The European Migration System and Global Justice

A First Appraisal

Enrico Fassi and Sonia Lucarelli (eds)

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Table of contents

Chapter 2

EU terms, definitions and concepts on migration[1]

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This chapter deals with terms, definitions and concepts in the realm of migration and asylum as conceived by the EU. The literature has spent a great amount of ink in assessing EU's policies and practices but it has predominantly failed to provide a thorough assessment of the terms and definitions employed by the EU, missing the opportunity to investigate the ideas, conceptions and understandings beneath peculiar aspects of the EU Migration System of Governance (EUMSG).

There are at least three grounds for affirming that terms, definitions and concepts employed in main legal documents are of relevance in a preliminary analysis of the EU. First, 'EUropeanised terms' suggest specific ways the EU has interpreted certain terms common in the realm of migration, or concepts adopted on migration. This category includes specific articulations of the 'migration' terminology but also specific EU institutions and devices. Second, 'EU cornerstone concepts' recalls some concepts employed within the EUMSG that can be considered key pillars of the EU's 'approach' to migration. Third, some

[1] We are grateful to Graham Finlay for precious comments and suggestions to an earlier version of this chapter and also chapter 3.

recurrent yet frequently overlooked terms suggest the (implicit or explicit) purposes of EU's migration policies, and the constraints they pose.

In the first category, 'EUropeanised terms', are terms such as 'resettlement'. This has not been coined by the EU but, especially in the last years, it has assumed a distinct 'EU' connotation, while also becoming an instrument to manage the 'European' migration crisis. Similarly, 'relocation', a largely used word today, is not an EU term but it has acquired a specific meaning within the EUMSG, clearly associated to the 'emergency' situation facing the European Union. Related to the concept of relocation, 'hotspot' is neither an original term nor one of first usage in the EU's jargon. Yet, in the realm of migration, it has been associated with the 'migration crisis' and invariably referred to an area, a system and an approach. Some other terms and definitions, instead, are immediately associated to the governance of migration as approached and played out by the EU. This is the case for example of terms such as the 'Blue Card' for highly skilled workers, the 'Global Approach to Migration and Mobility', intended as the overarching framework of EU external migration policy and the recent 'Partnership Framework (Compacts)' for relations with third states. Seemingly, some Agencies that are part of the governance of migration, entail a specific understanding of how flows need to be regulated. A diachronic analysis allows uncovering how some of these peculiar tools have been assuming different meanings through time, conflating purposes to combat irregular immigration and to address asylum claims. This in turn opens for a number of questions from a justice perspective. Not only the functions but also the juridical nature, the autonomy and the underpinnings upon which these tools were originally created are changing, and with them their definition and role in the EUMSG. Missing this point would mean failing to understand how this specific system of governance is currently being re-defined.

The second category, 'EU cornerstone concepts', includes some concepts that equate to veritable pillars of the EU's migration policy. This is the case for example of the 'Common European Asylum System', which underlines the purpose of a common understanding of what asylum implies in the European Union. 'Burden sharing' is another evocative concept widely surfacing in this work, mostly referring to relations with third states and mainly recalling the necessity that these states 'fairly' contribute to the management of migration. 'Solidarity' is mainly used to underline the necessity to share the burden within

the EU, among Member States. The evocative concept of the 'Dublin system' is a cornerstone of the Common European Asylum System. The Dublin system's contribution extends further than the simple determination of the country responsible to examine an asylum application: it also entails a specific understanding of Member States' reciprocal responsibilities within the Union. 'Return' is another evocative concept intended as the key recipe to properly address irregular immigration, but also to provide a credible asylum and admission policy in the EU. Return to 'transit countries' is a peculiar variant of the EU's approach to the matter. Seemingly crucial is the concept of 'External dimension', mirroring EU's understanding of the role of third countries in migration management. The meaning of 'integration' as reported in the few documents on the matter, is aimed at the fulfilment of broader EU (and not necessarily Member States) goals, such as remaining competitive, facing the challenge of demographic ageing and being an effective promoter of basic values and the rule of law.

Finally, the third category, 'EU forgotten words', regroups crucial and yet overlooked terms in the assessment of the European approach to migration. Failing to emphasize them would mean losing the opportunity to grasp the 'constraints' these terms implicitly entail. For example, 'secondary movements', 'asylum shopping', 'mixed migratory flows or hybrid migratory flows' and 'orderly and managed arrivals' are already telling of EU's understanding of migration and of the ways to cope with it. 'Mixed migratory flows' suggests the idea that flows are constituted by both persons likely to fall under EU's criteria of protection and by persons who do not, no matter for example of the severity of their economic needs. The almost automatic and widely repeated use of these terms should be given greater attention, as done in this work.

For the sake of simplicity, the work follows the division of asylum into irregular immigration, legal migration and the external dimension of migration.[2] Ultimately, this allows entering deep into each domain and

[2] The work draws on the most relevant legal documents produced by the EU on migration and asylum. The work does not focus on all terms, definitions and concepts provided by the EU. Rather, in order to start reasoning on the EU's contribution to global justice, it puts the focus on terms that provide a better understanding of how the EU conceives how the governance of migration should look like. The analysis of terms, definitions and concepts also covers the last proposals for Directives and Regulations drafted by the European Commission as they seem to significantly shift from previous legislative acts (for a critical assessment of the role of 'legislation' in the current EU's migration policy see for example Menéndez 2016).

understanding the main idea behind them as conceived by the EU. Additionally, it opens for uncovering how concepts have changed through time (the approach is diachronic) and the direction this change has taken. Indeed, it is fair to underline that contamination between these domains has been wide and that some words and concepts are key in most of the domains.

Asylum

Asylum can be considered an (almost) universal term. However, a crucial issue in this domain is to understand what 'asylum' means for a political system and more so on what 'providing asylum' implies for the same political community. As any other policy, it entails selection, prioritization and discrimination. Undoubtedly, more than in other fields of political action asylum embodies broader ethical and justice considerations, irreducible to easy solutions. Thus, assuming that asylum is perceived and defined (not to say practiced) differently in different political contexts is a wrong and misleading starting point.

With this in mind, analysing how the EU defines 'asylum' is far from trivial. Reading through EU documents leads to the disclosure of a specific pattern constituting the understanding of 'asylum' in the EU. What emerges from this analysis is a pattern of words substantiating the leading concept in the domain, that is, the Common European Asylum System (CEAS). These words are: 'secondary movements', 'asylum shopping', 'mixed migratory flaws', 'safe country of origin', 'safe third-country', 'first country of asylum', 'burden sharing resettlement', 'relocation' and 'hotspot', among others. Related terms that may be found in other domains of the EUMSG but when used in the realm of asylum assume a specific meaning are 'return' and **'**external dimension' for example. Even in the case of 'predictable words' (such as 'protection', 'family reunification', 'refugee' etc.), there is still need for close analysis as each may come with its own specificity in terms of rights, obligations, duration, exceptions. That is, terms are not neutral, and their meaning may well change through time.

Accordingly, a first element to be taken into account is that the creation of a Common European Asylum System (CEAS) – which should first lead to the setting of basic common standards among Member States and then to a whole harmonization of asylum practices – is a very long term *process*, dating back to Tampere Council of 1999. A second element, which is provided by the term itself and that will be crucial in

the following analysis, is that the EU conceives 'asylum' as a system, composed of multiple facets and that the system should be shared (common) among Member States.

For the sake of simplicity, this section on asylum keeps the partition operated at the EU level, and is divided in three sub-sections: procedures, qualification, Dublin system and reception.

Procedures

The first fundamental pillar of the CEAS is the definition of common procedures for international protection. Overall, the EU's reasoning behind 'common procedures' was to 'improve the quality of examination and the speed of procedures' (European Commission 2003b, 8).

The very first document produced after the Tampere Council discussing common procedures for international protection, was very clear in explaining that 'protection' in the EU could no longer be granted only on the basis of the Geneva Convention, given the increasing mismatch between 'the nature of the demand and the criteria of the Geneva Convention' (European Commission 2000, 5). Probably, the legacy of the Balkan wars left space for a broader interpretation of protection responsibilities within the Union. Reference was made to the European Convention on human rights, which was said to have set the basis for many alternative forms of protection at the national level aside from the one granted by the Geneva Convention.

However, already in this first document, where much of the attention was focused on rendering the EU a space of protection, the objective to limit 'secondary movements' was mentioned**.** This entails the possibility for asylum seekers to move from a Member States to another without prior authorization, something that common procedures for Member States could prevent (European Commission 2000, 6). Ultimately, this is intended to describe a situation whereby asylum seekers tend to go to states with 'easier procedures', which would disproportionally affect certain Member States. A related term started to surface the public debate and made its appearance in a EU 2000 Commission document (European Commission 2000, 10), that of 'asylum shopping', referring to the ever frequent practice to apply for asylum in different Member States even at the same time, duplicating costs and efforts in the EU.

In setting the first stones of the CEAS the European Commission brought to relevance another term/concept normally used on irregular immigration but said to be key for the 'credibility' of the EU asylum system: 'return' **(**European Commission 2000, 10-11). In this context return was intended as the effective possibility to send back those people found ineligible for any form of protection and not risking any sort of persecution in their country of origin or of residence. Return as a building block of the asylum system was further urged in 2003, when the European Commission delivered a Document addressing the proposal by the United Kingdom to look for forms of protection outside the EU and close to displacement areas. This reflection was seemingly undergone by the UNHCR at the time through the 'Agenda for Protection' and the 'Convention Plus' initiatives (European Commission 2003a). The concepts of 'mixed migratory flows' (European Commission 2003a) or 'hybrid migratory flows' (European Commission 2003b) were guiding UK's proposal but also EU's reflection. . The concepts inferred that asylum seekers were not only people searching for international protection, but to an increasing extent economic migrants 'abusing' the EU asylum system (European Commission 2003a, 11). Again, properly facing mixed migratory flows was considered key to EU asylum system's 'credibility'. The argument of the UK (endorsed by the EU) was that by effectively enforcing return of 'economic migrants' they would eventually be discouraged to abuse the asylum system, thus reducing the caseload of applications the EU would have to consider. In turn, this would save resources to help countries and regions of origin to face the immediate need of displaced persons and refugees. It is noteworthy to notice how the CEAS concept was broadening to encompass an important 'external dimension': the EU asylum system had to be intended to gradually improve protection capacities in third countries in order to reduce the necessity of people in need of protection elsewhere (i.e. the EU) (European Commission 2003a, 13). Accordingly, 'burden sharing' meant that third countries had to contribute to offer protection to persons in need given that providing assistance timely and as close as possible to the real needs was the 'logic and preferred protection option' (European Commission 2003a, 16).

This further elaboration of the CEAS concept is fundamental to understand future EU policies in the domain. In particular, in these first documents there is reference to 'orderly and managed arrival' of persons in need of international protection from the countries of origin. This

implicitly made resettlement[3] a preferred option and long-term objective for the European Union (European Commission 2003a, 13). Later on the EU would be clearer in maintaining that 'the approach aims to end irregular and dangerous movements and the *business model of smugglers*, and to replace these with safe and *legal ways* to the EU for those who need protection. Protection in the region and resettlement to the EU should become the model for the future, and best serve the interests and safety of refugees' (European Commission 2016a, 2).

Fact sheet 2.1: Resettlement

Resettlement as a concept has only recently found greater usage in the European Union. Resettlement has always existed but there was no common EU framework on the matter. Yet, since the very starting of talks on a common asylum system resettlement has been considered a key instrument. Similarly, to other words examined in this work it does not simply imply a 'procedure'. A patterned scheme of related words, concepts and tools together make sense of what resettlement means. Hence, pertinent terms encompasses Regional Protection Programmes, durable solutions, orderly procedures and legal and safe arrivals, external asylum policy, the United Nations High Commissioner for Refugees (UNHCR), the European Asylum Support Office (EASO) and the new European Agency for Asylum, relocation and integration. Even though there exists a definition of 'resettlement' shared among international protection Institutions, an interpretative analysis underlines the nuances that the term has assumed throughout years, the new objectives supporting it but also the new shape it is about to assume.

In its bare definition resettlement is intended as 'the transfer of individual displaced persons in clear need of international protection, on request of the United Nations High Commissioner for Refugees, from a third-country to a Member State, in agreement with the latter, with the objective of protecting against refoulement and admitting and granting the right to stay and any other rights similar to those granted to a beneficiary of international protection' (European Commission 2015a, 4). It was considered as a possible 'durable solution' for persons in need of protection, persons to be identified by the UNHCR (European Commission 2009, 3). An 'European' idea of resettlement (as different from Member states' practices)

[3] Resettlement is here described as 'transferring refugees from a first host country to a second, generally a developed country, where they enjoy guarantees of protection, including legal residence, and prospects for integration and autonomy' (European Commission 2003a, 14).

concretely emerged in relations with Regional Protection Programmes established by the EU. The main idea was that resettlement was central to provide assistance to the countries envisaged under these programmes (Tanzania, Belarus Moldova and Ukraine at that time) (European Commission 2009, 2). Hence, before the Arab Spring, resettlement was considered as a way to show solidarity with third countries of first asylum (European Commission 2009, 2) but also a way to ensure orderly procedure for recipient countries while assuring safety for resettled refugees (European Commission 2009, 3). However, resettlement plans were intended to be voluntary, with EU only providing financial contribution through the EU Refugee Fund and the support of EASO on information sharing (European Commission 2009, 2, 3).

