and relocation schemes is to make Schengen safe again, by making sure that frontline states meet their legal obligations under Dublin and EURODAC, reducing secondary movements.[29]

After a first and difficult start which did not give much hopes on the success of the whole operation, the implementation of the hotspot approach has started. In a study of the European Parliament, it has been observed that in several hotspots it is mainly Frontex experts who are being deployed; secondly EASO, with much more limited numbers; Europol and FRA are often not in the hotspots structures. This suggests that the focus in hotspots is on border control and return operations. Next to this, several NGOs, both in Italy and in Greece, have raised their voice against human rights violations perpetrated in hotspots.[30]

While it is too early to draw an assessment, the hotspot approach and relocation schemes seem to be inspired by a logic of making sure that the Dublin and EURODAC systems are enforced, thus avoiding free-riding and lack of compliance; they are therefore also inspired by a good share of distrust toward the same states. Will the incentives for obedience now be higher than those for disobedience? For example, the main threat is the suspension of Schengen: will this be effective against Greece, which has no land borders with other EU MSs? For Italy a core incentive for compliance is in swifter return procedures, which require the cooperation of TC, which is not fully under the control of the EU. All in all, the current approach seems inspired by a logic of '*chacun pour soi*', which is one of the leading reasons of the crisis of the European asylum system, and far from a logic of decoupling first reception from application for asylum, and fair burden-sharing among MSs, taking into account the agency of prospective refugees (where they actually plan to go).

5. Conclusions

Overall considered, the EU has activated its bureaucracy in order to react to the 'refugee crisis' and it enacted policies and instruments in order to strengthen border controls, to make sure that the phenomenon of boat migration is contrasted at its roots, in the countries of departure and with fighting against criminal networks. One of the dimensions of the European effort is about securing borders and externalizing border management to TC. This policy has

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[28] F. Maiani, "Hotposts and Relocation Schemes", op. cit., 2016

[29] G. Morgese, "Recenti iniziative dell'Unione europea per affrontare la crisi dei rifugiati", in Diritto, immigrazione e cittadinanza, XVII, 3-4.2015, p. 15 ff.

[30] D. Neville, S. Sy, A. Rigon, "On the frontline: the hotspot approach to managing migration", European Parliament, May 2016, at http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556942/IPOL_STU(2016)556942_EN.pdf

taken shape also with the important EU-Turkey migration agreement of march 2016, which remains outside the scope for this work.

Another dimension of EU's reaction has attempted to mitigate the structural shortcomings nd inequalities of the asylum system, by calling some MSs to their legal responsibilities ('hotspot approach'), with the promise of an effort in building solidarity across MSs, with relocation schemes.

Notwithstanding the efforts done, also in financial terms, questions remain on many aspects of the policies: for example, to which extent is it realistic to think that border management can be effective in keeping migrants away from us? Which are the implications of it, both in legal and ethical terms? When involving TC in the management of migration control policies, which should be the pre-conditions to make this happen? And which the guarantees? And again, in relation to asylum, which is the most effective way to deal with prospective asylum seekers, in order to enable them to become active participants in our societies, also in economic terms? These questions are far from being answered and it is of primary importance to keep them as guidance in our efforts to keep Europe a prosperous and peaceful Union.