It was specified that resettlement had a different understanding with respect to intra-EU resettlement of refugees (relocation). In fact, it implied the transferring of persons from outside of the EU into a Member State and had to be intended as a humanitarian measure and an expression of solidarity with third states instead of a measure of burden sharing among Member States (as relocation was) (European Commission 2009, 3).

With the recent massive arrivals of migrants and asylum seekers into the European Union, the EU started to conceive resettlement as an ever necessary tool to be developed at the EU level to avoid that displaced persons and refugees had to resort to criminal networks, to prevent the further loss of lives and to hamper secondary movements of resettled refugees among Member States (European Commission 2015a, 3). The idea evolved that resettlement would also entail specific obligations of the resettled persons: to remain in the Member State of resettlement (European Commission 2015a, 5). Additionally, resettlement plans were referred to specific countries, such as North Africa, the Middle East and the Horn of Africa (European Council 2015a, 4).

A thorough assessment of what resettlement is today can be found in the Commission's proposal for Regulation that, if accepted, will be the first 'legal' document ever produced on resettlement by the European Union. The most important novelties brought to the understanding of resettlement are 1) a common EU approach must be developed on the matter, and 2) (somehow related) resettlement cannot only be voluntary but also a binding EU mechanism regulated by specific procedures at the EU level (hence part of the reason for the choice of a Regulation). Ultimately, the proposal is to create a Union Resettlement Framework (European Commission

2016b). The fundamentals of the revised understanding of resettlement and in particular of the Union Resettlement Framework are:

> To provide a common approach to safe and legal arrival in the Union for third-country nationals in need of international protection, thus also protecting them from exploitation by migrant smuggling networks and endangering their lives in trying the reach Europe; help reduce the pressure of spontaneous arrivals on the Member States' asylum systems; enable the sharing of the protection responsibility with countries to which or within which a large number of persons in need of international protection has been displaced and help alleviate the pressure on those countries; provide a common Union contribution to global resettlement efforts.
>
> (European Commission 2016b, 3)

Hence, the idea was also there that, aside from its 'external dimension' resettlement could work as a tool of migration and crisis management (European Commission 2016b, 2) supported in its task by the new European Union Agency for Asylum. The eligible persons would fall well beyond a traditional understanding of refugees according to UNHCR practices by encompassing for examples socio-economic vulnerabilities, displaced persons, and those with family links (European Commission 2016b, 10-11).

Finally, two main understanding have been underlined in the proposal: first, that secondary movements have to be prevented (which partly explains the choice for a Regulation); and second, that irregular movements are absolutely to be avoided and punished. In this sense, persons who have irregularly entered, irregularly stay, or have attempted to irregularly enter into the territory of the Member States during the last five years prior to resettlement have to be excluded from resettlement schemes (European Commission 2016b, 11).

The first Directive on minimum standards on procedures for granting and withdrawing refugee status in the EU, delivered on 2005 (European Council 2005), listed applicants' rights: legal assistance, proper translation, assistance by relevant agencies, an interpreter, the possibility of an interview and indeed the right to be informed about the motivations of a negative answer and the right to appeal (European Council 2005, Art. 10). 'Minors' were also recognized to be in need of specific procedural guarantees. Yet, in this first Directive, a request for protection was understood to fall under the Geneva Convention (and

its 1967 Protocol). The recast 2013 Directive on common procedures for granting and withdrawing international protection (European Parliament and Council 2013a) confirmed these rights, extending them to encompass provisions in terms of medical needs; 'free' legal assistance in appeals; strengthened information rights at maritime borders and territorial waters; inserting a peculiar attention to the 'gender perspective' and to unaccompanied minors (European Parliament and Council 2013a, Artt. 8-12). With respect to the 2005 Directive, the 2013 one enclosed 'subsidiary protection', as a legitimate form of international protection.

Already in the 2005 Directive on procedures, three key concepts were mentioned: 'safe country of origin', 'safe third countries' and 'first countries of asylum'. In all cases, the aim was to expedite the application examination procedure by either evaluating requests' soundness (in the case of safe countries of origin) or their possible consideration in another 'safe' country, hence their inadmissibility (safe third-country and first country of asylum). In the words of the Commission, expedite procedures would allow focusing more thoroughly on persons in true need (European Commission 2003b, 8). These concepts were largely specified in the proposal for Regulation on common procedures for international protection delivered in 2016 (European Commission 2016c). The 'safe country of origin' concept indicates a country where

> on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally no persecution (…) no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.
>
> (European Commission 2016c, Artt. 44-50)

Fact sheet 2.2: A common list of safe countries of origin

The concept of safe country of origin has acquired great relevance in the last years. The concept specifically refers to unfounded applications for international protection, which especially given the 'migration crisis' are a burden for the proper working of the asylum system and should therefore be dealt with quickly.

In a proposal for Regulation put forward by the Commission in 2015 (European Commission 2015b), a common list of safe countries of origin is mentioned, and it is exactly this concept that is of extreme

interest for the purpose of this work. In fact, through the concept, the EU aims at defining the criteria for the assessment of a safe country of origin, at standardizing different understandings among Member States, at possibly introducing the concept in the legislative framework of some Member States that do not have such list (see below) and at avoiding secondary movements of applicants.

The common list of safe countries of origin draws from Directive 2013/32/EU (European Parliament and Council 2013a) on procedures (recast) (see above), which specifies that safe countries of origin should be evaluated according to:

> (a) the relevant laws and regulations of the country and the manner in which they are applied; (b) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and/or the International Covenant for Civil and Political Rights and/or the United Nations Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention; (c) respect for the non-refoulement principle in accordance with the Geneva Convention; (d) provision for a system of effective remedies against violations of those rights and freedoms.
>
> (European Commission 2015b, 2-3)

It is a list informed by consultation with multiple organizations and structures, among which the UNHCR, EASO, the European External Action Service, the Council of Europe and which defines Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey as safe countries of origin according to the criteria above (European Commission 2015b, 6). The Common list is not intended to be exclusive, as further countries may be added (or removed) especially on the basis of the amount of applicants for international protection received by the EU, which makes Pakistan, Bangladesh and Senegal likely candidates for the future (European Commission 2015b, 6). Yet, the concept reiterates the understanding that applications consideration should be individual and based on the single circumstances of every applicants (European Commission 2015b, 8).

The understanding of a Common list of safe countries of origin is intended to strongly relate and even overlap to the one of EU's Candidate States, which should already fulfil a series of requirements with respect to 'stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities' (European Commission 2015b, 7).

In turn, a 'first country of asylum' has to be intended as a country where

> (a) the applicant has enjoyed protection in accordance with the Geneva Convention in that country before travelling to the Union and he or she can still avail himself or herself of that protection; or (b) the applicant otherwise has enjoyed sufficient protection in that country before travelling to the Union and he or she can still avail himself or herself of that protection.
>
> (European Commission 2016c, Art. 44)

Finally, and slightly different, a 'safe third-country' can be considered one where

> (a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion; (b) there is no risk of serious harm as defined in Regulation on Qualification; (c) the principle of *non-refoulement* in accordance with the Geneva Convention is respected; (d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; (e) the possibility exists to receive protection in accordance with the substantive standards of the Geneva Convention or sufficient protection as referred to in Article 44(2), as appropriate.
>
> (European Commission 2016c, Art. 45)

Indeed, all three terms open up many normative dilemmas, as for the effective impact on migrants. The choice of words does not help; what does 'sufficient protection' mean for example?

Delivered only three years after the recast 2013 Directive on procedures and right in the middle of the 'migration crisis', the 2016 proposal for Regulation is explicitly aimed at homogenizing procedures within the EU and avoiding *asylum shopping* and *secondary movements* (European Commission 2016c, 3-4). The basic idea supporting the entire Document is that the application process has to be as quick as possible: quick in rejecting unfounded applications and quick in returning non-eligible migrants. The main reasons, attaining to the credibility of the asylum system as evidenced before, are underlined by the need to face irregular immigration, dangerous movements and smuggling

phenomena (European Commission 2016c, 2). In turn, a quick procedure would be beneficial to those really in need of protection. Thus, the idea that efficient procedures for international protection have to envisage time constraints. This has led to the proposal of an '*accelerated examination procedure*' that would deal with cases of 'manifestly unfounded claims' such as 'when the applicant makes clearly inconsistent or false representations, misleads the authorities with false information' or when the application 'is clearly abusive', aimed at delaying or frustrating the enforcement of a return decision, or when it is not submitted in the first country of irregular entry or where the applicant is legally present or, of interest, 'when an applicant comes from a *safe country of origin*' (European Commission 2016c, 15). Given the 'urgency' attached to the whole process, doubts arise on the possible implications this may have for the effective and careful evaluation of single cases – an issue that becomes particularly visible in the analysis of these concepts in terms of justice claims, and especially through the concept of justice as mutual recognition (see chapter 3).

Following this same logic, duties on applicants are strengthened – such as those regarding mandatory fingerprints; presence and stay in the Member State of application, a duty that if contravened may have implications on the asylum request; respect for time constraints in the application phases – and sanctions for related 'abusive' behaviours are reinforced (European Commission 2016c, 4-5).

Qualification

A closer look to the content of the asylum domain of international protection and the nature of protection granted in the European Union (synthesized with the word 'Qualification') is even more telling. As in the case of all developments in the asylum system, the legislative path has followed the instruction provided by the Tampere Council (1999), envisaging a short-term timeline for the approximation of qualification standards and a long-term timeline for their harmonization. The analysis of the words and the concepts used reveals the existence of at least two distinct trends: on the one hand, we identify an attempt to improve the concept of protection provided in the EU after the poor results achieved with first streamlining attempts. This phase lasted until 2014. On the other hand, it suggests an apparent restrictive interpretation of the content of protection and the nature of protection granted, especially in the 2016 new proposal for Regulation on Qualification.

The protection system for persons in search for asylum in the European Union is based on two main conceptual grounds: 'persecution' and 'serious harm'. These terms have different legal bases, give birth to different statuses and entail different protection guarantees. The scope of protection has to a great extent been the object of revision.

The 2004 Directive on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons that otherwise need international protection and on the content of protection granted (European Council 2004a) made clear that the 1951 Geneva Convention and its 1967 Protocol was the legal provision supporting the protection system in the EU. . It also stated that non-refoulement was its core principle (European Council 2004a). Respect for human dignity and the right to asylum were underscored as guiding values of EU's action, according to the Charter of Fundamental Rights of the European Union (Art. 1 and Art. 18 respectively).[4] It also underlined that the refugee status was by no means the only form of protection granted by the EU but that subsidiary protection was complementary. At that time, a Directive on 'qualification' meant the approximation of the rules for the identification and the recognition and provision of a minimum level of benefits to persons in need of international protection. Providing common guidelines would limit 'secondary movements' by providing similar legal systems in Member States (Council 2004a). Yet, when looking at the legal systems in Member States, the vagueness of some concepts and the optional nature of some provisions in the Directive had not lead to similar identification, recognition and procedures. Moreover, incomplete or incorrect transposition was contributing to uneven standards in the Member States, towards, most of the time, lower protection levels than those expected by the European Commission (2013, 16). Hence, the 2004 Directive neither affected the direction of flows nor posed a limit to the problem of *secondary movements* (European Commission 2013, 16). More similar standards on protection would imply that there was no point for asylum seekers to choose either a specific country or to move within the Union to increase the chances for better protection.

With this in mind, the recast 2011 Directive on qualifications aimed at

[4] At that time, the Charter did not have the same legal basis as it would assume after the Lisbon Treaty of 2009.

better reducing discrepancies in Member States and improving standards of protection (European Parliament and Council 2011). The Directive specified the core definition of the protection system better than was the case in the previous Directive. 'International protection' meant both the refugee status and the subsidiary protection status, extending the opportunity to get protection in the EU. A 'Refugee' was defined as:

> A third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply.
>
> (European Parliament and Council 2011, Art. 2)

Instead, a 'person eligible for subsidiary protection' was defined as:

> A third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm (…) and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.
>
> (European Parliament and Council 2011, Art. 2)

Details were provided of the definitions of 'persecution' and 'serious harm', which, respectively, substantiated the ground for the refugee status and the subsidiary protection status. Importantly, in both cases, the nature of the actors perpetrating the act spanned over the national state by encompassing 'parties or organisations controlling the State or a substantial part of the territory of the State' and 'non-State actors' (European Parliament and Council 2011, Art. 6).

In both the cases of refugee and subsidiary status, protection was enlarged to the 'family members' of the persons in need. This included the spouse or his/her unmarried partner in a stable relationship (ac-

cording to Member States' legislation on the matter); the minor children on condition that they are unmarried and regardless of whether they are adopted as defined under national law; and the father, mother or another adult responsible for the beneficiary of international protection when that beneficiary is a minor and unmarried (European Parliament and Council 2011, Art. 2). 'Minors' (under 18 years) and 'unaccompanied minors' (a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him/her) were devoted exceptional guarantees (European Parliament and Council 2011, Art. 2), recognizing their peculiar vulnerabilities. This is another aspect particularly relevant in terms of the tensions between different conceptions of justice, such as 'impartiality' and 'mutual recognition' (see chapter 3)

Being a refugee or entitled of subsidiary protection meant having specific rights. First and foremost, the right to *non-refoulement*, but also the right to information, to maintain family unity, to have residence permits, travel documents, access to employment, education, social welfare, and healthcare (European Parliament and Council 2011, Artt. 21-30). In most of the cases, persons entitled to international protection were granted the same rights as Member States' nationals (access to employment, education, recognition of qualifications, social welfare and healthcare). Differences in rights remained between refugees and persons entitled of subsidiary protection when it came to resident permits (3 years and 1 years at least renewable respectively) and social assistance, given that subsidiary protection was considered a more 'temporary' form of protection. Importantly, the 2011 Directive allowed persons entitled to international protection the possibility to obtain the long-term resident status in the EU to entice their social and economic integration (see below).

The refugee crisis and the need to make up for the loopholes of the European asylum system, speeded up regulation work. In 2016 a Commission proposal for a Regulation aimed at further harmonizing the common criteria for recognizing applicant of international protection. This was going to be accomplished by creating more detailed rules (directly applicable) and by removing most of 'optional' ones. Many aspects of interest in terms of definitions and concepts can be underlined.

First, common qualifications were part and parcel of the mechanism to avoid *asylum shopping* ('asylum should be granted according to Dublin parameters') and *secondary movements* ('the state of residence is the

state who grants protection') and hence avoid uneven protection distribution among Member States (European Commission 2016d, 2). Contributing to common protection could also mean the adoption of a common list of *safe countries of origin* (European Commission 2016d, 9).

Second, it was made clear that being entitled to international protection was both a duty and a right. Most importantly, the duty of the applicant to substantiate the application for international protection and the duty to remain in the Member States that granted that protection now seems to extend to refugees as much as to asylum seekers (European Commission 2016d, 6, 13-15).

Third, the concept of protection in the EU was somewhat 'limited'. The obligation to verify 'internal protection' options was phrased as 'the conditions that he or she can safely and legally travel to, gain admittance to and can reasonably be expected to settle in another part of the country of origin (…) to determine that the applicant is not in need of international protection' (European Commission 2016d, 13). Most importantly, in this understanding of protection as a 'limited' and 'limiting' concept was the clear affirmation of the 'non-permanent' nature of the protection status, for as long as it was needed.[5] The Commission stated:

> The absence of checks on the continued need for protection gives the protection a de facto permanent nature, thereby creating an additional incentive for those in need of international protection to come to the EU rather than to seek refuge in other places, including in countries closer to their countries-of-origin.
> (European Commission 2016d, 4)

Indeed, this marks a deep watershed to previous understanding of asylum in the European Union, with possibly great implications for specific rights – and thus justice claims – as applied to this institution.

[5] In the past the Court of Justice had been called to provide judgment on specific cases regarding the revocation of the refugee status and contributed to specify (in a 'positive' sense for the refugee) a provision whose interpretation was not unidirectional, see *Salahadin Abdulla and Others* (Court of Justice of the European Union 2008).

Table 2.1: Duration of residence permits for beneficiaries of international protection (AIDA 2016, 16)

Country	**Legal basis**	**Duration of residence permit (in years)**	
		Refugee status	Subsidiary protection
EU Minimum	Art. 24 Qualification Directive	■■■	■
Austria	Art. 8(4) Asylum Act	■■■	■
Belgium	Art. 49 Aliens Act	■■■■■	■
Bulgaria	Art. 6 Trans. Prov LAR	■■■■■	■■■
Cyprus	Arts. 18A(3 & 19(4) Refugee law	■■■	■
Czech Rep.	Sects. 50 & 53a Asylum Act	Permanent	■
Germany	Sect. 26 Residence Act	■■■	■
Denmark	Aliens Act as reformed	■■	■
Estonia	Art. 38 AGIPA	■■■	■
Spain	Art. 36(1)(c) Asylum Law	■■■■■	■■■■■
Finland	Sect. 57(7) Aliens Act	■■■■	■■■■
France	Arts. L313-13 & L314-11(8)-(10) Ceseda	■■■■■■■■■■	■■
Greece	Art. 21 Law 4375/2016	■■■	■■■
Croatia	Art. 75 LITP	■■■■■	■■■
Hungary	Sect. 23 Gov. Decree 251/2007	■■■■■■■■■■	■■■
Ireland		Permanent	■■■
Italy	Art. 23 LD 251/2007	■■■■■	■■■■■
Lithuania	Art. 89 Law on Status of Foreigners	Permanent	■
Latvia	Sect. 36 Asylum Act	Permanent	■
Luxembourg	Art. 57 LITP	■■■	■■■
Malta	Art. 20 Refugee Regulations	■■■	■■■
Netherlands	Art. 28 Aliens Act	■■■■■	■■■■■
Poland	Art. 89i Law on Protection	■■■	■■
Portugal	Art. 67 Law 26/2014	■■■■■	■■■
Romania	Art. 20(5) Asylum Act	■■■	■
Sweden[6]	Aliens Act to be reformed	■■■	■
Slovenia	Sect. 91 International Protection Act	Permanent	■
Slovakia	Sect. 24 Asylum Act	Permanent	■
UK	Rule 339Q Immigration Rules	■■■■■	■■■■■
Norway	Sect. 60 Immigration Act	■■■	■■■
Switzerland[7]	Arts. 58ff & 83ff Asylum Act	■	■
Serbia	Arts. 43 & 61 Asylum Act	Permanent	■
Turkey[8]	Art. 83 LFIP	■	■

[6] Permits issued to beneficiaries of subsidiary protection will be valid for 13 months under the proposed reform.

[7] Switzerland has a 'temporary admission' regime, not subsidiary protection. The 'F-Permit' issues in cases of temporary admission does not amount to a residence permit, but rather as a confirmation that deportation is suspended.

[8] Beneficiaries do not receive a residence permit, but rather an identification document. This refers to 'conditional refugees' i.e. persons originating from non-European countries. Refugees recognised under the Refugee Convention in Turkey are entitled to a 3-year identification document.

The Dublin System

The 'Dublin System' is the cornerstone of the CEAS. Its ancestor, the Dublin Convention, was already in place in 1990, well before any attempt to provide guidelines on a common asylum. Since 2003, it has had a bigger impact on Member States than any other provision on asylum. Its ultimate objective has not changed since: the determination of the state responsible for the examination of an application for international protection. The trajectories travelled to pursue this objective, instead, have changed since. 'Dublin' is certainly the most frequently used reference in EU's speeches, especially in last years, when its proper functioning was said to be crucial for the management of the 'refugee crisis' even though its weaknesses have become more apparent. The Dublin System is both regulative with respect to applicants for international protection in the EU, and relations among Member States. *Responsibility* and *solidarity* are the key terms in the Dublin system, and the aim of the Regulations produced through time was exactly to strike a balance between these two key concepts (Council 2003a). As such the normal functioning of the Dublin System has been affected by the 'internal crisis' of the European Union, which has revealed the deepest ontological fragilities of the common approach to asylum.

For the purpose of this work referring to Dublin as a regulation would be reductive.[9] As a matter of fact, Dublin is a system: an ensemble of concepts which in themselves are highly relevant for the idea of a common European system (*responsibility*, *solidarity*); of devices considered key to the functioning of the system (EURODAC, Visa Information System (VIS), EASO and in the future the New European Agency for Asylum); and of terms that inform its logic (*secondary movements* and *family reunification* among others).

The Dublin System was little more than a bare sum of technicalities in 2003; a much more detailed framework for the definition of the 'responsible' state attentive to the basic and fundamental rights of the applicant in 2013; and finally, with the new proposal for Regulation, a central pillar of the Common European Asylum System, aimed at quickly providing protection and at curbing *secondary movements*

[9] In the proposal for Regulation COM (2016) 272 final (p. 2), the Dublin System is defined as the joint work of the Dublin and the EURODAC Regulation, but for the purpose of this work this understanding is reductive.

within the European Union. We will now take a closer look at these phases.

The Charter of Fundamental Rights of the European Union and in particular its Article 18, the 'right to asylum', is the cornerstone supporting the principles and values enshrined in the Dublin Regulation (Council 2003a). In general terms, when reference is made to the Dublin system, it is article 10 of the Regulation that is quoted:

> Where it is established, on the basis of proof or circumstantial evidence (…) that an asylum seeker has irregularly crossed the border into a Member State by land, sea or air having come from a third-country, the Member State thus entered shall be responsible for examining the application for asylum.
>
> (Council 2003a, art 10)

For the finalities of the Regulation, any information that could prove the asylum seeker's transit through one of the frontier states of the EU, such as a residence document, or a registration in any of the database storing information on third-country citizens entering the EU space was key (EURODAC or the VIS).

Fact sheet 2.3: EURODAC

The system called EURODAC is one of the best examples of how concepts and terms can assume different meanings throughout time. Since it was created in 2000 by Regulation, it has then been significantly revised both in 2013 and in 2016. It now assumes a much broader meaning and absolves greater tasks than it was intended for. As a system aimed at collecting and sharing data among Member States, it fully adhered to the objective of developing a common approach to asylum.

EURODAC has been conceived as a system for the comparison of fingerprint data, 'consisting of a Central Unit, to be established within the Commission and which will operate a computerised central database of fingerprint data, as well as of the electronic means of transmission between the Member States and the central database' (Council 2000, Art. 2). It was created to help implement the Dublin Convention for the identification of the state responsible to examine an application for international protection. In order to meet that objective, a system had to be created both for the identification of applicants for asylum, and for discovering whether an application had already been submitted in another Member State (Council 2000). Germane here is the definition of 'hit', defined as 'the existence of a

match or matches established by the Central System by comparison between fingerprint data recorded in the computerised central database and those transmitted by a Member State with regard to a person' (Council 2000, Art. 2). The 2000 Regulation postulated a key obligation for the 'common European asylum': to take the fingerprints of all asylum applicants and of all aliens apprehended while irregularly crossing an external border of a Member State. Yet, at that time, two limitations were set: First, fingerprints of irregular crossing alien were taken only for the purpose of identifying the country responsible for the examination of an asylum application and were stored for a limited amount of time. Second, the fingerprints of minors under 14 were not taken (Council 2000, Art. 8).

Thirteen years later, after terrorist attacks, increasing inflows towards the European Union, increasing urgency to create a common and working asylum, and a Dublin Regulation modified accordingly, EURODAC assumed a broader meaning. The two main shapers of the new understanding of the system were the linkage established with law enforcement tools and the introduction of subsidiary protection to the understanding of international protection (European Parliament and Council 2013b). Particularly when it comes to law enforcement tools ('prevention, detection, investigation of terrorist offences and other serious criminal offences'), EURODAC could be of extreme relevance for specific authorities of the Member States or for the European Police Office (EUROPOL). This is because of the data stored in EURODAC that could be made available (under certain conditions though) (European Parliament and Council 2013b). Hence, a clear change in the purpose of the system can be observed.

The 2016 proposal for revision of the EURODAC Regulation has significantly modified the understanding and the purpose of the system in many ways. Most notably, it has been transformed from mainly an asylum tool to a device for broader migration purposes, for example the return of irregular immigrants found illegal in the Member States (European Commission 2016e). As a matter of fact, it has been proposed that EURODAC take the fingerprints not only of those persons illegally crossing an external border of a Member State for the identification of the responsible state, but also of those not fingerprinted irregular migrants already in the Member States who are not applying for asylum. The main idea was that 'thousands of migrants remain invisible in Europe, including thousands of unaccompanied minors, a situation that facilitates unauthorised secondary and subsequent movements and illegal stay within the EU' (European Commission 2016e, 2).

Hence, attention shifted from irregular immigration to the EU to irregular immigration in the EU (European Commission 2016e, 2). In addition to the original objective of EURODAC (linked to the realm of asylum), there was also a proposal to identify illegally staying third-country nationals to 'assist a Member State to re-document a third-country national for return purposes' by using improved biometrics for identification, such as facial recognition and digital photos (to be eventually be taken and transmitted also by the European Border and Coast Guard) (European Commission 2016e, 2-3). Accordingly, two main underpinnings of the EURODAC system changed: first, the idea that minors were not fingerprinted; second, that irregular immigrants' fingerprints could only be stored for a limited amount of time. As for minors' fingerprinting (proposed now at 6 years), the argument was that this could help both addressing smuggling phenomena, and identifying possible connections to family members (European Commission 2016e, 4). As for irregular immigrants apprehended at the external border or found in an illegal situation within the Member States, the broadened scope of the EURODAC Regulation to fight illegal immigration required the storing of data for a quite extended period (5 years), as for other databases in the Justice and Home Affairs domain (European Commission 2016e, 4).

Finally, the modified understanding of the system required that data were shared with third countries for the purpose of return, previously forbidden according to data protection criteria (European Commission 2016e, 4). Additionally, it allowed to share all data stored for law enforcement purposes (European Commission 2016e, 5).

As plainly stated in the proposal for the Regulation, EURODAC must be understood as strongly related to several key terms and concepts: the CEAS, the EU return policy, internal security and the European Border and Coast Guard (European Commission 2016e, 5-6). Hotspot will also be added as a term, in that 'urgency' has been attached to identify, register and fingerprinting all the persons arriving through them, both for relocation and return purposes (European Commission 2016e, 9). Indeed, the big modification EURODAC has gone through open many normative dilemmas that need careful investigation and assessment. However, the definition of responsibility in the Dublin system is essentially based on two other key elements: *minors* (and in particular *unaccompanied minors*) and *family unit*. The principles have almost always been that minors could not be separated from their parents or guardian; that unaccompanied minors have to join their family legally present in one of the Member States, provided that is in the

main interest of the minor (Council 2003a, Art. 6); and that this represents the views of the minor according to age and maturity (European Commission 2016a, Art. 8). From this point of view, vulnerable categories seem to be particularly protected with respect to others. Notably, Member States hosting family members already granted international protection or waiting for a decision on their asylum application should also take responsibility for asylum applicants (European Commission 2016a, Art. 12). Additionally, it is important to underline that the last Proposal for Regulation issued by the European Commission in 2016, has extended the understanding of *family members* to encompass the *sibling* or *siblings* of the applicant (European Commission 2016a, Art. 2).

As seen before, most of the Dublin system is about regulative aspects among Member States and their duties and responsibilities. It is especially here that most of the changes have been made through the different Regulations, and also where most of the controversies have arisen among Member States. The 2003 Dublin Regulation understanding of international protection did not encompass *subsidiary protection,* and this was somehow conflicting with other Directives (such as the Qualification Directive). This could represent a limitation to the right of *family unity* for certain categories of applicants (European Commission 2007b, 6). Moreover, the application of the Dublin Regulation raised the issue of internal solidarity. A reflection over the concept of solidarity was promoted in a complex situation: *asylum and mixed migratory flows* towards the European Union were putting extraordinary pressures on some countries; and in turn, it was exactly these countries that were particularly called to be *responsible* and observe EU's regulations, at the risk of endangering the EU asylum system (European Council 2012, 1). Responsibility and solidarity as the two faces of the same coin could be profitably handled through the help of FRONTEX and EASO, assisting Member States particularly affected by inflows. Furthermore, it was specified that solidarity could be assisted by *relocation,* defined as the voluntary acceptance of beneficiaries of international protection as attempted through Pilot Project for intra-EU Relocation from Malta (EUREMA) (European Council 2012, 5).

Fact sheet 2.4: Relocation

As seen above, relocation as a concept is not new to the European Union. Overall, it should be referred to the binary objective of solidarity and fair sharing of responsibilities mentioned in other parts of

this work. Hence, as in the case of other concepts, it is not only intended as a mechanism, but as a meaningful term that specifically plays out in relations among the Member States. In recent years, it has been employed in relation to the 'migration crisis' and it has been intended accordingly, as an exceptional, provisional measure to address an emergency situation (the one witnessed in the Mediterranean throughout 2015 and 2016). Nevertheless, a more elaborated concept of Crisis Relocation Mechanisms is being developed, which suggests a less 'extemporaneous' measure and instead provides the idea of a device to solve future structural crises affecting the EU.

As in the case of other concepts, relocation is better understood and assumes a more coherent story when its pattern of reference is made clear: EASO, solidarity, fair responsibility sharing, roadmap, hotspot, secondary movements, fingerprints, EURODAC and Dublin are the words which reiterate the most in the documents on the subject matter.

In its bare definition, relocation is defined as 'the transfer of an applicant from the territory of the Member State (…) responsible for examining his or her application for international protection to the territory of the Member State of relocation' and a member state of relocation as 'the Member State which becomes responsible for examining the application for international protection (…)of an applicant following his or her relocation in the territory of that Member State' (Council 2015b, Art. 2(e)). Nevertheless, and as argued above, in the last years, relocation has been particularly related to the concept of 'crisis', which is likely to affect the EU in many ways. Hence, it was intended as a device to address the considerable pressure to the migration and asylum systems of Italy and Greece (and Hungary) due to unprecedented flows of migrants. The geographical delimitation of the concept is worth noting. Relocation can be applicable in these countries and concerns persons having lodged their applications for international protection in these states (Council 2015b, Art. 3). Additionally, it is specified that the unprecedented arrivals of migrants include applicants for international protection who are 'in clear need of international protection' (Council 2015b), namely those extremely likely to be recognized as refugees in the EU: Syrians, Eritreans and Iraqis.

The idea of relocation as a tool to solidarity should be complemented by the idea that relocation is based on effective responsibilities falling on the states subject to relocation provisions. In other words, effective relocation presupposes that Italy and Greece bring forward structural adjustments to their asylum and migration systems, which should be listed in a roadmap. Migration and asylum systems are

intended in their capacity of 'asylum assessment', 'first reception' but also 'return' (Council 2015b).The relationship between relocation and the hotspot approach (see below) and between relocation and agencies such as EASO (see below) but also FRONTEX and EURODAC (see above) is apparent given that applicants for relocation have to be fingerprinted first (Council 2015b, Art. 5(5)).

A further idea subsumed in relocation is that 'an applicant does not have the right under EU law to choose the Member State responsible for his or her application' (Council 2015b, 5). Therefore, deciding the state of relocation is not a right of the persons that are relocated.[10] Accordingly, avoiding secondary movements is important to the concept of relocation and to properly inform applicants of the possible constraints on their protection rights is reflected in the precept (in principle confined to the Member States providing them international protection) (Council 2015b).

Indeed, the idea of relocation is somewhat linked to the idea of a distribution key among Member States. Distribution formula have been particularly central to a specific reflection on relocation that has given a more structural dimension to the concept with the development of the idea of a Crisis Relocation Mechanism. This idea entails that 'a number of applications for international protection shall be examined by the Member State of relocation' in derogation from the principle set in the Dublin Regulation (European Commission 2015d, Art. 33(2)). The idea (proposed by the Commission in 2015) is that of an overall system and not only of a method; its underpinnings remains solidarity and fair responsibility sharing. This time, though, the relocation concept is especially related to the Dublin System given that the mechanism is triggered when the normal functioning of Dublin is put in question. The EU made a proposal for 'a permanent system of relocation to be triggered in crisis situation' and impinging on the determination of the responsible state for the examination of an application for international protection (European Commission 2015d, 2). The geographical specificities of the above concept is therefore lost. 'Selection' criteria are instead still based on nationality; explicit responsibility for states experiencing pressures remain and prevention of secondary movements is still one of the linchpins of the system (European Commission 2015d, 10). The crisis situation is defined as 'of such a magnitude as to place extreme pressure even on a well prepared and functioning asylum system, while also

[10] While Member states may express a preference for applicants to be relocated on the basis of language, cultural and social ties or demonstrated family likely to positively contribute to integration.

taking into account the size of the Member State concerned' (European Commission 2015d, 7).

Fact sheet 2.5: Temporary protection

The definition of exceptional schemes to offer immediate protection to persons displaced and without the possibility to return to their country of origin was in place in 2001, through the so-called 'Temporary Protection Directive', created because of the massive inflows of persons in the aftermath of the Yugoslavia breakdown. Temporary protection was defined as:

> A procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection.
>
> (Council 2001, Art. 2(a))

Temporary protection would be offered to entitled migrants. The idea behind this Directive was to prevent secondary movements and to promote a balance of efforts between Member States 'in receiving and bearing the consequences of receiving displaced persons' (Council 2001). Yet, the Directive has never been employed.

Fact sheet 2.6: Hotspots

While not new in the EU jargon, the concept of 'hotspot' (as relocation) has been increasingly associated with the 'migration crisis'. It is not easy to provide a definition of what the hotspot is, as it has invariably been referred to physical 'areas' (European Commission 2015e) but also to a broader 'approach'.

The 'hotspot' approach is intended as the joint support of EU's agencies to frontline Member States experiencing disproportionate migratory pressures at the external borders. Two elements are implied: first, the hotspot can be conceived as a 'border control' device; second, by envisaging the joint work of many agencies, the approach absolves different functions. More precisely, FRONTEX deals with the screening, document check, fingerprinting and registration of persons in the hotspot; EASO helps with asylum applications and relocation and EUROPOL

assists frontline states on forged documents and, together with EUROJUST, smuggling and trafficking phenomena (European Commission 2015e, 5).

All these elements are of relevance to understand what the 'hotspot approach' is. Furthermore, this approach is strongly related to EURODAC and to its finalities as reframed in the 2016 Regulation seen above: registration of people for the twofold objective of channelling them into the international protection path (also through the relocation programme) or speeding up their return if not in need of protection.

The first seeds of the challenges to Dublin were already observed but became self-evident when a sentence of the Court of Justice of 2011 declared Greece as a *non-safe country*, de facto prohibiting the application of the Dublin Regulation. This and other events were brought to attention by many organizations, paved the way for a revision of the Dublin Regulation in 2013. The revision aimed particularly at extending the rights of applicants in every step of the responsibility determination process[11] (European Parliament and Council 2013b, Artt. 4-6). The idea of a 'fitness check' to assess the effects of the Dublin Regulation on fundamental rights (European parliament and Council 2013b) and the deficiencies testified by the Court of Justice in Greece (only implicitly mentioned), were aimed to protect the rights of applicants set out in the Union asylum *acquis* and the Charter of Fundamental Rights of the European Union, other international human rights, and refugee rights (European Parliament and Council 2013b). In the 2013 Dublin Regulation (recast), *subsidiary protection* entered the concept of international protection, and the European Union Asylum Support Office (EASO) entered into force to assist Member States in implementing the Dublin Regulation and to provide solidarity measures to particularly affected states (European Parliament and Council 2013b).

Fact sheet 2.7: The European Asylum Support Office (EASO) and the European Union Asylum Agency

The European Asylum Support Office (EASO) was established in 2010 after the new impetus on migration and asylum policy triggered

[11] Right to a personal interview, to get appropriate information, the possibility of effective remedy on a decision of transfer to a given Member States and to get a human transfer, to limit and provide appropriate conditions in detention, and especially of vulnerable categories such as minors and unaccompanied minors and giving priority to family unity

by the Lisbon Treaty (2009), the new Pact on Migration (2008) and similar documents. It was first intended as a 'support' Office, but has been gradually upgraded as one of the key tools at the EU's disposal, especially after the 'migration crisis'. Hence, the idea of an asylum Office has gradually changed into the idea of an effective Agency, more powerful and proactive in its tasks. It can be argued that this shifting 'nature' resonates the progressive modification of EURODAC but also that of FRONTEX, quickly modified into the European Border and Coast Guard.

If EASO is a 'practical' device, we should not miss the contribution this term brings to the CEAS. Indeed, it suggests that Member States should be assisted in their asylum practices, especially when facing severe pressure. The concepts and terms EASO is discussed in relation with help providing a coherent story about its relevance in the European asylum system. These concepts/terms are: external dimension, (safe) countries of origin, FRONTEX, reception, relocation, solidarity, resettlement, and capacity building. This list makes clear that if the primary task of the Office is assistance to Member States, a key external dimension is part of the definition, a dimension that was further extended with the proposal for an Agency drafted by the Commission in 2016.

EASO is primarily a Support Office enjoying independence in technical matters and legal, administrative and financial autonomy (European Parliament and Council 2010). Additionally, the Office is working in cooperation with EU agencies (FRONTEX and the FRA in particular) and other agencies (especially the UNHCR), drawing on their expertise (European Parliament and Council 2010). As reported in the Regulation that established it, EASO should be intended as 'a European centre of expertise on asylum', where its main tasks are 'contributing to the implementation of the CEAS, supporting practical cooperation among Member States on asylum and supporting Member States that are subject to particular pressure' (European Parliament and Council 2010). It was clearly specified that, considering the aim to improve the implementation of the CEAS, the Office had to be involved in the CEAS's external dimension (European Parliament and Council 2010, Art. 2(1)). With particular reference to this latter dimension, EASO was intended to help in the provision of information on countries of origin and on resettlement programmes (European Parliament and Council 2010, Art. 4). Additionally, given its 'support' nature and its technical skills, it could provide assistance to third countries on capacity building and reception systems, while also contributing to the implementation of Regional Protection Programmes and other actions related to 'durable solutions' (European Parliament and Council 2010, Art. 7). As for

Member States subject to severe pressure, EASO was intended to help with relocation efforts.

Since it was created, EASO came to embody new meanings corresponding to new tasks, especially triggered by the 'migration crisis'. Its 'implementation-check' function became even more needed as a complement to the CEAS, hence the proposal to enhance EASO and transform it into something partly new (European Commission 2016f, 2). Instead of a support office, it became more of an Agency, a centre of expertise in its own rights, not relying on information provided by Member States and able to provide operational and technical assistance to Member States (European Commission 2016f, 2). Inevitably, this required a new mandate, new resources in terms of staff and a new budget. The role of the Agency in promoting uniform application of asylum law and in promoting convergence in the assessment of applications for international protection among Member States has been particularly underlined (European Commission 2016f, Art. 1). Hence, EASO is no longer conceived as a pure assistance tool but as an active agent of harmonization of Member States' actions on asylum. The Agency has to assume also a central role in the assessment of safe countries of origin, safe third countries or first countries of asylum (European Commission 2016f, Art. 11).

As in the case of other proposals for Regulation put forward in 2016, the European Union has specified how the *new Dublin system* should look like**.** The new system aims to determine the state responsible for the examination of an asylum application while envisaging a) more efficient ways to show solidarity among Member States; b) clear provisions on applicants' obligations and the consequences of non-compliance so as to avoid possible abuses of the system; and c) quick procedures for the identification of the responsible state. As for point a), the proposal for an automatic *collective activation mechanism* was put forward, intended as the following:

> [A] corrective mechanism in order to ensure a fair sharing of responsibility between Member States and a swift access of applicants to procedures for granting international protection, in situations when a Member State is confronted with a disproportionate number of applications for international protection for which it is the Member State responsible under the Regulation'. Its aim was that to 'mitigate any significant disproportionality in the share of asylum applications between Member States resulting from the application of the responsibility criteria.
>
> (European Commission 2016a, 18)

In this sense, the necessity for the creation of a new EU Agency for Asylum was underlined (European Commission 2016a, 17) (see fact sheet 2.7).

With respect to point b), the aim was to avoid applicants' *secondary movements,* underlining the obligation to apply in the first country of entrance and remain in the Member States assigned as responsible (European Commission 2016a, 4). As stated in the proposal, 'With this amendment it is clarified that an applicant neither has the right to choose the Member State of application nor the Member State responsible for examining the Application' (European Commission 2016a, 15). The purpose of the proposal put forward by this Regulation to expand the understanding of the *family members* to encompass *siblings* was exactly to avoid further secondary movements. As for point c), speeding up the determination process was in line with the new understanding of the CEAS. One of the most important proposals in this sense was the elimination of the 'cessation of responsibility clause', previously set at 12 months. Another one was the obligation for the Member State of application to first check the 'inadmissibility' of the asylum claim with respect to the *safe country of origin, first country of asylum* or the *safe third-country* concepts (European Commission 2016a, 15). Finally, other duties explicitly set time limits for different phases of the determination process both for Member States and for applicants. For example, a quick determination process encompassed applicants' obligation to provide the relevant elements and information regarding the determination process, respecting the time schedule set by the proposal, to the risk of no consideration of information unjustifiably provided afterwards (European Commission 2016a, 15).

Reception

The last building block of the CEAS are the reception conditions of asylum seekers into the territory of the European Union. As in the case of the other policies substantiating the CEAS, the ones on reception have been subject to modifications, and a proposal was issued in 2016 to revise the reception system. Overall, tensions have always accompanied the understanding of reception conditions in the European Union. On the one hand, there is a definition of minimum standard to respect *human dignity* (even though no clear definition is provided as for what this term stands for). On the other hand, there is a necessity of progressive harmonization to prevent *secondary movements,* determined by the different reception conditions in Member States (Council 2003b).

The Charter of Fundamental Rights of the European Union and the protection of *human dignity* ('dignified standard of living') were said to be at the basis of the 2003 Directive on reception, laying down minimum standards for the reception of asylum seekers (Council 2003b). The Directive specified two similar yet partly different definitions. First, *reception conditions* were intended as 'the full set of measures that Member States grant to asylum seekers/applicants'. Second, *material reception conditions* were the reception conditions that include housing, food (also non-food items with the 2016 Directive, a positive improvement this latter) and clothing, provided 'in kind', or as financial allowances or in vouchers, and a daily expenses allowance (Council 2003b). The difference is important in that material reception conditions, which specify the nature of reception conditions, also specify the restrictions applied to their provision. By specifically providing dispositions for the reception of 'applicant with special reception needs', the document scores positively on the protection of vulnerable categories of persons (European Parliament and Council 2013c).

The recast reception Directive laying down standard (and not 'minimum' standards) for the reception of applicants of international protection (European Parliament and Council 2013c) has brought about important changes to the understanding of reception conditions. First, the consideration that these applications were extended to applicants for *subsidiary protection,* thus expanding the category of persons affected by the Directive. Second, the idea that family unity and child rights were to be especially protected. Third, that *detention* had to be particularly detailed, especially as an answer to the many contestations regarding the effective implementation of the practice. Fourth, that reception conditions had to better ensure human dignity and hence had to be improved (European Parliament and Council 2013c).

The rights embodied in reception conditions encompass being timely informed about rights and duties and appeal possibilities. This meant timely release of a certificate proving the status of 'applicant' after lodging an application or certifying the right to stay in the territory throughout the examination of the asylum application; right to freely move in the territory of the host state or within the area assigned; to be kept with the own family (when possible); to have the same access to education as nationals; to have access to the labour market (after a certain period) and with the only limit of specific preferences for nationals

or Union citizens; and to get access to the healthcare or at least to emergency care and essential treatment of illness or mental disorders (Council 2003b, Artt. 5-15). When provided, housing is intended as:

> Premises used for the purpose of housing applicants during the examination of an application for international protection made at the border or in transit zones; accommodation centres which guarantee an adequate standard of living; private houses, flats, hotels or other premises adapted for housing applicants.
> (European Parliament and Council 2013c, Art. 18)

In these structures, the right of family unity should be supported, together with the right to communicate with and grant access to family members, the UNHCR, legal advisors and other organizations. On the other hand, applicants' residence always has to be communicated to the authorities of the host state and applicants' permanence in the assigned places may be condition for the effective provision of material reception conditions (Council 2009b, Art. 7(6)), hence reducing freedom of movement.

As argued, one of the most controversial terms provided in the Directive is *detention,* all the more relevant in the case of applicants for international protection. Detention is intended as the 'confinement of an asylum seeker/applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement' (Council 2009b, Art. 2(k)). The deprivation of the freedom of movement should differentiate between ordinary detention and reception in accommodation centres, intended as any place used for collective housing of asylum seekers/applicants (Council 2009b, Art. 2(l)). The recast Directive of 2013 provided the idea of *detention* as a last resort measure, and if no other less coercive measures could be applied (European Parliament and Council 2013c, Art. 8), with a specific emphasis on minors and unaccompanied minors. Its scope was limited to verify or determine an applicants' identity or nationality; to determine those elements on which the application for international protection was based, which could not be obtained in the absence of detention (in particular when there is a risk of absconding of the applicant); to decide on the applicant's right to enter the territory; to prepare the return and/or carry out the removal process when detention precedes a return procedure (and the Member State thinks that the application for international protection is made merely in order to delay or frustrate

the enforcement of the return decision); to protect national security or public order; and to determine the responsible state according to the Dublin criteria (European Parliament and Council 2013c, Art. 8). Eventually, with the 2016 proposal for Directive, detention may also be implemented in case an applicant has been assigned a specific place of residence but has not complied with this obligation (European Commission 2016g, Art. 8 (3) (c)).

However, applicants detained should benefit from specific rights, starting from the right to be detained for as short as the procedure require; to be duly informed of the reasons of detention and of the opportunities shared in this condition (even though free legal assistance and representation may depend on the national law); the right to access open-air spaces; to communicate with the UNHCR, family members, legal advisors and other organizations; and to be kept with the family or keep a gender-based partition if contingent situations do not oblige otherwise (European Parliament and Council 2013c, Artt. 9-10). Detention is thought to be implemented in specific detention facilities. If a prison is used for detention purposes, applicants have to be kept separate from prisoners (this possibility never applies for unaccompanied minors which should be lodged with adult relatives and with siblings when possible, in accommodation centres with special provisions for minors or in other suitable accommodations (European Parliament and Council, Art. 11.)

The 2016 proposal for a revised Directive on reception brings about important changes to the concept of reception (European Commission 2016g). The main idea is that important differences still persist on both the organization and the standard provided in the Member States. In particular, discrepancies among too generous and too restrictive reception conditions leave space to *secondary movements.* Contrasting this trend is utmost important for the EU, especially given the high migration pressure of recent years (European Commission 2016g, 3). Nevertheless, given social and economic conditions in each Member State, a thorough harmonization is neither possible nor advisable (European Commission 2016g, 6).

With this in mind, the provision of *standards on reception conditions* at the EU level is an attempt to further harmonization, reducing the distance among Member States' measures. This will be achieved through *operational standards and indicators* on reception conditions developed by the EASO and the future *European Union Agency for Asylum*, and through the set-up of contingency plans in case of massive arrivals (European Commission 2016g, 3). Additionally, the idea that reception

conditions at the EU level have to contribute to the *orderly* management of flows is included. The conditions should also contribute to the easy identification of the country responsible for the examination of an application for international protection according to the Dublin Regulation, and to the provision of timely and effective assessment of applicants' claims according to the Procedure Regulation. Hence, the possibility to restrict the freedom of movement of the applicants, the assignment of specific places, as well as the provision of material reception only 'in kind', is contemplated (European Commission 2016g, 3, 4, 5). In line with other proposal issued in 2016, this Directive more explicitly underlines duties for applicants and more clearly specifies the consequences of not abiding by these obligations in terms of material reception provisions. The definition of *absconding* provided in the Directive is interesting from this point of view. It means 'both a deliberate action to avoid the applicable asylum procedures and the factual circumstance of not remaining available to the relevant authorities, including by leaving the territory where the applicant is required to be present' (European Commission 2016g, Art. 2(10)), which is open to many interpretative possibilities (among others, how to assess a deliberate action?). Finally, access to the labour market in the Member States is made swifter.[12] This represents indeed a positive provision, contributing to the idea of *social integration***.** Yet, this measure together with the request for further harmonization was both intended to promote applicants' 'self-reliance' and to reducing *asylum shopping* for employment purposes and related *secondary movements* (European Commission 2016g, 4).

In summary, it can be said that the EU has undertaken important steps forward in extending the content and domain of protection. Yet, important limitations remain, which somehow hamper a full-enjoyment of rights within the European space as for EU citizens and that seems to mainly leave out other specific claims of protection that deviate from EU's criteria. The *trait-d'union* linking the developments undergone in all asylum phases is that to avoid 'secondary movement' within the Union, an objective whose priority is all internal to the EU, while putting on the back burner the migrants with his/her own need of protection. This objective has also informed the last proposal for revision of the asylum system, putting emphasis on 'urgency' and 'duties' of ap-

[12] Access is reduced from no later than 9 months to no later than 6 months and in the cases of well-founded applications to 3 months.

plicants and persons already entitled of protection; in both cases a 'pejorative' protection stance can be already inferred and more speculations about that will follow in the third part of this work.

Irregular Immigration

Return

Since the EU got competences on migration, tackling irregular immigration has been a key aim. In the first documents on the matter the term '*i*llegal immigration' was used, even if it was explained that the term 'illegal' was used following EU legal terminology and was not intended to label the person as being illegal but rather her 'status' as not in compliance with the law on entry or residence (European Commission 2002, 7). Nevertheless, the use of the term has been subject to many criticisms, and has mostly been substituted by irregular immigration in EU's documents, although not always consistently in the last years. It was specified that addressing irregular immigration was indivisible from the creation of a common migration and asylum policy (European Commission 2001a, 5). It was mainly interpreted as a threat or a severe challenge given that the jargon used spoke about 'combating or fighting' illegal immigration (European Commission 2001a, 5, 7).

It was recognized that the phenomenon was variegated as for the 'individuals concerned and the patterns of their illegal entry and residence' (European Commission 2001a, 7). In fact, different 'illegalities' could characterize the term: an illegal border crossing, or the use of false or forged documents for 'illegal entry' which in turn could occur individually or by mean of smugglers or facilitators. 'Overstayers' was the term used to describe people who entered in a legal way, by means of a valid VISA or residence permit but stayed longer than what their permits allowed. Seemingly, illegal stay may characterize the situation whereby persons do not need a VISA for short-stay terms (3 months) but which embark on unauthorized employment activities or whereby persons violate residence regulations (European Commission 2001a, 7). According to the 2008 Directive on Return, 'illegal stay' means the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State (European Parliament and Council 2008, Art. 3(2)). Hence, both illegal entry and illegal residence account for illegal/irregular immigration.

The *return* of irregular immigrants, illegally entered or staying in the Union, has from the very beginning constituted the key recipe to properly address irregular immigration. While return as a practice was already implemented at the Member States' level, a 'common' policy on return had to envisage common principles, standards and measures (European Commission 2001a, 24). Basic principles supporting return were, on the one hand, priority of voluntary return over forced return, and on the other hand, the obligations under international law to readmit own nationals.

As for other terms/concepts analysed in this work, *return* does not simply reflect a practice, but it entails specific understandings related to the regulation of migration, specific responsibilities, rights and obligations. It acquires meaning if also taking into account relations with third countries; and informs and moulds the work of agencies and instruments disposable at the EU level (see the case of hotspots and EURODAC above). As such, the pattern of terms/concepts somehow related to return and relevant for this work encompasses: *readmission, transit and origin countries, detention, Global Approach to Migration and Mobility (GAMM), reintegration, VIS, SIS, FRONTEX, EURODAC* (from 2015) and *hotspot*. These concepts help draw the contour of the EU idea of return, which does not necessarily overlap with that of its Member States or of other international actors. Above all, two terms have always characterized the jargon used on return: *integrity* and *credibility*. More precisely, the EU has always conceived the development of an effective *return policy* key both in the fight against illegal immigration and inescapable for the integrity and the credibility of the EU migration and asylum system (European Commission 2002, 4; European Commission 2003c, 9; European Parliament and Council 2007; European Commission 2015f, 2). Further, the possibility to force return was central to ensure the integrity of the common migration and asylum policy (575/2007/EC). It was maintained that an effective return policy allows more support by the public opinion in favour of legal immigrants' admission and of persons in real need of protection (European Commission 2002, 8). Through time, this basic understanding of return has not changed; it has 'crystallized' through the development of an effective Return Policy in 2008 and it has 'adjusted' with respect to the contingencies of different moments, either emphasizing respect for human rights or the necessity to be as effective and immediate as possible.

According to the 2008 Return Directive (on common standards and procedures in Member States for returning illegally staying third-country nationals), *return* means:

> The process of a third-country national going back — whether in voluntary compliance with an obligation to return, or enforced — to: his or her country of origin; or a country of transit in accordance with Community or bilateral readmission agreements or other arrangements**;** or another third-country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted.
>
> (European Parliament and Council 2008, Art. 3(3))

The best interest of the child and respect for family life, the state of health of the person to be returned and the principle of 'non-refoulement' were said to be primary concerns in the application of the Directive. A 'third-country national', instead, is defined as 'any person who is not a citizen of the Union (…) and who is not a person enjoying the Community right of free movement (…)' (European Parliament and Council 2008, Art. 3(1)). Two key elements in the definition comes to mind: first the possibility for return to be voluntary or forced. Only the effective implementation of the latter, could open the way to the former and could convey a clear message to both illegal immigrants within the EU and outside (European Commission 2002, 8). Additionally, forced return was intended as fundamental for the admission policy and for enforcing the rule of law (European Commission 2002, 8). Second, return referring to the readmission of 'third-country nationals'. This element is key, as international obligations only exist for return of own citizens.

Readmission agreements are therefore especially relevant for transit countries. *Readmission* is intended as an act by a state accepting the reentry of an individual (own nationals, third-country nationals or stateless persons), who has been found illegally entering to, being present in or residing in another state' while a *Readmission agreement* is:

> An agreement setting out reciprocal obligations on the contracting parties, as well as detailed administrative and operational procedures, to facilitate the return and transit of persons who do not, or no longer fulfil the conditions of entry, presence or residence in the requesting state.
>
> (European Commission 2002, 24-25)

Thus, the Readmission agreement facilitates the return of irregular migrants.

Given these definitions, a series of other terms and concepts revealed key for the understanding of common standards on return. In particular, an *entry ban* was intended as 'an administrative or judicial decision or act prohibiting entry into and stay on the territory of the Member States for a specified period, accompanying a return decision' (European Parliament and Council 2008, Art. 3(6)). Additionally, the concept of *detention* assumed great relevance when applied to return, 'in order to prepare and/or to carry out the removal process' (European Parliament and Council 2008, Art. 15(1)). Intended as an 'Act of enforcement, deprivation of personal liberty for return enforcement purposes within a closed facility' (European Commission 2002, 25) the concept struggled with a 'human rights' perspective. Detention had to take place in a specialized detention facility; if occurring in prisons, migrants to be return had to be kept separate from other detainees. Rights and duties of detained migrants were to be reiterated along with rules regarding facilities' working modalities (European Parliament and Council 2008, Art. 16). Unaccompanied minors and family with minors should only be detained as last resort for the shortest period possible. Unaccompanied minors should benefit of appropriate accommodations; family should be given separate accommodation, while minors should be provided leisure activities, and depending on the duration of their stay, education (European Parliament and Council 2008, Art. 17). In this sense, separate treatment is provided to 'vulnerable' categories.

The concept of detention as adopted in the 2008 Directive on Return was especially vague with respect to: the duration of detention (no more than six months extendable under exceptional circumstances to no more than 18 months); 'reasonable intervals' at which detention should be reviewed (European Commission 2014a, 14); and the motivations of detention (such as the risk of 'absconding'). These loopholes

gave way to many pronouncements by the Court of Justice of the European Union (i.e. *Kadzoev*) (Court of Justice of the European Union 2009) in favour a 'protective' (for migrants) interpretation of detention (European Commission 2014a, 27). The *Arslan* ruling (Court of Justice of the European Union 2013a) effectively underlined the different concepts and safeguards of detention for return and detention under asylum (European Commission 2014a, 28), insisting on a certain 'categorization' of migrants with different rights. In general, there were several protests regarding Member States' discretional interpretation of these concepts. These contestations also asked for more attention to the fundamental rights of migrants to be returned. Among others, FRONTEX was forced to embody fundamental rights and respect for dignity considerations within its working modalities on return (European Commission 2014a, 6).

Fact sheet 2.8: FRONTEX and its development into the European Border and Coast Guard

The European Agency for the Management of Operational Cooperation at the External Border of the Member States of the European Union was established in 2004 (Council 2004b) and became operational in October 2005. The Agency was created as autonomous in terms of legal, administrative and financial capabilities (Council 2004b). It was intended to improve the 'integrated management' of the external borders of EU's Member States (Council 2004b, Art. 2). As such, it was thought to improve and facilitate coordination among Member States on the control and surveillance of the external border. At the basis of FRONTEX stood two main ideas. First, 'the responsibility for the control and the surveillance of external borders lies with the Member States' (Council 2004b, Art. 1(2)). Second, that the EU had a role in implementing the 'integrated management' of its external borders to ensure uniform and effective control and surveillance, given that this played as a pre-requisite for the free movement of persons in the EU and for the area of freedom, security and justice (Council 2004b).

There was indeed an element of solidarity in the idea behind FRONTEX, substantiated by the argument that control of the external border was a matter of utmost relevance to the Member States regardless of their geographical position (Council 2004b). Accordingly, FRONTEX was created both for times of 'normality' and of 'emergency', that is, situations of high migratory pressures. This is also observable in the hotspot approach, which FRONTEX contributes to. The concepts of 'border control', 'risk analysis and assessment', 'border guards' training' and 'technological research' were central in the understanding of FRONTEX. The concept of return is also key,

according to which the Agency is called to assist Member States by organizing joint return operations and identifying best practices on the acquisition of travel documents and the removal of irregular immigrants (while observing the non-refoulement principle). As such, FRONTEX also fit into the meaning of the EU's external dimension.

With the creation of an independent FRONTEX Fundamental Rights Officer in 2012, monitoring the Agency's operations and the adoption of a FRONTEX Code of Conduct for joint return operations, the Agency, fallen prey of many criticisms, underlined respect for dignity and human rights as own key pillars (European Commission 2014a, 6). In parallel, though, the Agency understood more as a return tool. Specifically on this dimension, a proposal was made for the Agency to act not only as 'facilitating cooperation between' or 'assisting' Member States but also with an autonomous role on the return of irregular immigrants (thus far a prerogative of Member States), a shift that would have significantly impacted its concept and definition (European Commission 2015f, 8). Along this line, the meaning of 'risk analysis' was to be extended to 'collect and analyse data on irregular secondary movements' of third-country nationals within the EU', to help enforce the return of irregularly staying migrants (European Commission 2015f, 8). Again, this was intended to far extend the meaning of FRONTEX as an Agency devoted to operations 'at the border'.

FRONTEX has been the launching pad of what is today the European Border and Coast Guard, replacing FRONTEX. The idea was not new. In the 2001 Commission Communication on a Common Policy on Illegal Immigration, the proposal for the creation of a European Border Guard was already made clear, as it was bluntly explained that border management encompassed a variegated set of tasks, illegal immigration being only one of many (traffic security, customs, security threats, dangerous or illegal goods control) (European Commission 2001a). Indeed, the 'refugee crisis' has given great impetus to the effective creation of the Agency and to its working modalities. For example, the hotspot system concept has been fully ingrained. Being also an instrument pursuing the aim to 'Securing borders', the definition of the neonate agency spans over that of FRONTEX. Interestingly, the European Parliament speaks of a European Border and Coast Guard 'system' (European Parliament 2016). While a formal definition is not provided, the main idea conveyed is that of an Agency with a 'shared responsibility' for the management of the external borders (strongly criticized by some Member States as an intrusion towards sovereign prerogatives), both in normal and emergency time, representing a 'deepening' with respect

to FRONTEX (European Parliament 2016), due to increased resources in terms of staff and funds. The Agency works with national authorities responsible for border management (including coast guards) and together they form the European Border and Coast Guard, performing 'integrated border management'. This complex and multifaceted concept is intended for the purpose of border control; search and rescue operations; analysis of the risk for internal security of affecting the functioning of the external border; cooperation between Member States; inter-agency cooperation at the national and EU level; cooperation with third countries (neighbouring countries, countries of origin and transit of illegal immigration); technical and operational measures within Schengen related to border control; return of third-country nationals; use of up-to-date technology and information systems; quality control mechanisms and solidarity (European Parliament 2016, Art. 4).

While not lingering on the details of the new Agency, which largely draws on FRONTEX, it is here relevant to emphasize the words that more than others provide an understanding of the logic informing it: mixed migratory flows, improved return, hotspots, search and rescue, fight against cross-border crime, Schengen, internal border controls, EASO, EUROPOL, EUROJUST and European Agency of Fundamental Rights (European Parliament 2016). The objectives of the Agency do not only rest with the management of irregular immigration, but also with internal security (from possible threats linked to smuggling, trafficking or terrorism) and the safeguard of freedom of movements within the Union (preservation of the Schengen system). Hence, the priority given to 'security' concerns may be likely to overshadow concerns more related to migrants' right in general and rights of specific categories of migrants in particular.

The concept of *reintegration* was also considered as part and parcel of the understanding of effective return. As a matter of fact, the act of returning migrants well encompassed the entire migration journey and had to ensure to be sustainable (durable) so as to not open up new opportunities for new emigration (European Commission 2003c, 9). Return assistance would increase the opportunities for voluntary returns, constituting a good solution both for migrants and for the EU, ensuring a cost-effective measure (European Parliament and Council 2007). Thus, relations with third countries were not only necessary for *readmission* but also for *reintegration,* key concepts for the understanding of return and to be included in the *Global Approach to Migration and Mobility* (GAMM), 'the overarching framework for external migration and asylum policy' (European Commission 2014a, 2).

As for other concepts discussed in this report, also 'return' has been reinterpreted through the lenses of the 'refugee crisis' of the last few years. It has not assumed other meanings, but its urgency has been underlined, and this has side-lined concerns over human rights. In particular, two main imperatives have reinterpreted the concept. First, return has to be incremented and second, it must be done quicker (see also the use of the 'hotspot' as presented before under this logic). Increasing the rate of return was given a geographical priority, emphasizing the urgency to conclude return and readmission agreements with African countries (European Commission 2015f, 10). Inevitably, the refugee crisis further emphasized the link between return and asylum putting a strong importance on returning rejected asylum seekers. The idea that the return of irregular immigrants (included rejected asylum seekers) could maintain public trust in the EU asylum policy, could support and free resources for persons in real need of international protection was brought to the table again (European Commission 2015f, 2; European Commission 2015g, 2). Additionally, the idea that an effective and swift return policy would discourage those persons not in need of international protection to risk their lives and spend much money to reach the EU was put forward (European Commission 2015f, 2).

Hence, swift return procedures had to be applied also in cases of *unfounded asylum claims*, reiterating the connection between return and a functioning asylum system (European Commission 2015f, 5). The emphasis on forced return was underlined. 'Flexibility' was underlined regarding the conditions of closed detention for migrants under the 'emergency clause' of the Return Directive for situation of migratory pressures. Simplified and swift return procedures for migrants apprehended or intercepted in irregular border crossing were encouraged. Finally, detention for the purpose to avoid *secondary movements* was advanced in the Commission Action Plan on Return (European Commission 2015f, 4). As seen before, many agencies have been related to the concept of a Common EU Return policy, among others FRONTEX, facilitating the organization of joint return operations and individuating best practices on return matters (acquisition of travel documents and removal practices) (European Parliament and Council 2007). Other 'flanking measures' proved increasingly relevant throughout time in the field of return, such as the VIS for the identification and documentation of persons to be returned, or the SIS for the issuing of EU-wide entry ban (European Commission 2014a, 4). In the last documents

drafted by the Commission, the role and mandate of the different agencies with respect to return was extended. In particular, this applied to FRONTEX (see table on FRONTEX), while EURODAC was proposed for the first time as a potentially useful instrument not only on asylum, but also on return (see Fact sheet 2.3).

Legal migration

Unlike the cases of asylum and irregular immigration, 'legal migration' does not play an extended role in the EU. Nevertheless, some concepts and terms are equally interesting as they say something about the scope of rights conferred to migrants and the domains where these rights seem more likely to be achieved.

Undoubtedly one of the key terms in the legislation on migration is 'family reunification'. On the one hand this stands as one of the key ways to legally enter the European Union. On the other hand, it refers to a fundamental right, embodied in the European Charter of Fundamental Rights, putting family unity at centre stage of EU's normative façade. Yet, it must be said that the Right to family reunification, enshrined and regulated by the 2003 dedicated Directive, has often been interpreted in a restrictive way by Member States, creating a variegated governance on the matter. This is also related to the vagueness of some provisions of the text and to omissions in the same, which have conceded a large degree of discretion when it comes to the interpretation and implementation of the right. However, no new document has been produced thus far and partial modifications have mainly been embodied in the new Directives on asylum as discussed above. This essentially means that the governance of family reunification remains largely fragmented and allows for different interpretations of the right of family reunification (with all the implications this entails for migrants).

The right to family reunification codified by Directive 2003/86/EC of 2003 (European Commission 2008a) draws on the Convention for the Protection of Human Rights and Fundamental Freedoms and on the Charter of Fundamental Rights of the European Union (which in turn derives from the Convention above). Family reunification as discussed at Tampere (1999) was aimed at providing third-country nationals *legally* residing in the territory of the European Union with comparable rights and obligations as those of EU citizens, also with a view to better integration (European Commission 2008a). Family reunification was considered as a step toward promoting family life, which had to be

provided in an equal way throughout the EU, hence, the necessity for the harmonization of national legislations on the matter. Family reunification was defined as:

> The entry into and residence in a Member State by family members of a third-country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry.
> (European Commission 2008a, Art. 2(d))

The 'sponsor' was 'a third-country national residing lawfully in a Member State and applying or whose family members apply for family reunification to be joined with him/her' (European Commission 2008a, Art. 2(c)).

As explained by an EU document, the original proposal of the Commission for a Directive on the right to family reunification was more 'open', while the final test mirrored a more restrictive understanding, much in line with the legislation of Member States (European Commission 2008a). A restrictive interpretation of the Directive was motivated by Member States' argument that family reunification represented an overused tool to get legal access to the EU (European Commission 2008a; European Commission 2011a).

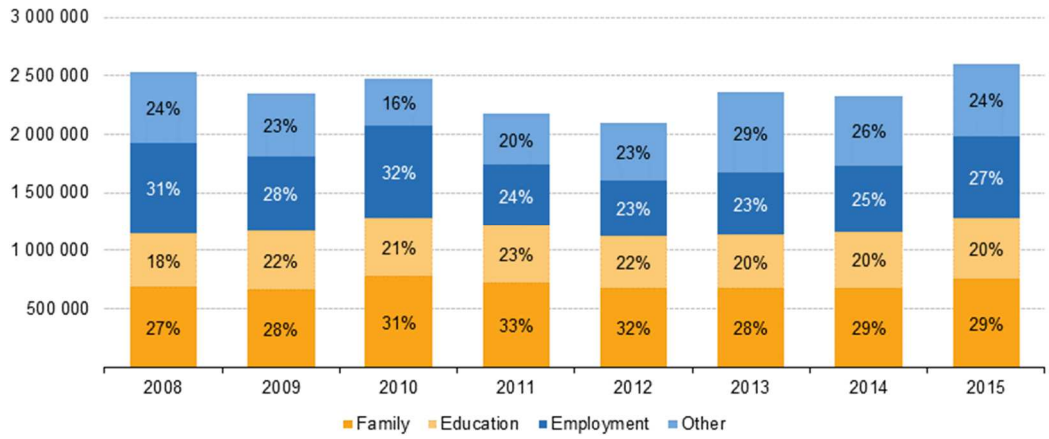

Figure 2.1: First Residence Permits issued by reason, EU-28, 2008-2015 (EUROSTAT 2016)

The Directive clearly explains that family reunification applies in any case to members of the nuclear family, that is, to the *spouse* and the *minor unmarried children* (European Commission 2008a, 1). There were however some restrictions to these categories: in the case of polygamy, no more than one spouse was allowed and the reunification of further

children could be restricted (European Commission 2008a, 6). Indeed this was inevitably likely to impact certain categories of migrants more than others. A minimum age for the sponsor and the spouse (21) could also be introduced, with the objective to prevent forced marriages (European Commission 2008a, 6). With respect to 'protected' migrants, such as 'minors', some restrictions were imposed. In their assessment of entry and residence of minors above 12 years arriving independently from their families, national authorities could evaluate whether they fulfilled integration conditions required in the Member States (European Commission 2008a, Art. 4 (1) (d)). Furthermore, for minors of more than 15 years, entry on grounds other than family reunification could be required (European Commission 2008a, 5). Aside from that, it was up to Member States to allow entry and residence and hence to consider 'dependent parents and unmarried adult children of the sponsor or his/her spouse, and an unmarried partner (duly attested long-term relationship or registered partnership) of the sponsor' as family members (European Commission 2008a, 6). A renewable residence permit of at least one year (but no longer than that of the sponsor) was a specific right of family members. Also, family members were entitled to the same rights as the sponsor in terms of access to education, access to employment and self-employment activities (pending possible conditions set by Member States), access to vocational guidance, training and retraining (European Commission 2008a, Art. 14).

It was made clear that refugees should be conceded more favourable conditions for the exercise of family reunification, recognizing hence their peculiar condition. Other family members could join the refugee if dependent on him. Additionally, in the case of unaccompanied minors 'the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line' was mandatory for Member States. Refugees were not required to provide accommodation and other resource evidence as in the case of other sponsors, nor were they required to have resided for a certain period after being joined by their family (see below) (European Commission 2008a, Art. 12). Other than that, though some possible limitations remain even for refugees (European Commission 2011a, 6). However, if a sponsor whose status of refugees was recognized could apply for family reunification, no such possibility was initially envisaged for persons entitled of '*subsidiary protection*' (European Commission 2008a, Art. 3 (2)(c)), a measure corrected by the recast Qualification Directive of 2013, scoring hence a positive point on the extension of rights.

There was also left a large space to interpretation with regard to the 'requirements' necessary to exert the right of family reunification. In particular, it was explained that Member States 'may' require the provision of evidence as for accommodation, sickness insurance, stable and regular resources sufficient to also maintain the reunified family without recourse to the social assistance system of the Member States (European Commission 2008a, Art. 7). This vagueness has led Member States to impose many different requirements, as well as recourse to the Court of Justice on interpretative grounds has been wide.

One of the most debated and criticized issues is that a sponsor can exert the right to family reunification when holding a residence permit valid for at least one year provided he/she has 'a reasonable prospects of obtaining the right of permanent residence' (European Commission 2008a, Art. 3(1)). This provision has raised many interpretative dilemmas (European Commission 2011a, 2). The possibility for Member States to require compliance with 'integration measures' for members of the family has also been widely debated (European Commission 2008a, Art. 7(2)). These 'integration measures' have given birth to a plethora of measures, some of which examined also by the Court of Justice, which has concluded that these measures should have the facilitation of the integration of family members as its ultimate objective (European Commission 2011a, 4). A further 'possible' requirement that Member States could introduce was to request the sponsor to have stayed *lawfully* in the hosting territory for a period of no more than two years before finally reunite with his family (European Commission 2008a, Art. 8). As a derogation, 'a three year' period was introduced (at the request of Austria), for countries having to match family reunification with a quota system. Because of this feature, peculiar to the Austrian case, issues regarding the appropriateness of such a provision on the EU Directive were raised (European Commission 2008a, 8). Omission, as much as vagueness, was hence blameworthy. No reference was made to the likelihood of 'fees' to be applied in different phases of the family reunification process (for application, VISA fees, residence permits, pre-entry language texts). Consequently, many Member States have applied different fees (some of which quite high) and no harmonization currently exists on the matter (European Commission 2011a, 8).

Integration

The integration of foreign nationals has always been one of the key objectives of the European Union. An objective that can only partly be

discussed at the European level, given that, it only acquires a full meaning when dealt at the Member States' level, matching with different historical, cultural and administrative background (European Commission 2008b). Here again, the patchy governance of migration is all the more relevant. In fact, no *binding* legislation exists on the matter. Nevertheless, integration has a European dimension as it conflates with some fundamental principles of the Charter of the Fundamental Rights of the European Union and as it is essential to meeting other key tasks of the EU in other domains. It is reasonable to suppose that integration acquires a specific meaning in the EU, linked to the values it supports and to the objectives it aims to achieve. Hence, defining what the EU means with integration and what it expects Member States to endorse in their national legislation is of the utmost relevant and deserves scrutiny.

Before delving into the concept, it is appropriate to underline that integration as intended by the EU is better understood in its broader pattern of reference, which encompasses words and concepts such as competitiveness, demographic change, ageing, legal and illegal migration, entry and residence, family reunification, third countries, return, refugees, non-discrimination, long-term residents and resettlement**.** Each of these words help define the meaning and purpose of integration in the EU.

'Integration' is defined by the EU as a 'two-way process based on mutual rights and corresponding obligations of legally resident third-country nationals and the *host society* which provides for full participation of the immigrant' (European Commission 2003d, 17-18). There are three immediate aspects of this definition. First, that integration is a process and therefore needs the active participation of immigrants and host societies. Second, that integration is about the definition of rights as well as obligations. Third, that integration applies to *legal* migrants. 'Illegal immigrants' (this is the term used in 2003, when the first relevant document was issued) are covered by basic human rights, which encompass emergency healthcare and primary school education for children. However, the best approach with illegal immigrants is reportedly to return them, as they do not benefit from integration measures (with connected rights), and would be further marginalized (European Commission 2003d, 25).

Since its first treatments, integration has been emphasized with a view to the possible contribution of legal migrants to the competitiveness of

the EU, given also the economic and social challenges of demographic ageing (European Commission 2003d, 3). 'The successful integration of immigrants is both a matter of social cohesion and a prerequisite for economic efficiency', reported a Commission document (European Commission 2003d, 17). Also because of that, integration has aimed to provide legal migrants with rights and obligations comparable to those of EU citizens (European Commission 2003d, 4), scoring positive result on non-discrimination. Even though the EU does not have a specific mandate on integration, it has intervened in other legislative domains underlining the importance of integration. For instance, this has been done in the case of *family reunification* (see above), considered as a key tool for integration, of *long-term residents,* of the conditions of entry and residence for paid employment or self-employment activities, of *non-discrimination* (European Commission 2003d, 5).

Fact sheet 2.9: Long-term residents

Long-term residents have taken on a specific importance in the debate on integration and are one of the few categories where the EU has delivered a Directive, in an attempt to harmonize Member States' practices. Given the fact that the EU and Member States endorse the principle that 'the length of residence has an influence on the level of rights of the person concerned', third-country nationals meeting the requirement for long-term resident status are those mostly benefitting of integration provisions and hence of rights in the EU (European Commission 2003d, 5). Since 2010, long-term status has been extended to beneficiaries of international protection, although it cannot be given to asylum seekers, persons residing temporarily, having a temporary protection, residing for the purpose of study or vocational training, hence discriminating according to the 'time-length' of permanence in the EU. Legal and continuous residence for at least five years are preconditions for the long-term status. Additionally, eligible persons need to provide evidence of having enough resources for them and their family not to have recourse to the social assistance system and to have sickness insurance (Council 2003c, Art. 5).

The status is permanent and long-term residents should be given a residence permit of at least five years. Most importantly, they enjoy equal treatment with nationals when it comes to access to employment and self-employed activity, education and vocational training, including study grants in accordance with national law; recognition of professional diplomas, certificates and other qualifications, in accordance with the relevant national procedures; social security, social assistance and social protection as defined by national law; tax

benefits; access to goods and services and the supply of goods and services made available to the public and to procedures for obtaining housing; freedom of association and affiliation and membership organizations representing workers or employers or similar organizations; and freedom of access to the entire territory of the Member State concerned, within the limits provided for by the national legislation for reasons of security. Some limitations 'may' exist on employment (prioritizing EU, EEA or nationals citizens), education (language proficiency) or social assistance and social protection. Finally, they also have the possibility to reside in a second Member States (Council 2003c, Artt. 14-23). Indeed, with respect to other categories of migrants, persons eligible for long-residence status enjoy much higher rights, leading to easier integration prospect.

Fact box 2.10: The EU Blue Card

The term 'Blue Card' immediately recalls the European Union's effort to attract highly qualified immigrants to the overall benefit of her competitiveness and economic growth.

The EU Blue Card entitles its holder to reside and work in the territory of a Member State (Council 2009, Art. 2(c)). The main idea behind the Blue Card is that, to attract highly qualified workers, it is necessary to facilitate their admission as well as that of their families and to provide them with equal social and economic rights as of EU's citizens in a number of areas. In the Directive that first tried to harmonize criteria at the EU level, a series of persons were excluded from the possibility to apply for a EU Blue Card, among those, beneficiaries of international protection (Council 2009, Art. 3(2)(b)). In the Proposal for a revised Directive in 2016 this exclusive measure has been relaxed and beneficiaries of international protection (but not of temporary protection) and resettled persons are envisaged as potentially falling within the Blue Card if highly skilled (European Commission 2016h). This is a positive shift with respect to rights extension. The rights enjoyed by persons having the EU Blue Card are quite extensive: labour market access; temporary unemployment safeguard; equal treatment with respect to working conditions; freedom of association; affiliation and membership in organizations representing workers or similar; recognition of education and professional qualifications; provisions for social security; access to good and services for the public; free access to the entire national territory (Council 2009, Artt. 12-17).

Of utmost importance are the extended rights for family reunification envisaged for this category of legal migrants (which starkly contrast 'ordinary' migrants). The 2016 proposal for Directive hopes to extend

these rights even further by reducing time limits for family reunification, removing the need for prospect for permanent residence, removing the time limit for access to the labour market and removing impediments conditions (Council 2009, Art. 15). In a similar way, the path towards the application for the 'long term residence status' in the EU is easier, by cumulating periods of residence in different EU Member States (Council 2009, Art. 16) (a provision not envisaged for non-skilled migrants). Intra-EU mobility of the Blue Card holder and of his/her family is also eased and plans have been made to make it even easier in the 2016 proposal for Directive (Council 2009; European Commission 2016h).

However, as one of the few instruments of the EU realm of legal migration, the EU Blue Card has not had the success hoped for. Minimum standards (inevitable before the Lisbon Treaty when unanimity was required) have provided a large margin of manoeuvre in Member States (European Commission 2014b). Sometimes the 'Blue Card' has been synonymous of intricate admission and intra-mobility conditions. Hence, the new proposal for Directive issued by the Commission hopes to upgrade the relevance of the instrument by addressing these shortcomings. Most importantly, if adopted, the new Directive would change the understanding of the EU Blue Card, by making it the only available avenue to the admission of highly qualified third-country nationals in the EU, something that would bypass Member States' prerogatives thus far. In fact, 'only action at EU level can offer highly skilled workers the possibility to easily move, work and reside in several EU Member States', the Commission makes clear (European Commission 2016h, 6).

Two basic features that have informed the EU's and Member States' understanding of integration are the 'incremental approach' and the 'holistic approach'**.** According to the first, certain categories of immigrants can benefit from integration measures. These are labour migrants, family members admitted under family reunion agreements, refugees and persons enjoying international protection. For these persons integration entails 'a balance of rights and obligations over time', which essentially means that 'the longer a third-country national resides legally in a Member State, the more rights and obligations such a person should acquire' (European Commission 2003d, 18). Hence, immediate integration (which translates into specific rights and obligations) should apply to immigrants with a prospect for a more permanent or stable residence in the EU. Refugees, resettled refugees and

persons entitled to subsidiary protection should also benefit of integration measures. Length of stay and specific needs therefore affect integration and accordingly, asylum seekers are not included in the category of persons above. According to the 'holistic' approach, integration should not only take into account economic and social aspects, but also cultural and religious diversity, citizenship, participation and political rights as well as integration into the labour market, education and language skills, housing and urban issues, health and social services, the social and cultural environment, nationality, civic citizenship and respect for diversity (European Commission 2003d, 19). Interestingly, some integration measures have a specific impact on the possibility of *return***.** As in the case of measures on education, these would contribute to acquire qualifications that can be used in the origin country (European Commission 2003d, 19).

Additionally, two other specific peculiarities inform integration as intended by the EU. First, the idea that a holistic approach should not only cross different sectors but also encompass a variety of actors at the local, national, regional, European level as well as countries of origin, and be the most inclusive possible, working with social partners, the research community, NGOs and the migrants self (European Commission 2003d, 24), emphasizing the multi-faceted governance of the phenomenon. Third countries of origin, for example, could work at three levels: preparing the arrival of immigrants with measures related to integration; support migrants in the EU, through embassies for example; and profiting of migrant's acquired competence when these return to their residence countries (European Commission 2011b, 10). Second, integration includes the idea that some persons may have specific needs, such as refugees and persons entitled of international protection, immigrant women (because of both their sex and ethnic origin) and second and third generation immigrants (European Commission 2003d, 25). In this sense, migrants' subjectivity is particularly taken care of.

Fact box 2.11: the Common Agenda for Integration

The 'Common Agenda for Integration' tried to provide further guidelines to Member States' on the principles upon which integration should be promoted in the EU. These are the principles that still today inform the debate on integration and provide meaning to the concept as intended in the EU. Some of them seem to reflect efforts at involving migrants and their exigencies in the process:

1. Integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States
2. Integration implies respect for the basic values of the European Union
3. Employment is a key part of the integration process and is central to the participation of immigrants, to the contributions immigrants make to the host society, and to making such contributions visible
4. Basic knowledge of the host society's language, history, and institutions is indispensable to integration; enabling immigrants to acquire this basic knowledge is essential to successful integration
5. Efforts in education are critical to preparing immigrants, and particularly their descendants, to be more successful and more active participants in society
6. Access for immigrants to institutions, as well as to public and private goods and services, on a basis equal to national citizens and in a non-discriminatory way is a critical foundation for better integration
7. Frequent interaction between immigrants and Member State citizens is a fundamental mechanism for integration. Shared forums, intercultural dialogue, education about immigrants and immigrant cultures, and stimulating living conditions in urban environments enhance the interactions between immigrants and Member State citizens
8. The practice of diverse cultures and religions is guaranteed under the Charter of Fundamental Rights and must be safeguarded, unless practices conflict with other inviolable European rights or with national law
9. The participation of immigrants in the democratic process and in the formulation of integration policies and measures, especially at the local level, supports their integration.

(European Commission 2005a, 5-10)

Recently, the debate has resented the echoes of the 'refugee crisis' and the European Commission has delivered an Action Plan emphasizing the need to immediately provide integration measures, with an insistence on pre-departure venues. This is an argument in line with the increasing focus on orderly arrivals, making resettlement a privileged channel of entry (European Commission 2016i). There has also been put emphasis on the early and full integration of all third-country nationals, including refugees. Refugees' integration in the labour market

is considered as paramount and is in line with what envisaged in the Qualification Directive. It has also been specified that support to the integration of third-country nationals should not come at the expenses of other vulnerable, disadvantaged group or minority in the Member States (European Commission 2016i).

The external dimension to migration and asylum

The idea that migration necessitates of an 'external dimension' did not only come about from the perception of a blurred divide between internal and external affairs. Rather, it was somehow intrinsic in the same definition of migration as a movement across a national border recognizing the existence of a place from where migrants originate and transit before arriving. It became clear that to try to govern the phenomenon and to regulate it, third countries had to be engaged somehow. Together with migration other home affairs issues, such as 'terrorism' and 'organized crime' shared the fact of necessitating a vigorous external action able to dilute their capabilities to exploit transnational nets, and that acquired even more urgency given the security dimension. Hence, the first reference to the external dimension of the area of freedom, security and justice (European Commission 2005b).

As specifically for migration, the idea was not only to better manage the movement of persons through the engagement of third countries; it was also about addressing the root causes of such movements. Hence the idea was that of a 'comprehensive approach' with respect to issues such as admission and reception in the EU to encompass phenomena and development in third countries (European Commission 2005b, 4). Through time, the external dimension of migration has acquired its own relevance, detached or not always overlapping with border management efforts more in general. An increasing set of words have been associated with this specific facet of migration: irregular immigration, return, readmission, asylum, refugees, Regional Protection Programmes (later Regional Development and Protection Programmes), durable solutions, capacity building, Mobility Partnership, Circular migration, VISA facilitation, Partnership Frameworks (Compacts) and Trust Funds. Indeed, this is not an exhaustive list and many more words testify to the 'external dimension'. However, these provide a glimpse of what 'externally' entails in this EUs effort. Going through the concept delves into EU's interpretation of how relations with third countries have to be framed, into supporting principles and values,

into specific aims and into what is required to maintain an internal area of freedom, security and justice.

As a starting point, it is relevant to underline how the concept of 'resilience', which now seems to be the linchpin of EU's external action in a variegated set of domain, was already well ingrained to migration in the idea of an 'external dimension'. More specifically, it was ingrained in the form of 'respect for the rule of law' and 'capacity building' of third states (those from where migrants originated or transited). Through time, this understanding enriched to encompass an even more comprehensive approach, pulling together actions and aims in different domains. To a certain extent it is possible to affirm that the understanding behind the external dimension to migration has always overlapped with 'resilience':

> Societies based on common values such as good governance, democracy, the rule of law and respect for human rights will be more effective in preventing domestic threats to their own security as well as more able and willing to cooperate against common international threats.
>
> (European Commission 2005b, 4)

Different principles have informed the understanding of 'the external dimension of migration', among others, geographic prioritization (some countries are prioritised in their relations with the EU); differentiation (idea of tailor-made approaches); flexibility (to timely respond to new circumstances); cross-pillar coordination (pulling together of different external actions); partnership (idea of joint approaches with third countries) (European Commission 2005b, 6-7).

Two instruments that have been informing the understanding of the external dimension are, for example, Mobility Partnership and Circular Migration. The main idea behind Mobility Partnerships was to frame relations with third countries on the basis of increased opportunities for legal migration and corresponding duties to fight irregular migration. In particular, the idea was set forward that more cooperation on the fight against irregular migration and on readmission would ensure increased opportunities for legal migration (European Commission 2007a, 2, 4). Mobility Partnership contemplated also the idea of possible countermeasures against *brain drain* phenomena, that is, the deprivation of important resources for the development of a third-

country as a result of the partnership. Yet, these were not firmly part of the arrangement with third countries, but could be added, to the request of the third-country (European Commission 2007a, 7). The concept of *circular migration*, instead, was put forward to intend 'a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries' (European Commission 2007a, 8). Of particular relevance is the possibility for third-country nationals to have temporary access to the EU for work, study, research and training. Nevertheless, the concept of circular migration presupposes as fundamental condition the return and the reestablishment in the country of origin. Hence, both concepts seem to be largely based on 'conditionality' imposed upon third countries. Brain drain of possible skills with a particular attention to specific sectors is given more attention by Circular Migration. However, circular migration was also intended as a possible contribution to 'brain gain' given by temporary emigration experiences, opportunities that may be profitably exploited through adequate reintegration programmes and the creation of local professional opportunities (European Commission 2007a, 12).

With the Arab Spring and the increasing arrivals of migrants on European shores the need to deepen relations with third countries turned more urgent and the external dimension was enriched by a new key concept, the *Global approach to migration and mobility* (GAMM) (European Commission 2001b). Presented in 2011, GAMM was intended 'in the widest possible context as the overarching framework of EU external migration policy, complementary to other, broader, objectives that are served by EU foreign policy and development cooperation' (European Commission 2001b, 4). This attempt at providing a new impetus and a new specification of the external dimension of migration was aimed at pursuing even more coherent external actions, at defining geographic priorities and at more thoroughly pursuing EU strategic objectives (European Commission 2001b, 3). Again, elements recalling the 'resilience' approach of the EU are to be underlined: 'The GAMM should respond to the opportunities and challenges that the EU migration policy faces, while at the same time supporting partners to address their own migration and mobility priorities, within their appropriate regional context and framework' (European Commission 2001b, 5). Hence, the emphasis was on fruitful cooperation and capacity building, not only on migration (managing migration and reducing irregular migration) and security (fight against smuggling and trafficking),

but also on asylum (not a new approach if one considers for example the *Regional Protection Programmes* already encountered in this work).

Accordingly, the main idea was that an effective cooperation with (selected) third countries had to be framed around 4 main pillars: legal migration and mobility; irregular migration and trafficking in human beings; international protection and asylum policy; maximizing the development impact of migration and mobility (European Commission 2001b, 6). Again, the principle of differentiation was at the basis of the GAMM, 'the EU will seek closer cooperation with those partners that share interests and are ready to make mutual commitments with the EU and its Member States (European Commission 2001b, 7). Mobility Partnership was individuated as the key instrument to fulfil the aims of the GAMM, revised to offer 'visa facilitation based on a simultaneously negotiated readmission agreement', though a 'more for more' logic (read as conditionality) (European Commission 2001b, 11).

The massive inflows characterizing the last years have brought further emphasis on the external dimension of migration. More than previously, the external dimension has been conceived as inextricable with respect to other external actions and geographical prioritization has been emphasized. In this sense goes, for example the set-up of *Trust Funds*, intended as 'an innovative mechanism under the EU's Financial Regulation used in the field of development cooperation to pool large resources from different donors to enable a swift, common, complementary and flexible response to the different dimensions of an emergency situation', directed specifically at the Sahel and Lake Chad regions, the Horn of Africa and North Africa (European Commission, 2015h). A similar geographical prioritization is envisaged in the new framework for relations with third countries, the *Partnership Framework (Compacts),* seemingly intended to foster resilience. The main tenets of this concept are: the development of safe and sustainable reception capacities and the provision of lasting prospects close to home for refugees; the creation of effective resettlement prospects in the EU to discourage irregular migration and dangerous journeys and effective policies for the return and readmission of third-country nationals (European Commission 2016l, 2). Again, 'standing ready to provide greater support to those partner countries which make the greatest efforts' was behind the concept of compacts (European Commission 2016l, 2). As framed, the 'Compact' approach was aimed both to face short-term crises as well as to

address the root causes of migration. The idea was a package encompassing different policy elements within EU competence (neighbourhood policy, development aid, trade, mobility, energy, security, digital policy, etc.).